

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 766/Bang/2017
Assessment Year : 2009-10

M/s. Axis Aerospace & Technologies Pvt. Ltd., 54, Richmond Road, Bangalore – 560 025. <b>PAN: AACCB1728K</b>	Vs.	The Commissioner of Income Tax (Appeals) – 14, Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sheetal Borkar, Advocate
Revenue by	:	Smt. R. Premi, JCIT (DR)

Date of hearing	:	09.09.2019
Date of Pronouncement	:	20.09.2019

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-14, LTU, Bangalore dated 27.02.2017 for Assessment Year 2009-10.

2. The grounds raised by the assessee are as under.

*“1. The Commissioner of Income Tax (Appeals) (CIT), erred in confirming the addition of Rs 30,54,794 made by invoking section 14A of the Income Tax Act (Act).*

***Ground on Source of funds to make investments***

*2. The CIT has made an error when holding that the appellant had only Rs 13,91,15,414 as available funds while the invest was to the tune of Rs 24,00,58,742.*

*3. The amount of Rs 13.91 crores was on 31.3.2008 while the investment during the financial year 2008 - 09 was Rs 14.80 crores. The appellant had sold investments worth Rs 9.2 crores during the year.*

*4. The CIT has not stated facts when observation that "the appellant has not been able to file a cash flow statement linking its available funds from interest bearing and interest free sources to the dates of*

*investments". The financial stamen of the appellant was indeed filed filled and a cash flow was never asked for even though the appellant had explained in detail the source of funds.*

*5. The CIT erred in relying on the decisions of the Kerala High Court in the case of CIT v Dhanalakshmi Bank Ltd 10 taxman.com 213 and Hercules Hoist Ltd ITA 7944,7946,2252 and 7943/Mumbai/2001.*

*6. The CIT has grossly mistaken the decision of the Bangalore Bench in the case of John Distilleries by observing in para '13 of the order that disallowance has been upheld even when it was found that investments had been made out of own interest free resources.*

*7. The appellant submits the extract of the pronouncement:*

*We have heard rival submissions and perused material on record. The only issue in the appeal filed by the revenue is that whether the Id.CIT(A) was justified in deleting addition of Rs.75,67,905/-under the provisions of rule 8D(2)(ii) of the Act. The Id. CIT(A) deleted the addition after considering the fact that reserves and surplus are more than investments in the year in which investments are made i.e. 2009-10. Therefore, he concluded that a presumption should be drawn that only free funds are utilised for making investments and therefore, held that no disallowance should made under the said provision. The reasoning of the Id.CIT(A) is supported by the following decisions:*

*i. CIT vs. Hero Cycles Ltd. (323 ITR 518) ii. CIT vs. Gujarat Industries Ltd. (218 Taxman 742); and iii. CIT vs. Kribhco (349 ITR 618) and iv. Reliance Utility and Power Ltd. (313 ITR 340) In the abovementioned cases, it has been held that it should be presumed that the assessee used own funds for making investments where assessee had both own funds as well as borrowed funds. The Id.CIT(A), on the same parity of reasoning, directed the AO to delete the addition of Rs.75,67,905/-under ITA Nos.1429 & 1565/Bang/2014 rule 8D(2)(ii). Therefore, we do not find any reason to interfere with the order of the Id.CIT(A). Hence, the appeal filed by the revenue is dismissed.*

*8. The appellant also wishes to rely on the decision of the Supreme Court in the case of Munjal Sales Corporation 298 ITR 298, the Madras High Court decision in Hotel Savera v CIT 239 ITR 796 and the Bombay High Court in the case of Reliance Utilities and Power Limited 313 ITR 340.*

***Ground on Actual receipt of exempted income by the Appellant***

*9. The CIT ought to have appreciated the fact that the appellant has not received any income which is exempt from tax. This fact alone distinguishes the above decisions.*

*10. Respective high Courts have held that the expression does not form part of the total income in section 14A implies that there should be an actual receipt of income which is not includible in the total income*

during the previous year for the purpose of disallowing expenditure under section 14A and therefore the said section would not apply if no exempted income was received or receivable during the relevant previous year.

11. The appellant wishes to rely on the decision of the Punjab and Haryana High Court in the case of CIT v Hero Cycles Ltd 323 ITR 518, CIT V Winsom Textile Industries Ltd 319 ITR 204.

12. The appellant also submits for your consideration the findings with respect to rule 8D(2)(iii) The only issue is whether any disallowance is called for under rule 8D(2)(iii) or not. The contention of the assessee that no expenditure was incurred to earn dividend income of Rs. 29,000/- was not accepted by the AO. As held by the Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. Vs. CIT (347 ITR 272) it is not the purpose of the expenditure which is relevant.

Once exempt income is earned, it means that some expenditure being incurred in relation to the exempt income which should be disallowed by applying formula laid down in rule 8D(2)(iii). Therefore, action of the AO is correct in applying rule 8D(2)(iii) but the amount of disallowance should be restricted to the dividend income.

13. The appellant submits that the disallowance cannot exceed the amount of exempted income. The appellant relies on the decision of the Delhi High Court in the case of DCM Ltd v DCIT.

14. The appellant also relies on the decision of the Bombay High Court in the case of CIT v Delite Enterprise P Ltd.

**Ground of claim based on nexus of expenditure to the income earned**

15. The appellant submits that it had incurred an expense of Rs 26,18,582 being finance charges on Inter corporate Deposits (ICD) availed. These ICDs were used for working capital of the appellant

16. The Assessing officer has disallowed a sum of Rs 30,54,794. The amount disallowed is more than the amount alleged to be incurred for earning exempted income — being interest on ICD.

17. The appellant had borrowed ICD of Rs 8.19 crores during the financial year 2007 — 08 and it came down to •Rs 2.74 crores during 2008 - 09. The figure was Nil for the financial year 2006 07. These are short term borrowings for the working capital requirement of the appellant. There is no nexus between the finance cost incurred for the said borrowing and the investments made.

18. The appellant submits that the CIT ought to have considered the findings of the Honorable court in the case of CIT V Hero cycles Ltd 323 ITR 518. The Courts have held that disallowance is not permissible under section 14A where there is no nexus between expenditure incurred and exempted income generated.

19. Your appellant also wishes to draw your attention the findings of the Courts on similar principles in the case of *Godrej & Boyce Mfg Co Ltd 328 ITR 81* and *Wall fort Shares and Stock Brokers Ltd v ITO 310 ITR 421*.

***Ground of recording reason for rejecting the appellants claim***

20. The appellant further submits that the CIT ought to have appreciated the fact the assessing officer has not brought out any reason for rejecting the claim of the appellant and has mechanically applied the provisions of section 14A.

21. The appellant draws your attention to the decisions of the courts in the cases of *DCIT v Ashish Jhunjunwala Kolkatta* and *DCIT v Philips Carbon Black Ltd 133 ITD 189*.

22. For these and other grounds that may be urged at the time of hearing, the appellant prays that the Honorable Bench of the Tribunal may kindly delete the disallowance made under section 14A of the Income Tax Act?

3. At the very outset, it was submitted by Id. AR of assessee that in the present year, there is no exempt income earned by the assessee and hence, there cannot be any disallowance u/s. 14A of the IT Act. In support of her contention, reliance was placed by her on the judgment of Hon'ble Delhi High Court rendered in the case of *PCIT Vs. McDonald's India (P.) Ltd.* as reported in [2019] 101 taxmann.com 86 (Delhi). She filed a copy of this judgment. She also filed a copy of the audited P&L account for the year ended on 31.03.2009 and pointed out that as per the P&L account, it is apparent that no exempt income was earned by the assessee in the present year and hence, this judgment of Hon'ble Delhi High Court is squarely applicable in the facts of the present case. She also placed reliance on a Tribunal order rendered in the case of *DCIT Vs. Axiscades Aerospace & Technologies Pvt. Ltd.* in ITA No. 314/Bang/2018 dated 31.05.2018. She submitted a copy of this Tribunal order and drawn our attention to para 4 of this Tribunal order and pointed out that in this case also, it is held by the Tribunal that the provisions of section 14A cannot be invoked in the absence of exempt income. The Id. DR of revenue supported the orders of authorities below.

4. We have considered the rival submissions. First of all, we examine the P&L account of the assessee company to find out as to whether any exempt income is earned by the assessee in the present year or not. We find that as per the P&L account, there is gross income of Rs. 4,95,79,007/- which includes sales of products, interest received, excess provision written off and service income and hence, it is seen that there is no exempt income earned by the assessee in the present year. This is by now settled position of law that in the absence of exempt income, provisions of section 14A cannot be invoked and hence, by respectfully following these various judgments cited by Id. AR of assessee, we delete the disallowance made by the AO and confirmed by Id. CIT(A) u/s. 14A of the IT Act.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(PAVAN KUMAR GADALE)  
Judicial Member

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 20<sup>th</sup> September, 2019.  
/MS/

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

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.