

आयकर अपीलिय अधिकरण पुणे न्यायपीठ “बी” पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “B”, PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND  
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.507/PUN/2017  
निर्धारण वर्ष / Assessment year : 2012-13

The Asst. Commissioner of Income Tax,  
Satara Circle, Satara.

..... अपीलार्थी /  
Appellant.

बनाम v/s

M/s. Hindustan Feeds Mfg. Co.,  
L-4, Additional MIDC,  
Satara – 415004.

..... प्रत्यर्थी /  
Respondent

PAN : AABFH6485P.

Assessee by : Shri D.G. Kurundwadkar

Revenue by : Shri Sudhendu Das.

सुनवाई की तारीख / Date of Hearing : 02.08.2019	घोषणा की तारीख / Date of Pronouncement: 12.09.2019
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आदेश / ORDER

**PER ANIL CHATURVEDI, AM :**

1. This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A) – 8, Pune dated 29.12.2016 for the assessment year 2012-13.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a partnership firm stated to be engaged in the business of processing of cattle feed. Assessee filed its return of income for A.Y. 2012-13 on 22.09.2012 declaring total taxable income of Rs.5,49,30,013/-. The case was selected for scrutiny and thereafter

assessment was framed u/s 143(3) of the Act vide order dated 27.03.2015 and the total income was determined at Rs.6,38,07,290/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 29.12.2016 (in appeal No.PN/CIT(A)-8/ACIT, Satara Circle/83/2015-16/198) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following effective ground. :

*“Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) is correct in reducing the disallowance u/s. 14A r.w. Rule 8D of Rs. 88,77,276/- to Rs. 1,98,410/- without appreciating the fact that interest bearing fund was utilized by the assessee firm to earn exempt income and hence interest paid by the assessee firm on borrowed fund is required to be disallowed as per section 14A of IT Act, 1961 read with Rule 80 IT Rules 1962 ?”*

3. During the course of assessment proceedings, AO noticed that assessee had shown Rs.39,77,585/- as exempt income which included dividend income from investments in mutual funds. The assessee was asked to show cause as to why the proportionate expenditure has not been disallowed u/s 14A of the Act, to which assessee inter-alia submitted that assessee has not incurred any expenditure for earning exempt income. The submissions of the assessee were not found acceptable to the AO. AO noticed that assessee had investments of Rs.6,06,45,545/- in mutual funds. He also noticed that the partners of the assessee had brought huge capital to the extent of Rs.22.90 crores and assessee firm had paid interest on the capital to the partners. He noted that the total interest on capital paid by the firm was to the extent of Rs.2.09 crores. AO was of the view that assessee had diverted interest bearing funds for making investments. He was also of the view that apart from direct expenditure, indirect expenditure was also incurred for running exempt income. He thus, worked out the interest

expenses at Rs.55,34,939/- and thereafter he worked out the disallowance u/s 14A r.w. Rule 8D of I.T. Rules and made its addition. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A).

4. Ld.CIT(A) while granting partial relief to the assessee has noted that the AO's finding that the capital of the partners which has been diverted for making investments in mutual funds and on it paying interest is not equivalent to borrowed funds and for which Ld.CIT(A) has relied on the decision in the case of Quality Industries Vs. JCIT reported in (2016) 161 ITD 0217 (Pune). She also noted that the Tribunal has held that the capital of the partners in a firm does not amount to borrowed funds and the interest paid thereon is not the interest as envisaged u/s 36(1)(iii) of the Act. She has further noted that the Tribunal has also held that the interest paid by partnership firms towards use of the partner's capital does not amount to expenditure for the purpose of Sec.14A of the Act and accordingly such interest on partners capital cannot be considered for making disallowance u/s 14A r.w.s R 8D of I.T. Rules. With respect to disallowance under 8D(2)(i) of I.T. Rules she has given a finding that the interest of Rs.2,199,989/- and commission of Rs.1,48,686/- cannot be considered for earning exempt income under Rule 8D(2)(ii) of I.T. Rules. She however upheld the disallowance on account of administrative expenses and thus upheld the disallowance to the extent of Rs.1,98,410/-.

Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

5. Before us, Ld. D.R. supported the order of AO. Ld.A.R. on the other hand reiterated the submissions made before lower authorities and supported the order of Ld.CIT(A).

6. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to the disallowance u/s 14A r.w. Rule 8D of I.T. Rules. We find that Ld.CIT(A) while granting partial relief to the assessee after relying on the decision of Pune Tribunal in Quality Industries Vs. JCIT (supra) has held that interest paid on partner's capital account cannot be considered as interest for the purpose of disallowance u/s 14A of the Act. She has also given a finding that interest and commission expenses cannot be considered to have been incurred for earning exempt income. Before us, Revenue has neither placed any contrary binding decision in its support nor has pointed out any fallacy in the findings of Ld.CIT(A). In such a situation, we find no reason to interfere with the order of Ld.CIT(A).

**Thus, the ground of the Revenue is dismissed.**

**7. In the result, the appeal of Revenue is dismissed.**

Order pronounced on 12<sup>th</sup> day of September, 2019.

**Sd/-**  
**(SUSHMA CHOWLA)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ANIL CHATURVEDI)**

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 12<sup>th</sup> September, 2019.

Yamini

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-8, Pune.
4. Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,  
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.