

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E', NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.923/Del/2017
Assessment Year: 2012-13

M/s. Metal Coatings (India) Ltd., 912, Hemkunt Chambers, 89, Nehru Place, New Delhi	Vs.	DCIT, Circle-16(2), C.R. Building, New Delhi
PAN :AAACM2115M		
(Appellant)		(Respondent)

Appellant by	Shri Ashok Khandewal, CA
Respondent by	Shri K. Hauthang, Sr.DR

Date of hearing	26.09.2019
Date of pronouncement	16.10.2019

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 10/01/2016 passed by the learned Commissioner of Income-tax (Appeals)-6, New Delhi [in short 'the learned CIT(A)] for assessment year 2012-13 raising following solitary ground:

“Action of the CIT(A) in sustaining a disallowance of Rs.7,50,000/- made u/s 14A of Income Tax Act, 1961 is unjust, illegal, arbitrary and against the facts and circumstances of the case.”

2. Briefly stated facts of the case are that the assessee filed return of income on 25/09/2012, declaring total income of 2,38,47,390/-. The case was selected for scrutiny and statutory notices under Income-tax Act, 1961 (in short "the Act") were issued and complied with. The Assessing Officer observed investment in shares by the assessee and in view of no explanation in respect of expenditure incurred in relation to the exempt income, in assessment order passed under section 143(3) of the Act on 09/12/2014, he invoked section 14A of the Act read with rule 8D of Income Tax Rules, 1962, and made disallowance of 1,78,64,589/-, which was subsequently rectified by him to 9,59,850/- in order under section 154 of the Act, dated 02/05/2016.

2.1 Aggrieved with the addition made, the assessee preferred an appeal before the learned CIT(A), who restricted the disallowance to the extent of exempt dividend income of 7,50,000/-, following the decision of the Hon'ble Delhi High Court in the case of Joint Investment (P) Ltd. Vs. Commissioner of Income-tax (2015) 59 taxmenn.com 295 (Delhi).

2.2 Aggrieved with the finding of the learned CIT(A), the assessee preferred an appeal before the Tribunal.

3. Before us, the learned counsel of the assessee filed a paper book and submitted that investment in shares has been made out of the own funds and no borrowed funds have been utilized for investment in the shares and, therefore, no disallowance should be made in respect of expenditure directly related to exempt income as well as expenditure not directly attributable to the exempt income and only disallowance, which could have been made in the

case of the assessee is $\frac{1}{2}\%$ of average value of investment, which has been computed by the Assessing Officer under Rule 8D(2)(iii) of the Income-tax Rules, 1962 at 75,000/-. The learned Counsel submitted that in subsequent assessment year 2013-14, also the Assessing Officer has restricted the disallowance under section 14A of the Act read with rule 8D(2)(iii) of the Rules only and no disallowance has been made under rule 8D(2)(i) and 8D(2)(ii) of the Income Tax Rules. The learned counsel referred to para six of the submission made before the learned CIT(A) and submitted that the working capital loan which was of 17,43,76,002/- as on 31/03/2010 has reduced to 14,55,45,077 as on 5/02/2011 i.e. the period during which investment of 3 crores in shares of "Kochar Agro Industries Private Limited" was made, which has earned dividend income of 7,50,000/- to the assessee. In view of the arguments, the learned counsel submitted to restrict the disallowance under rule 8D(2)(iii) of the Rules.

4. The learned DR, on the other hand, relied on the order of the learned CIT(A).

5. We have heard the rival submission of the parties and perused the relevant material on record. The assessee made investment of 3 crore in unquoted fully paid up shares of "Kochar Agro Industries Private Limited" on 5.02.2011 and earned dividend income of 7,50,000/- from that investment during the year under consideration. The assessee did not make any *suo motu* disallowance for expenses incurred toward earning exempt income out of the expenses claimed, under section 14A of the Act . We find that the Assessing Officer invoking Rule 8D of the Income Tax Rules, 1962 made disallowance of 9,59,850/- towards earning

the exempt income vide his order dated 02/05/2016 passed under section 154 of the Act as under:

S. No.	Disallowance	Amount in Lakhs (Rs.)
1.	<i>The amount of expenditure directly relating to income which does not form part of total income</i>	Nil
2.	<p><i>In a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula</i></p> <p><i>AXB/C</i></p> <p><i>Where</i> <i>A= amount of expenditure by way of interest other than the amount of interest included in clause (1) incurred during the previous year.</i></p> <p><i>B= the average of value of investment, income from which does not or shall not form part of the total income appearing in the balance sheet of the assessee on the last day and the last day of the previous year.</i></p> <p><i>C= the average value of total assets as appearing in the balance sheet of the assessee on the first day and the last day of the previous year.</i></p>	<p><i>A=1,94,58,000/-</i></p> <p><i>B=1,50,00,00,000/-</i></p> <p><i>C=32,98,52,500/-</i></p> <p><i>Hence,</i> <i>Disallowance=8,84,850/-</i></p>
3.	<i>An amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year</i>	<i>½ % of average investment of Rs.1,50,00,000/- =Rs.75,000/-</i>
	Total disallowance	Rs.9,59,850/-

6. Before the learned CIT(A), the assessee contested that investment in shares was made out of own sources and not borrowed capital. It was explained that during the year ending

31/03/2011, there was a balance in the profit and loss account of 8,94,60,371/-. The assessee's own capital was of 5,02,68,000/- in the figure of reserve and surplus of 9,33,00,708/- thus making a total capital and reserve of 14,35,68,708/- as on 31/03/2011. It was contended that working capital loan was used only for running the business and investment was made out of own funds and there is no expense directly attributable to earning the dividend income. The assessee relied on the decision of the Hon'ble Bombay High Court in the case of **CIT Vs. Reliance Utilities and Power Ltd., (2009) 178 Taxman 135 (Bombay)** wherein it is held that *"if there are funds available, both, interest free and overdraft and/or loans taken, then the presumption would arise that investment would be out of interest free funds generated or available with the company, provided said funds are sufficient to meet investment"*. After considering the submission of the assessee and verifying the details of working capital loan, the learned CIT(A) observed that investment in share was made out of overdraft account. The relevant finding of the learned CIT(A) is reproduced as under:

"In the instant case, investment in shares was made in February, 2011 i.e. in financial year 2010-11. On perusal of bank statement of appellant, it was found that there was Cash Credit Account to avail working capital loan bearing interest rate of 11 per cent per annum. The said account was Overdraft Account. The funds out flowed in February, 2011. The overdraft account balance before outflow of funds was Rs.11.99 crores and after outflow, it was increased to Rs.14.99 crores. Thus, it was clear that Cash Credit Overdraft Account bearing heavy interest burden was utilized towards making investment of Rs.3 crore in equity shares. Apparently, there was direct nexus between interest bearing source of funds and investment which yielded exempt income. The Commissioner (Appeals) vide Enhancement Notice dated 21-8-2015 asked appellant why the amount of interest expenditure directly relating to income which does not form part of total income should be made i.e. 11 per cent p.a. on

Rs.3 crore as per section 14A read with rule 8D(2)(i). However, the appellant could not furnish any convincing reply and simply reiterated what it had submitted earlier.

It is a fact that the appellant is having sufficient own funds available with it. Therefore, though it may be presumed that investment in shares had come from interest free funds available with appellant, in the instant case, presumption relied upon by appellant is not applicable as there are separate accounts. The Cash Credit Account is for working capital loan which has been utilized for making investment in equity shares. This fact is discernible from bank statement of appellant. Thus, borrowed funds have been diverted towards making investment and therefore, disallowance of interest expenditure is also required to be made under Rule 8D(2)(i) as there is direct nexus between the borrowings and the ' investment. Accordingly, enhanced disallowance should be made as per section 14A read with rule 8D in following manner:

<i>Particulars</i>	<i>Amount</i>
<i>Expenditure directly relating to exempt income [Rule 8D(2)(i)]</i>	<i>33,00,000</i>
<i>Expenditure not directly attributable to any particular income [Rule 8D(2)(ii)]</i>	<i>8,84,850</i>
<i>Amount equal to one-half per cent of average value of investment, income from which does not form part of total income [Rule 8D(2)(iii)]</i>	<i>75,000</i>
<i>Total</i>	<i>42,59,850</i>

However, it is pertinent to mention here that disallowance computed by invoking section 14A of the Act read with rule 8D of Income-tax Rules, 1962 is Rs.42,59,850/-, whereas, dividend receipt on shares was Rs.7,50,000. In Joint Investments (P.) Ltd. v. Commissioner of Income-tax [2015] 59 taxmann.com 295 (Delhi), it was held that "the disallowance under section 14A cannot exceed the tax exempt income. By no stretch of imagination can section 14A or rule 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in section 14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case."

In Daga Global Chemicals Pvt. Ltd. v. ACIT (ITA No. 5592/Mum/2012) dt. 1-1-2015, it was held that disallowance under section 14A read with rule 8D of the Rules cannot exceed the exempt income. If any disallowance could be made, that is to be restricted to expenditure with respect to exempt income.

In Ravian International (P) Ltd. v. ITO ITA No. 5735/Mum/2012 (Mum-Trib.) dt. 10-12-2014, it was held that where the assessee had not claimed any exempt income during the year under consideration, no disallowance could be made by invoking provisions of section 14A.

In view of above judicial pronouncements, disallowance made under section 14A read with rule 8D is restricted to Rs.7,50,000 only. Therefore, this ground of appeal may be treated as dismissed.”

7. We find that the learned CIT(A) has given the finding of the fact that overdraft account balance before outflow of the fund for investment was 11.99 crores and after outflow, it was increased to Rs.14.99 crores and thus investment of 3 crores, was made out of interest-bearing overdraft account. This finding of the fact has not been rebutted by the assessee before us. In our opinion, when there is a direct evidence that investment has been made out of borrowed fund, there is no requirement to refer to the presumption that investment was made out of interest free funds generated or available with the company. In view of the finding that investment was made out of borrowed funds, the learned CIT(A) computed the disallowance under Rule 8D to Rs.42,59,850/- as under:

<i>Particulars</i>	<i>Amount</i>
<i>Expenditure directly relating to exempt income [Rule 8D(2)(i)]</i>	<i>33,00,000</i>
<i>Expenditure not directly attributable to any particular income [Rule 8D(2)(ii)]</i>	<i>8,84,850</i>
<i>Amount equal to one-half per cent of average value of investment, income from which does not from part of total income [Rule 8D(2)(iii)]</i>	<i>75,000</i>
<i>Total</i>	<i>42,59,850</i>

8. However, keeping in view the decision of the Hon'ble Delhi High Court in the case of Joint Investment Private Limited (supra), he restricted the disallowance to the amount of exempted dividend income of Rs.7,50,000/-. In view of clear finding that investment in the shares was made out of borrowed funds, the request of the assessee to remit the matter back to the Assessing Officer for deciding in view of the assessment for assessment year 2013-14 is rejected.

9. In our opinion, the order of the learned CIT(A) on the issue in dispute is well reasoned and we do not find any error in the same. Accordingly, we uphold the finding of the learned CIT(A) on the issue in dispute. The ground of the appeal of the assessee is accordingly dismissed.

10. In the result, the appeal of the assessee is dismissed.

Order is pronounced in the open court on 16th October, 2019.

**Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER**

**Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

Dated: 16th October, 2019.

RK/-(D.T.D.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR