

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, BENGALURU**

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
and  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.2143/Bang/2017  
(Assessment year:2009-10)

M/s. Suprajit Engineering Ltd.,  
No.100, Bommasandra Industrial Area,  
Bengaluru-560099. ... Appellant  
*PAN:AADCS 1638L*

Vs.

Asst. Commissioner of Income-tax, LTU,  
Bengaluru. ... Respondent

Appellant by : Shri V.Srinivasan, Advocate.  
Respondent by : Shri M.Rajasekhar, Addl.CIT(DR)

Date of hearing: 18/07/2019  
Date of pronouncement: 06/09/2019

**O R D E R**

**Per PAVAN KUMAR GADALE, JM:**

The assessee has filed the appeal against the order of the CIT(A), Bengaluru, passed u/s 143(3) and 250 of the Income-tax Act,1961 ['the Act' for short] for the assessment year 2009-10.

2. The assessee has raised the following grounds of appeal:
  1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

**Page 2 of 8**

2. The learned CIT[A] is not justified in upholding the disallowance of Rs.29,92,799/- in terms of Section 14A read with Rule 8D of the I T Rules under the facts and in the circumstances of the appellant's case.
3. Without prejudice to the right to seek waiver, the appellant denies itself liable to be charged to interest u/s 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.
4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. Brief facts of the case are that the assessee is engaged in the manufacture and sale of automobile cables and filed the Return of income for the assessment year 2009-10 on 30/09/2009 with total income of Rs.17,12,68,423/-. Subsequently notice u/s 143(2) and 142(1) of the Act were issued. In compliance, the Id. AR of the assessee appeared from time to time and the case was discussed. On the disputed issue of applicability of provisions of section 14A of the Act, the assessee has dividend on shares of Rs.1,15,41,525/- and claimed exemption u/s 10(34) of the Act. The Assessing Officer raised query to the Id. AR that the provisions of section 14A r.w rule 8D shall apply. The Id. AR submitted explanation at para. 6.2 to 6.4. AO, having considered judicial decisions and the assessee's submission that no expenditure was incurred for

making investments and such investments have been made out of common pool of funds including current cash credits/ overdrafts and AO dealt on the provisions and judicial decisions and applied provisions of section 14A r.w.s rule 8D and calculated the disallowance u/s 14A r.w. rule 8D(2)(i) of Rs.27,05,809/- and 8D(2)(iii) of Rs.2,86,990/- along with other additions Assessed the total income of Rs.17,40,00,076/- and passed the order u/s 143(3) dated 22/11/2011.

4. Aggrieved by the order, the assessee has filed an appeal with the CIT(A) where the CIT(A) upheld the action of the AO and dismissed the appeal.

5. Aggrieved by the order of the CIT(A), the assessee has filed appeal with the Tribunal. The Id. AR submitted that the CIT(A) erred in confirming the addition u/s 14A without considering the fact that the assessee has sufficient surplus funds which are sufficient to cover up investments made by the assessee supported with paper book and judicial decisions, further disallowance u/s 14A shall not apply where assessee has sufficient non-interest bearing funds for investments and Id. AR has argued only on the disallowance u/s 14 of the Act and prayed for allowing the appeal. Contra, learned DR relied on the orders of the CIT(A).

6. We heard the rival submissions and perused material on record. The sole matrix of the disputed issue argued by the Id. AR is on applicability of sec.14A r.w. rule 8D(2)(i) & (iii). The Id. AR submitted that the assessee has sufficient funds to make investments and referred to the Balance-sheet at page 8 of the paper book where the assessee has surplus funds of Rs.57 crores and the assessee has made investment referred in Schedule VI. The Id. AR emphasized that these investments are made in mutual funds. The sole contention of the Id. AR that non-interest-bearing funds have been utilized for making investments and therefore, disallowance under rule 8D(2)(ii) shall not apply and disallowance under rule 8D(2)(iii) has to be calculated based on the average investments and relied on the decision of the co-ordinate bench in the case of *Page Industries Ltd. vs. DCIT*(2016)(181 TTJ Bang 798) at para. 12.1 to 12.3 which is read as under:

“12.1 Ground No.13 relates to disallowance of an amount of Rs.20,15,175/- u/s 14A read with rule 8D of the IT Rules. During the course of assessment proceedings, the AO noticed that the assessee-company earned dividend income of Rs.6,86,839/- from shares and mutual funds which is exempt under the provisions of sec.10(34) of the Act. It is the claim of the assessee-company that there was no expenditure which is incurred to earn the dividend income. The AO held that no dividend can be earned without incurring any expenditure. He, accordingly, applying rule 8D(2)(iii) made addition of Rs.20,51,175/-.

12.2 It is the contention of the assessee-company that no addition u/s 14A can be made without rendering a finding as

to how the claim of the assessee-company that no expenditure was incurred, was incorrect.

12.3 We heard the rival submissions and perused material on record. Now, law is fairly settled that no disallowance under clause (iii) of sub-rule (2) of rule 8D can be made without rendering a finding as to how the claim of the assessee that no expenditure was incurred, is incorrect. When the assessee had not incurred any expenditure, the question of disallowance u/s 14A does not arise as per law laid down by the Hon'ble Karnataka High Court in the case of *Canara Bank Vs. Asst.CIT* (99 DTR 36)(Kar.) In the circumstances, we remit the matter back to the file of the AO for de novo assessment on this issue as per law.”

7. The Id. AR relied on Hon'ble Bombay High Court decision in the case of *CIT vs. Reliance Utilities and Power Ltd.* (2009)(313 ITR 340)(Bom), para.14 to 16 which read as under:

“14 We have heard learned counsel for both the parties. In our opinion, the very basis on which the Revenue had sought to contend or argue their case that the shareholders funds to the tune of over Rs. 172 crores was utilised for the purpose of fixed assets in terms of the balance-sheet as on March 31, 1999, is fallacious. Firstly, we are not concerned with the balance-sheet as on March 31, 1999. What would be relevant would be the balance-sheet as on March 31, 2000. Apart from that, the learned counsel has been unable to point out to us from the balance-sheet that the balance-sheet as on March 31, 1999, showed that the shareholders funds were utilised for the purpose of fixed assets. To our mind the profit and loss account and the balance-sheet would not show whether the shareholders funds have been utilised for investments. The argument has to be rejected on this count also.

15 Apart from that we have noted earlier that both in the order of the Commissioner of Income-tax (Appeals) as also the Appellate Tribunal, a clear finding is recorded that the assessee had interest-free funds of its own which had been generated in the course of the year commencing from April 1, 1999. Apart from that in terms of the balance-sheet there was a further availability of Rs. 398.19 crores including Rs. 180 crores of share capital. In this context, in our opinion, the finding of fact recorded by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal as to availability of interest-free funds really cannot be faulted.

16 If there be interest-free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest-free funds available. In our opinion, the Supreme Court in *East India Pharmaceutical Works Ltd. v. CIT* [1997] 224 ITR 627 had the occasion to consider the decision of the Calcutta High Court in *Woolcombers of India Ltd.* [1982] 134 ITR 219 where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in *Woolcombers of India Ltd.'s* case (1982) 134 ITR 219 the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the overdraft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the assessee had urged the contention before the High Court. The principle, therefore, would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal.”

We, considering the submissions of the assessee on the availability of non-interest-bearing funds and the judicial decisions, are of the view that the Id. AR could substantiate with evidence that non-interest-bearing funds have been utilized for the purpose of investments and need to be verified and we rely on the decision of Hon'ble jurisdictional High Court in the case of *CIT vs. Microlabs* (383 ITR 490) where it is held:

“Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income - (Interest) - Assessment year 2009-10 - Where availability of profit, share capital and reserves and surplus was much more than investments made by assessee which could yield tax-free income, no disallowance of interest expenditure under section 14A could be made [In favour of assessee].

Where the availability of profit, share capital and reserves and surplus was much more than investments made by the assessee which could yield tax-free income, no disallowance of interest expenditure under section 14A could be made.”

Accordingly, we restore the disputed issue for limited purpose to the file of the AO to verify and examining the surplus funds available with the assessee for investments and apply the ratio of judicial decisions and compute disallowance u/s 14A of the Act read with rule 8D and the assessee should be provided adequate opportunity of hearing to substantiate the case with evidence and co-operate in submitting information and allow the grounds of appeal for statistical purposes.

8. In the result, the assessee's appeal is treated as allowed for statistical purposes.

*Order pronounced in the open court on 06<sup>th</sup> September, 2019.*

Sd/-  
**(A.K.GARODIA)**  
**ACCOUNTANT MEMBER**

Place : Bengaluru  
Dated : 06/09/2019  
srinivasulu, sps

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

**Copy to :**

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore