

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD òDò BENCH

**Before: Shri Amarjit Singh, Accountant Member  
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 3085/Ahd/2013  
Assessment Year 2009-10**

Kiri Industries Ltd.(Formerly known as Kiri Dyes & Chemical Ltd.), 53, Manekbaug Society, Ambawadi, Ahmedabad PAN: AAACK9025C (Appellant)	Vs	The ACIT, Range-4, Ahmedabad (Respondent)
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**Revenue by: Shri Santosh Karnani, Sr. D.R.**  
**Assessee by: Shri T.P. Hemani,  
Shri P.B. Parmar &  
Shri Mohit R. Balani, A.Rs.**

Date of hearing : 22-11-2019  
Date of pronouncement : 04-12-2019

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This assessee's appeal for A.Y. 2009-10, arises from order of the CIT(A)-VIII, Ahmedabad dated 04-10-2013, in proceedings under section 143(3) of the Income Tax Act, 1961; in short òthe Actö.

2. The assessee has raised following grounds of appeal:-

*"1. The Id. CIT(A) has erred in law and on the facts of the case in confirming the disallowance of Rs.14,75,119/- u/s 14A of the Act out of total disallowance of Rs.54,52,529/- made by the Id. AO by invoking Rule 8D of the Income Tax Rules.*

*2. Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*

*3. The Id. CIT(A) has erred in law and on facts in confirming the action of Id. AO in charging interest u/s 234B/C/D of the Act.*

*4. The Id. CIT(A) has erred in law and on facts in confirming the action of Id. A.O. in initiating penalty proceedings u/s. 271(1)(1) of the Act."*

2. Both the grounds of appeal of the assessee are pertained to the solitary issue of sustaining the disallowance of Rs. 14,75,119/- u/s. 14A of the act of the out of total disallowance of Rs. 54,52,129/- made by the assessing officer.

3. The fact in brief is that return of income of Rs. 7,41,19,360/- was filed on 29<sup>th</sup> Sep, 2009. The case was subject to scrutiny assessment and notice u/s. 143(2) of the act was issued on 27<sup>th</sup> August, 2010. At the time of assessment, the assessing officer noticed that assessee has earned exempt income as dividend from mutual fund at Rs. 104,77,942/- and claimed as exempt income. During the course of assessment the assessee has submitted that it has made investment out of interest free fund therefore no disallowance u/s. 14A be made. However, the assessing officer has not accepted the submission of the assessee stating that assessee has failed to prove the nexus from which it can be established that the investment in shares was made out of interest bearing fund. Consequently, the assessing officer has computed disallowance u/s. 14A r.w Rule 8D to the amount of Rs. 54,52,529/- and added to the total income of the assessee.

4. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has partly allowed the appeal of the assessee restricting the addition to the extent of Rs. 14,75,119/-.

5. During the course of appellate proceedings before us, the Id. counsel has furnished paper book comprising detail and copies of document furnished before the assessing officer and CIT(A) at the time of assessment and appellate proceedings and contended that assessee had sufficient interest free funds to cover the investment. The Id. counsel has also placed reliance on the following decisions:-

- CIT vs. Reliance Industries Ltd. 410 ITR 466.
- CIT vs. Torrent Power Ltd. -363 ITR 474 (GUJ)
- CIT vs. Suzlan Energy Ltd. -354 ITR 630 (GUJ)
- CIT vs. Reliance Utilities & Power Ltd. 313 ITR 340 (Bom)
- CIT vs. Munjal Sales Corporation 298 ITR 298 (SC)

On the other hand, the Id. departmental representative has supported the order of Id. CIT(A).

5. Heard both the sides and perused the material on record. It is noticed that as per balance sheet of the assessee as on 31<sup>st</sup> March, 2009, the position of interest free fund and investment was as under:-

Particulars	Balance as at 31.03.09	Page No of the P/b
A) Interest free funds:	15.00	19
> Share Capital	107.96	
> Reserves & Surplus	122.96	
(B) Investments:	16.60	
> Investments	7.4 Times	
(C) Ratio of interest free funds and investments [A/B]		

In the light of the fact of the case, we notice that Honøble Mumbai High Court in the case of CIT vs. Reliance Utilities and Power Ltd 313 ITR 340 (Mumbai) has held that where an assessee has his own funds as well as borrowed funds a presumption can be made that advances for non-business purposes have been made out of the own funds and that the borrowed funds have not been used for this purpose and the Honøble Supreme Court in the case of CIT vs. Reliance Industries Ltd. 410 ITR 466 has held that interest free funds available with the assessee is sufficient to meet investment and presumption is that investment in subsidiaries were out interest free funds. After considering the above facts and judicial findings, we find that assessee was having sufficient interest free fund to cover the investment made in the shares from which it has earned interest free fund and therefore the decision of Id. CIT(A) is not justified. However, after looking to the size of the investment made in the shares, we are of the view that it cannot be ruled out that no administrative expenditure has been incurred for management and administration of the investment made by the assessee, therefore, we restrict the disallowance to the extent of administrative expenditure as reported at page 18 of the CIT(A) to the amount of Rs. 5,17,605/-. Accordingly, the appeal of the assessee is partly allowed.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 04-12-2019

**Sd/-**

**(MADHUMITA ROY)  
JUDICIAL MEMBER**

**Ahmedabad : Dated 04/12/2019**

**Sd/-**

**(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

आदेश कललम आषत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलअ अधकरण,  
अहमदाबाद