

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B”BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2641 & 2642/Bang/2019
AssessmentYear:2013-14 & 2015-16

M/s. Kingfisher Finvest India Ltd. No.24, UB Towers, Level 12 VittalMallya Road Bangalore-560001  <b>PAN NO :AABCV9224B</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Circle 4(1)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA No. 2477/Bang/2019
Assessment Year: 2013-14

Deputy Commissioner of Income-tax Circle 4(1)(1) Bangalore	<b>Vs.</b>	M/s. Kingfisher Finvest India Ltd. No.24, UB Towers, Level 12 VittalMallya Road Bangalore-560001
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri K.R. Pradeep, A.R.
<b>Respondent by</b>	:	Shri Muzaffar Hussain, D.R.

<b>Date of Hearing</b>	:	16.09.2020
<b>Date of Pronouncement</b>	:	18.09.2020

## **ORDER**

### **PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed appeals for assessment years 2013-14 and 2015-16. The revenue has filed appeal for assessment year 2013-14. All the appeals relate to the disallowance made by the A.O. u/s 14A of the Income-tax Act, 1961 [‘the Act’ for short]. Hence these appeals were heard together and are being disposed of by this common order.

2. The assessee is engaged in the business of making investment in shares, providing guarantees to group companies.

3. We first take up the appeal filed by the parties for assessment year 2013-14. In this year, the assessee earned exempt income of Rs.4.19 crores. The assessee did not make any disallowance u/s 14A of the Act. When questioned, the assessee submitted that the majority of its investments were made in the earlier years and further the loans taken during the year under consideration were used for general business purposes. The A.O. did not agree with the contentions of the assessee and accordingly proceeded to make disallowance u/s 14A of the Act read with rule 8D of IT Rules. Accordingly, he made disallowance of Rs.52.10 crores u/s 14A of the Act, which consisted of interest disallowance of Rs.46.88 crores under rule 8D(2)(ii) and expenditure disallowance of Rs.5.22 crores under rule 8D(2)(iii).

4. The assessee challenged the addition by filing appeal before Ld. CIT(A). Before Ld. CIT(A), the assessee reiterated the contentions with regard to the interest disallowance. With regard to the expenditure disallowance made under rule 8D(2)(iii), the

assessee submitted that the expenses relating to exempt income was only Rs.35.61 lakhs. In the alternative, the assessee contended before Ld. CIT(A) by placing reliance on the decision rendered by Hon'ble Delhi High Court in the case of Joint Investments Limited 372 ITR 694 that the disallowance should not exceed the exempt income. The Ld. CIT(A) agreed with the alternative contentions of the assessee. Accordingly, directed the A.O. to restrict the disallowance u/s 14A of the Act to the extent of exempt income earned by the assessee during the year. Aggrieved by the order passed by Ld. CIT(A), both the parties are in appeal before us in assessment year 2013-14.

5. At the time of hearing, the Ld. A.R. submitted a chart to substantiate the assessee's contentions that majority of investments have been made in the earlier years. It was also submitted that investments made during the year have been funded out of interest free funds provided by group concerns. The Ld. A.R. further submitted that the assessee had used interest free funds only for making investments and hence no disallowance out of interest expenditure is called for.

6. The Ld. A.R. also submitted that the dividend income had not been received from certain investments and hence they should not be considered for computing average value of investments as per the decision rendered by the special bench in the case of Vireet Investments Pvt. Ltd. 165 ITD 27. The Ld. A.R. further submitted that the A.O. has mechanically computed the expenditure disallowance under rule 8D(2)(iii) without having regard to the actual expenses incurred by the assessee. The Ld. A.R. submitted that the expenditure relating to exempt income is very less and major portion of the expenses have been incurred by the assessee

towards other activities and hence the disallowance out of administrative expenses should have been restricted to the actual expenditure relating to the exempt income.

7. On the contrary, the Ld. D.R. submitted that the A.O. was not satisfied with the claim of the assessee with regard to the disallowance made u/s 14A of the Act and hence he has computed the disallowance by applying rule 8D.

8. We have heard the rival contentions and perused the record. It is the submission of the assessee that majority of investments have been made in the earlier years. It is also the submission of the assessee that the investments have been made out of interest free funds provided by the group companies. The Ld. A.R. also submitted that the loans on which interest expenditure has been incurred by the assessee for the year relevant to AY 2013-14 have not been utilised for the purpose of making the investments. Accordingly, it was contended that no interest disallowance is called for under rule 8D(2)(ii) of IT Rules.

9. If the interest free funds available with the assessee is more than the value of investments, then the presumption is that the assessee has used interest free funds for making investments. This view is supported by the decision rendered by Hon'ble Supreme Court in the case of Reliance Industries Ltd. 410 ITR 466. There should not be any dispute that, if the assessee is able to demonstrate that the interest free funds available with the assessee is more than the value of investments and further the loan funds have not been used to make the investments, then no disallowance out of interest expenditure is called for under rule 8D(2)(ii). However, since the factual details relating to the issue require examination, we are of the view that the assessee, in the interest of

natural justice, should be provided with an opportunity to present its case to the A.O. With regard to the disallowance of administrative expenses made under rule 8(D)(iii), it is the submission of the assessee that the majority of expenses debited to Profit & loss account are not related to the exempt income and further the expenses relatable to the exempt income could be identified and the same is lower than the amount computed by the A.O. under rule 8D(2)(iii). This contention of the assessee also require examination at the end of the A.O.

10. Accordingly, we are of the view that this issue requires fresh examination at the end of the A.O. in the light of the discussions made (supra). Accordingly, we set aside the order passed by Ld. CIT(A) and restore this issue to the file of the A.O. for examining it afresh.

11. We shall now take up the appeal filed by the assessee for assessment year 2015-16. In this assessment year, the earned dividend income is of Rs.92,56,000/-. The assessee did not make any disallowance u/s 14A of the Act on its own. Hence, the A.O. computed the disallowance u/s 14A of the Act in accordance with rule 8D and disallowed a sum of Rs.29,23,212/- which consisted of interest disallowance of Rs.8.26 lakhs under rule 8D (2)(ii), expenditure disallowance of Rs.20.98 lakhs under rule 8D(2)(iii). The Ld. CIT(A) confirmed the disallowance made by the A.O. and hence the assessee has filed this appeal before us.

12. We heard the parties on this issue and perused the record. Since the facts relating to this issue are identical with the facts discussed in assessment year 2013-14, in the preceding paragraphs, consistent with the view taken therein, we restore this

issue to the file of the A.O. for examining it afresh in the light of the discussions made (supra). Accordingly, the order passed by Id. CIT(A) in assessment year 2015-16 is set aside.

13. In the result, both the appeals of the assessee and the appeal of the revenue are treated as allowed for statistical purposes.

Order pronounced in the open court on 18<sup>th</sup> Sept, 2020

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 18<sup>th</sup> Sept, 2020.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**