

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

Before Sh. Kuldip Singh, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2104/Del/2017 : Asstt. Year : 2010-11

ITA No. 2105/Del/2017 : Asstt. Year : 2011-12

ITA No. 2106/Del/2017 : Asstt. Year : 2012-13

ITA No. 2107/Del/2017 : Asstt. Year : 2013-14

VIC Enterprises Pvt. Ltd., 4 th Floor, Punjabi Bhawan, 10, Rouse Avenue, New Delhi-110002	Vs	Deputy Commissioner of Income Tax, Circle-26(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACV0132B		

Assessee by : Sh. M. P. Rastogi

Revenue by : Ms. Ashima Neb, Sr. DR

Date of Hearing: 21.01.2020

Date of Pronouncement: 29.01.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of Id. CIT (A)-33, New Delhi dated 19.01.2017 and the orders of Id. CIT (A)-9, New Delhi dated 20.02.2017.

2. In ITA No. 2104/Del/2017, following grounds have been raised by the assessee:

"1. The Id. CIT (Appeals) of Income Tax erred in disallowing the interest payment of Rs.3,05,12,745/- keeping in view the interest free advances given by the appellant company. Full arguments will be advanced at the time of hearing.

2. The Id. CIT (Appeals) of Income Tax erred in ignoring the fact that the appellant had advanced the loans and advances from its own funds and not out of the borrowed funds."

3. In ITA No. 2105/Del/2017, following grounds have been raised by the assessee:

"1. The Id. CIT (Appeals) of Income Tax erred in disallowing the interest payment of Rs.69,73,346/- keeping in view the interest free advances given by the appellant company. Full arguments will be advanced at the time of hearing.

2. The Id. CIT (Appeals) of Income Tax erred in ignoring the fact that the appellant had advanced the loans and advances from its own funds and not out of the borrowed funds."

4. In ITA No. 2106/Del/2017, following grounds have been raised by the assessee:

"1. The Id. CIT (Appeals) of Income Tax erred in disallowing the interest payment of Rs.68,81,215/- keeping in view the interest free advances given by the appellant company. Full arguments will be advanced at the time of hearing.

2. The Id. CIT (Appeals) of Income Tax erred in ignoring the fact that the appellant had advanced the loans and advances from its own funds and not out of the borrowed funds."

5. In ITA No. 2107/Del/2017, following grounds have been raised by the assessee:

"1. The Id. CIT (Appeals) of Income Tax erred in disallowing the interest payment of Rs.16,31,794/- keeping in view the interest free advances given by the appellant company. Full arguments will be advanced at the time of hearing.

2. The Id. CIT (Appeals) of Income Tax erred in ignoring the fact that the appellant had advanced the loans and advances from its own funds and not out of the borrowed funds.

3. The Id. CIT (Appeals) of Income Tax erred in not accepting the disallowance amounting to Rs.4,10,947/- u/s 14A made by the appellant and allowed the enhancement of disallowance by Rs.40,79,583/- made by the Assessing Officer. The increase in disallowance u/s 14A is not at all justified and requires revision. Full arguments and detailed submissions will be made at the time of hearing."

6. The issues involved in these appeals to be adjudicated are,

- i. Disallowance of interest payment on the interest free advances given by the assessee.
- ii. Disallowance u/s 14A of the Income Tax Act, 1961 more than the disallowance made by the assessee *suo moto*.

7. The assessment year 2012-13 is taken as the lead case for the sake of convenience on the issue of interest payments.

8. Brief facts of the case taken from the record are that, during the relevant financial year, the assessee earned interest income of Rs.8,73,13,968/- and also debited interest expenses of Rs. 16,31,794/-. From the details of interest paid furnished during the course of assessment proceedings, it is seen that a total amount of Rs.16,31,794/- has been paid to various entities against the total unsecured loans taken amounting to Rs.1.20 crores during the year. A perusal of the balance sheet of the assessee also shows that an amount of Rs.268.74 crores has been shown as loans and advances given as at 31.03.2013. The corresponding figure as at 31.03.2012 was Rs.255.05 crores. During the course of assessment proceedings, the details of interest paid were called for to justify that the loans and advances have been made for the purpose of business activities only. The Assessing Officer examined whether any interest has been charged on the advance. The Assessing Officer held that the assessee is using interest bearing funds by giving advances to various other group concerns and individuals without charging any interest from them. Therefore, a proportionate disallowance out of the interest expenses claimed by the assessee was made by the Assessing Officer of Rs. 16,31,794/-.

9. It was argued before the revenue authorities that the Assessing Officer has made a notional computation of interest @ 15% on loans and advances of Rs 268.74 crores. It was argued that there can be no notional addition of interest on interest free loan and advances has been decided by the Hon'ble Delhi High Court in the case of Shivnandan Buildcon Pvt. Ltd. v CIT 2015 (5)

TMI 192. The Id. CIT (A) confirmed the addition holding that the burden lies on the assessee that interest free loans and advances were given from own funds and no nexus has been proved.

10. Before us during the argument, the Id. AR submitted that the details of the own funds available with the assessee. The Id. DR supported the order of the Id. CIT (A). The details of own funds and loans given are as under:

Details of Interest Free reserves available with the appellant

	AY 2009-10	AY 2010-11	AY 2011-12	AY 2012-13	AY 2013-14
Statutory Reserve	514,875,000	578,625,000	648,000,000	711,950,000	791,409,000
Capital redemption reserve	3,290,000	3,290,000	3,290,000	3,290,000	3,290,000
Share Premium account	7,750,000	7,750,000	7,750,000	7,750,000	7,750,000
General Reserve	8,345,000	8,345,000	8,345,000	8,345,000	8,345,000
Surplus in profit and Loss account	2,276,216,422	2,531,129,296	2,808,554,199	3,065,216,748	3,383,048,545
Total own funds	2,810,476,422	3,129,139,296	3,475,939,199	3,796,551,748	4,193,842,545
Total Loans and advances including interest free advances	2,432,503,976	2,230,416,670	2,563,334,206	2,550,497,117	2,687,485,465

11. We find that the loans and advances including interest free advances are far less than the own funds. And hence, the presumption that the own funds have been utilized for extending the loans and advances sets in. When the assessee has got own funds available at their disposal, no disallowance is called for as enunciated in various judgments. The decision of Hon'ble Punjab & Haryana High Court in the case of Bright Enterprises Pvt. Ltd. Vs. CIT in ITA No. 224/2013, dated 24.07.2015, it was held that if there are interest free funds available then it will be presumed that these have been made out of interest free funds. Similar view was held in the case of CIT Vs. Kapsons Associates Investment Pvt. Ltd. (2015) 381 ITR 204 (P&H) wherein, the Hon'ble Court has held that interest on investment in other properties not for business purpose cannot be disallowed if the assessee is having sufficient interest free funds at its disposal. Similar view was taken by the Hon'ble Supreme Court in the case of Hero Cycles Pvt. Ltd. 63 Taxman 308 held that no disallowance is called for if the assessee has got own surplus fund.

12. Keeping in view the facts and circumstances of the case and the judicial pronouncements and keeping in view the fact that the assessee has got sufficient own funds to extend the loans interest free, we hereby direct that the disallowance made under section 36(1)(iii) be deleted.

13. The other ground relates to disallowance u/s 14A r.w.r 8D(2)(iii). The facts mentioned by the AO are that the revenue enquired vide query letter dated 26.06.2015 to provide the basis on which Rs.4,10,947/- has been disallowed u/s 14A. The assessee vide letter dated 23.04.2015 stated that while calculating the disallowance, the assessee company has not considered income of those investment, which are not changed last year. Since, no activity has been done on these investments, the allocation of expenses or disallowance of expenses on these investments is not at all justified. The Assessing Officer observed that the auditor has given the note in the year under consideration and in the Assessment Year 2012-13, that expenses were disallowed @ 0.5% in clause 17(1) of the audit report u/s 44AB in form 3CB/3CD. Hence, 0.5% of average value of investments which comes to Rs.44,90,230/- was disallowed as against Rs.4,10,947/-. The Assessing Officer relied on the judgment of Hon'ble Supreme Court in the case of CIT vs. United Trust Ltd 200 ITR 488 on preposition that proportionate management expenses should be deducted from gross dividend for the purpose of the deduction.

14. The Id. CIT (A) finds that the assessee during the AY 2013-14 had earned tax free dividend of Rs.33,34,17,195/- on the various investments made by it in the equity shares and units. During the year, the assessee had net loss on account of sale of long term equity shares on which no STT is paid of Rs.2,03,21,156/-. This loss is allowed to be carried forward as long term capital gains on which no STT is paid is taxable. Whereas, there was gain on sale of long term shares of Rs 21,18,743/-, on which loss is not allowed to be carried forward. Besides, the assessee had taken a position that any investment in equity shares over a period of less than one year shall be taken

as income from business and hence will be taxed at full rate of 30%. The Id. CIT (A) after due deliberation held that as per Rule 8D(2)(iii), the disallowance of Rs.44,90,230/- is justified.

15. Before us, the Id. AR argued that the disallowance u/s 14A should only with respect to actual expenditure and such expenses should be directly co-related with the exempt income. The only dispute of this ground is 0.5% has applied on the average investments. The Id. AR argued that earning dividends is not an assured activity, no business man will ever incur a recurring in anticipation of non-assured returns especially dividends. He further argued that the dividend earning was never the objective of the Company and thus finding has not been given by the Assessing Officer as to what was motive of the company of the invests Rs. 111 crores. The Id. AR argued that keeping in view the judgment of the Special Bench of ITAT in the case of Vireet Investment Pvt. Ltd. in ITA No. 502/Del/2012 vide order dated 16.06.2017, the non-dividend yielding investments ought to have been excluded.

16. Heard the arguments of both the parties and perused the material available on record.

17. The closing value of opening value of investment and average investment are as under:-

<i>Closing value of investments</i>	<i>Rs.99,12,68,846</i>
<i>Opening value of investments</i>	<i>Rs.80,48,23,266</i>
<i>Average value of investments</i>	<i>Rs.89,80,46,056</i>

18. The assessee has disallowed the expenses u/s 14A of Rs.4,10,947/-. Since, the assessee has not given any basis so Assessing Officer applied Rule 8D(2)(iii) and worked out disallowance of Rs.44,90,230/-.

19. The details of the investments – dividend yielding and non-exempt income is as under:

VIC ENTERPRISES PRIVATE LIMITED
Non Current Investment as at 31st March 2013

Particulars	Quantity	As at 31.3.13	Quantity	As at 31.3.12	Dividend Income
Long Term Investment					
IN BONDS					
6.70% Indian Railways Finance Corporation Ltd. Tax Rs.l Lac Each	1,000	100,000,0	1,000	100,000,000	
8.20% Power Finance Corporation Bond	8,544	8,544,000	8,544	8,544,000	
National Highway Authority of India 8.20% 10 years	7,417	7,417,000	7,417	7,417,000	
8% India Railwav Finance Corporation Ltd. Tax Free Each		63,244,37			
7.93% Rural Electrification Corporation Ltd.Tax Free Rs.1000/- Each		146,366,7			
		325,572,1		115,961,000	
IN EQUITY SHARES					
IL & FS Demat-no.10033578					
QUOTED AND FULLY PAID UP					
Asian Hotels (East) Ltd. of Rs.10/- each	54,000	18,486,41	54,000	18,486,414	243,000
Asian Hotels (North) Ltd. of Rs.10/- each	109,975	34,440,71	109,975	34,440,719	264,963
Asian Hotels (West) Ltd. of Rs.10/- each	71,608	22,215,77	71,608	22,215,771	308,632
Balrampur Chini Mills Limited	-	-	10,000	538,968	
Crompton Graves	100,000	12,261,01	30,000	4,896,475	52,000
Cairn India Ltd.	30,000	9,137,003			32,500
Dabur India Ltd of Rs.1/- each	217,734,0	25,773,59	217,734,000	25,773,596	304,827,600
Deccan Chroncile	25,000	463,869			
East India Hotel of Rs.2/- each	-	-	290,909	26,656,609	320,000
Future Capital Holding			50,000	9,109,139	75,600
Fresenius Kabi Oncology	27,083	2,838,646			
GVK Power & Infrastructure	500,000	6,248,577	250,000	3,176,500	
HDFC Bank Ltd.of Rs.10/- each	873,500	46,032,37	912,500	48,087,628	3,923,750
Henkel India Ltd.	40,000	1,701,683	40,000	1,701,683	
Hindustan Construction	100,000	3,064,250	100,000	3,064,250	
India Co Venture Ltd.of Rs.2/- each	244,000	13,751,84	244,000	13,751,840	
Indian Hotels of Rs.l/- each	100,000	4,283,068	100,000	4,283,068	
Indorama Synthetic Ltd.	-	-	360,000	23,350,483	439,008
Karnataka Bank Ltd.	950,000	123,280,4	950,000	123,280,420	3,325,000
Lakshmi Vilas Bank	100,000	10,458,97	92,850	9,913,955	324,975
Manglore Chemical & Fertilizers Ltd. of Rs.10/- each	1,000,000	39,514,48	1,000,000	39,514,482	1,912,921
Mega Corp. Ltd. of Rs.1/- each	100,000	67,823	100,000	67,823	
Moil Ltd.	3,785	1,419,375	3,785	1,419,375	18,925
NHPC Ltd. of Rs.10/-each	150,000	5,424,595	150,000	5,424,595	105,000
Pantaloan Retail	60,000	18,533,69	60,000	18,533,699	
Punj Llyod Ltd.	-	-	85,000	10,578,443	25,950
PVP Venture Ltd. of Rs.10/-each	500,000	8,837,193	500,000	8,837,193	
Shree Renuka Sugar Ltd.	60,000	3,026,429	60,000	3,026,429	
SJVN Ltd.	3,224,074	83,825,92	3,224,074	83,825,924	3,030,630
Tata Communication	20,000	4,569,494	20,000	4,569,494	40,000
Voltas Ltd.	80,000	7,106,192	-	-	
Zuari Agro Industries Ltd. of Rs.10/- each	90,147	18,713,53	29,990	9,546,806	89,970
Zuari Global Ltd.of Rs.10/- each	29,990	4,339,023	-	-	59,980
		529,815,9		558,071,781	
Kotak Mahindra Bank Demat-no. 10553664					
QUOTED AND FULLY PAID UP					
Asian Hotels (East) Ltd.	3,050	728,525	3,050	728,525	13,725
Asian Hotels (North) Ltd. of Rs.10/- each	5,050	1,249,744	5,050	1,249,744	7,575
Asian Hotels (West) Ltd.	5,550	1,270,758	5,550	1,270,758	
Dhampur Sugar	114,261	3,612,601	114,261	3,612,601	142,826
DLF Ltd	1,000	271,523	1,000	271,523	2,000
Eldeco Housing Financing Ltd.	14,843	2,991,497	11,832	2,388,240	
GVK Power & Infrastructure	174,600	2,827,561	174,600	2,827,561	
Hindustan Construction Co. Ltd.	42,500	1,566,024	42,500	1,566,024	
Hindustan Petroleum Ltd. of Rs.10/- each	3,500	1,227,767	3,500	1,227,767	29,750
IDBI Bank Ltd.	5,500	712,933	5,500	712,933	8,250
IL & FS Investmart Ltd. of Rs.2/-each	42,845	645,021	42,845	645,021	64,268

VIC ENTERPRISES PRIVATE LIMITED

India Overseas Bank	1,500	187,547	1,500	187,547	6,750
Indian Oil Corporation Ltd. of Rs.10/-each	4,070	1,011,515	4,070	1,011,515	20,350
Indorama Synthetic Ltd.	84,001	4,482,650	66,501	4,106,190	
J.P. Hydro	27,000	1,049,364	27,000	1,049,364	
J.P. Infratech Ltd.		-		-	
Mahindra Forgeing Ltd. of Rs.10/-each	386	85,280	386	85,280	
Manglore Chemical & Fertilizers Ltd. of Rs.10/- each	611,601	18,117,649	574,101	16,586,306	
MIRC Electronics Ltd. of Rs.1/- each	13,243	306,788	13,243	306,788	
Network 18 Media and Investment Ltd. of Rs.5/-each	8,846	1,328,971	8,846	1,328,971	230,299
Poly Plex Corporation Ltd.	46,950	8,064,379	40,700	7,087,260	
RSWM Ltd. of Rs. 10/-each	5,000	566,314	5,000	566,314	47,000
SJVN Ltd.	50,101	1,185,386	50,000	1,183,350	10,875
State Bank of Bikaner & Jaipur	750	371,520	750	371,520	2,000
Voltas Limited	1,250	126,117	1,250	126,117	7,812
Zuari Agro Industries Ltd. of Rs.10/-each	2,604	495,034	2,604	495,034	5,208
Zuari Golbal Ltd. of Rs.10/- each	2,604	412,453		907,487	
		54,894,918		51,404,704	
Barclays Securities India Pvt. Ltd. Demat A/c 10006282 QUOTED AND FULLY PAID UP					
Andhra Sugar		-		-	
Citi Union Bank of Rs.1/- each		-		-	
		-		-	
IN EQUITY SHARES UNQUOTED AND FULLY PAID-UP IN SUBSIDIARIES :-					
Betteroption Estate Pvt. Ltd. of Rs.10/- each	9,000	90,000	9,000	90,000	
Buman Resorts Pvt. Ltd. of Rs.10/- each	8,000	80,442	8,000	80,442	
Hillgrow Infracon Pvt. Ltd. of Rs.10/ each	10,000	100,000	10,000	100,000	
Newage Capital Services Pvt. Ltd. of Rs.10/- each	17,101	233,285	17,101	233,285	
S2 Property Pvt. Ltd. of Rs. 10/- each	-	-	-	-	
Sunshine India Pvt. Ltd. of Rs.10/- each	340,010	2,190,032	340,010	2,190,032	
Touchstone Fund Advisors Pvt. Ltd.	10,000	100,000			
IN OTHERS:-					
A.V.B. Finance Pvt. Ltd. of Rs.10/- each	3,450,010	30,807,508	3,450,010	30,807,508	
Ayurved Ltd. of Rs. 10/- each	16,665	166,790	16,665	166,790	41,662
Bonjour Investment Co. Pvt. Ltd. of Rs.10/- each Dabur	184,750	1,847,500	184,750	1,847,500	
Ayurvedic Spc. Ltd. of Rs. 10/- each	12,415	124,268	12,415	124,268	
Dabur Pharmaceuticals Ltd. of Rs. 10/- each Dabur	13,500	45,040	13,500	45,040	
Securities Pvt. Ltd.	789,370	7,895,400	789,370	7,895,400	
Dr. Fresh Real Estate Venture Pvt. Ltd. Of Rs.10/- Garner	50,000	500,000	50,000	500,000	
Finance & Securities Pvt. Ltd.	66,000	29,040,000	66,000	29,040,000	
Maneswari Trading Co. of Rs.100/- each	6,150	615,515	6,150	615,515	
Numro Uno International Ltd. of Rs.10/-each	26,000	5,201,300	26,000	5,201,300	
Sunehari Exports Limited of Rs. 10/- each	55,000	550,000	55,000	550,000	
Sonakashi Market Pvt. Ltd .of Rs.10/- each	10,500	2,100,000	10,500	2,100,000	
10% NCD MG Burman Capital Advisors Pvt.Ltd.10/- each	9,000,000	90,000,000	9,000,000	90,000,000	
Less :- Provision for Dimunition in Value of Investment		-5,201,300		-5,201,300	
		166,485,780		166,385,780	
Investment in PMS					
Kaizen Trust_domestic Scheme-1		4,500,000		3,000,000	
		4,500,000		3,000,000	
Other Investment in Movable Properties:-					
JEWELLERY *					
Painting		22,140,500		22,140,500	
Artifacts of Ruby Stone		3,175,000		3,175,000	
Total in		1,107,939,475		921,493,895	320,060,154

VIC ENTERPRISES PRIVATE LIMITED**VIC ENTERPRISES PRIVATE LIMITED**

Details of Non Current Investment from which no exempt income has been earned in AY 2013-14

	As at 31.3.2011	As at 31.3.2010
Total Investments other than Jewellery, Painting, Artifact & NCD	991,268,846	804,823,266
Less:- Investment from which no dividend received during the year		
6.70% Indian Railways Finance Corporation Ltd. Tax Free Bond of Rs. 1 Lac Each	100,000,000	100,000,000
8.20% Power Finance Corporation Bond	8,544,000	8,544,000
National Highway Authority of India 8.20% 10 years bonds	7,417,000	7,417,000
8% India Railway Finance Corporation Ltd. Tax Free bonds of 1000/- Each	63,244,372	-
7.93% Rural Electrification Corporation Ltd. Tax Free Bonds of Rs.1000/- Each	146,366,791	-
Balrampur Chini Mills Limited	-	538,968
Deccan Chronicle	463,869	-
Fresenius Kabi Oncology	2,838,646	-
GVK Power & Infrastructure	6,248,577	3,176,500
Henkel India Ltd.	1,701,683	1,701,683
Hindustan Construction	3,064,250	3,064,250
India Co Venture Ltd. of Rs.2/- each	13,751,840	13,751,840
Indian Hotels of Rs.1/- each	4,283,068	4,283,068
Mega Corp. Ltd. of Rs.1/- each	67,823	67,823
Pantaloon Retail	18,533,699	18,533,699
PVP ventule Ltd. of Rs.10/-each	8,837,193	8,837,193
Shree Renuka Sugar Ltd.	3,026,429	3,026,429
Voltas Ltd.	7,106,192	-
Asian Hotels (West) Ltd.	1,270,758	1,270,758
Eldeco Housing Financing Ltd.	2,991,497	2,388,240
GVK Power & infrastructure	2,827,561	2,827,561
Hindustan Construction Co. Ltd.	1,566,024	1,566,024
Indorama Synthetic Ltd.	4,482,650	4,106,190
J.P. Hydro	1,049,364	1,049,364
J.P. Infratech Ltd.	-	-
Mahindra Forgeing Ltd. of Rs.10/-each	85,280	85,280
Manglore Chemical & Fertilizers Ltd. of Rs.10/- each	18,117,649	16,586,306
MIRC Electronics Ltd. of Rs.1/-each	306,788	306,788
Network 18 Media and Investment Ltd. of Rs.5/-each	1,328,971	1,328,971
RSWM Ltd. of Rs. 10/- each	566,314	566,314
Barclays Securities India Pvt. Ltd. Demat A/c 10006282	-	-
Andhra Sugar	-	-
Citi Union Bank of Rs.1/- each	-	-
Betteroption Estate Pvt. Ltd. of Rs.10/- each	90,000	90,000
Buman Resorts Pvt. Ltd. of Rs.10/- each	80,442	80,442
Hillgrow Infracon Pvt. Ltd. of Rs.10/- each	100,000	100,000
Newage Capital Services Pvt. Ltd. of Rs.10/- each	233,285	233,285
S2 Property Pvt. Ltd. of Rs. 10/- each	-	-
Sunshine India Pvt. Ltd. of Rs.10/- each	2,190,032	2,190,032
Touchstone Fund Advisors Pvt. Ltd.	100,000	-
A.V.B. Finance Pvt. Ltd. of Rs.10/- each	30,807,508	30,807,508
Bonjour Investment Co. Pvt. Ltd. of Rs.10/- each	1,847,500	1,847,500
Dabur Ayurvedic Spc. Ltd. of Rs. 10/- each	124,268	124,268
Dabur Pharmaceuticals Ltd. of Rs. 10/- each	45,040	45,040
Dabur Securities Pvt. Ltd.	7,895,400	7,895,400
Dr.Fresh Real Estate Venture Pvt. Ltd. Of Rs.10/-	500,000	500,000
Garner Finance Si Securities Pvt. Ltd.	29,040,000	29,040,000
Maneswari Trading Co. of Rs.100/- each	615,515	615,515
Numro Uno International Ltd. of Rs.10/-each	5,201,300	5,201,300
Sunehari Exports Limited of Rs. 10/- each	550,000	550,000
Sonakashi Market Pvt. Ltd. of Rs.10/- each	2,100,000	2,100,000
10% NCD MG Burman Capital Advisors Pvt.Ltd.10/- each	90,000,000	90,000,000
Less :- Provision for Dimunition in Value of Investment	(5,201,300)	(5,201,300)
Investment in PMS	-	-
Kaizen Trust _domestic Scheme -1	4,500,000	3,000,000
Total Investments on which no dividend was received	600,907,279	374,243,239
Balance Investments	390,361,568	430,580,026
Average of Balance Investments		410,470,797
0.5% of Average investment		2,052,354

20. The Hon'ble Delhi High Court primarily decided the issue regarding applicability of section 14A even if no dividend income was earned. The Hon'ble High court in its decision observed as under:

"14. On the issue whether the respondent-assessee could have earned dividend income and even if no dividend income was earned, yet Section 14A can be invoked and disallowance of expenditure can be made, there are three decisions of the different High Courts directly on the issue and against the appellant-Revenue. No contrary decision of a High Court has been shown to us. The Punjab and Haryana High Court in Commissioner of Income Tax, Faridabad vs. MIs. Lakhani Marketing Incl., ITA No. 970/2008, decided on 02.04.2014, made reference to two earlier decisions of the same Court in CIT vs. Hero Cycles Limited, [2010]323 ITR 518 and CIT vs. Winsome Textile Industries Limited, [2009] 319 ITR 204 to hold that Section 14A cannot be invoked when no exempt income was earned. The second decision is of the Gujarat High Court in Commissioner of Income Tax-I vs. Corrttech Energy (P.) Ltd. [2014] 223 Taxmann 130 (Guj.). The third decision is Of the Allahabad High Court in Income Tax Appeal No. 88 of 2014, Commissioner of Income Tax (Ii) Kanpur, vs. MIs. Shivam Motors (P) Ltd. decided on 05.05.2014. In the said decision it has been held:-

"As regards the second question, Section 14A of the Act provides that for the purposes of computing the total income under the Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. Hence, what Section 14A provides is that if there is any income which does not form part of the income under the Act, the expenditure which is incurred for earning the income is not an allowable deduction. For the year in question, the finding of fact is that the assessee had not earned any tax free income. Hence, in the absence of any tax free income, the corresponding expenditure could not be worked out for disallowance....."

The Courts further held that the income exempt under Section 10 in a particular assessment year, may not have been exempt earlier and can become taxable in future years. Further, whether Income earned in a subsequent year would or would not be taxable, may depend upon the nature of transaction entered into in the subsequent assessment year. For example, long term. capital gain on sale of shares is presently not taxable where

security transaction tax has been paid, but a private sale of shares in an off market transaction attracts capital gains tax. It is an undisputed position that respondent assessee is an investment company and had invested by purchasing a substantial number of shares and thereby securing right to management. Possibility of sale of shares by private placement etc. cannot be ruled out and is not all improbability. Dividend may or may not be declared. Dividend is declared by the company and strictly in legal sense, a shareholder has no control and cannot insist on payment of dividend. When declared, it is subjected to dividend distribution tax."

21. Hence, keeping in view the legal and factual position of the case, we hereby hold that the disallowance needs to be restricted to the dividend yielding investment only for the years involved. The Assessing Officer is hereby directed to re-compute the disallowance taking into consideration, the dividend yielding investments.

22. In the result, we hereby hold that

(a) No disallowance on the interest is required when the assessee has got sufficient own funds at their disposal to lend/advance.

(b) The disallowance under Rule 8D(2)(iii) be restricted to dividend yielding investments to determine the average value of the investments.

23. The appeals of the assessee are hereby allowed.

Order Pronounced in the Open Court on 29/01/2020.

Sd/-

(Kuldip Singh)
Judicial Member

Dated: 29/01/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR