

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA
[Virtual Court Hearing]**

**Before Justice P.P. Bhatt, President
&
Shri P.M. Jagtap, Vice-President**

**I.T.A. No. 1467/KOL/2019
Assessment Year: 2014-2015**

**Assistant Commissioner of Income Tax,.....Appellant
Circle-5(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069**

-Vs.-

**M/s. Hindusthan National Glass & Industries Limited,.....Respondent
2, Red Cross Place,
Kolkata-700001
[PAN:AAACH7557G]**

Appearances by:

*Shri Ram Bilash Meena, CIT, Sr. D.R., for the Appellant
Shri Akkal Dudhwewla, C.A., for the Respondent*

Date of concluding the hearing : August 06, 2020
Date of pronouncing the order : August 14, 2020

O R D E R

Per Bench:-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-18, Kolkata dated 18.01.2019, whereby he restricted the disallowance of Rs.10,72,47,695/- made by the Assessing Officer under section 14A of the Income Tax Act, 1961 by applying Rule 8D of the Income Tax Rules, 1962 to Rs.4,31,280/- being the dividend income actually earned by the assessee during the year under consideration.

2. The assessee in the present case is a Company, which is engaged in the business of manufacturing of Glass Bottles, Containers and Casting,

Printing of Bottles and Power Generation. The return of income for the year under consideration was filed by it on 29.11.2014 declaring a loss of Rs.256,43,42,300/- under the normal provisions of the Income Tax Act, 1961 and negative Book Profit of Rs.241,53,84,240/- under section 115JB of the Income Tax Act, 1961. In the said return, dividend income of Rs.4,31,280/- received during the year under consideration was claimed to be exempt by the assessee-company. No disallowance on account of expenses incurred in relation to the earning of the said exempt income, however, was offered by the assessee as required by the provisions of section 14A of the Act. In this regard, the following explanation was offered by the assessee during the course of assessment proceedings before the Assessing Officer:-

“During the financial year the company has received the dividend from two companies namely:

<i>Name of the Company</i>	<i>Amount</i>
<i>Glass Equipment (India) Limited</i>	<i>2,64,000/-</i>
<i>The Calcutta Stock Exchange Association Limited</i>	<i>1,67,280/-</i>

No expenditure to be incurred in relation to earn of such tax free income.

According to Bombay High Court a disallowance u/s 134A may however be made on some fair and reasonable basis. The Supreme Court in the case of CIT -vs.- Walfort Share & Stock Brokers Pvt. Limited (326 ITR 1) has held that before making disallowance u/s 14A, Revenue must prove the proximate cause between the expenditure incurred and earning the exempt income. Unless such proximate cause is established no disallowance can be made u/s 14A merely on presumption that some expenditure might have been incurred by the assessee in relation to such exempt income.

The assessee earned dividend only from investments in Glass Equipment (India) Limited 100% subsidiary Company of the Hindusthan National Glass & Industries Limited and The Calcutta Stock Exchange Association Limited The investments were acquired in the earlier years In none of the earlier years income tax assessments finding was recorded by the AO to the effect that investments were acquired out of borrowed funds. The company's own funds

in the form of capital and free reserves were more than the cost of investments. The dividend on shares are credited through ECS facility directly to the designated Bank account of the investors. In the circumstances, no collection or bank charges were incurred by the appellant in respect of dividends earned on shares. The appellant therefore submits that no expenditure is actually incurred by the assessee in relation to earning of dividend on shares. No expenses incurred by the assessee in connection with its regular business activities could be disallowed.

In the case of DCIT -vs. Allied Investments Housing Pvt. Ltd. (ITAT Chennai) held that it had not made any fresh investment during the year and the dividend was received from an unlisted company out of an investment made in an earlier year.

Without prejudice, we also hereby submit that the Company has also an investment of Rs.6356.04 lacs in HNG Global GmbH (100% foreign subsidiary) of the company. You will note that under the Income Tax Act dividend receivable from foreign companies are not exempt u/s 10(34) of the Income Tax Act since the foreign companies have no liability to pay Dividend Distribution Tax u/s 10(34) of the Income Tax Act, since the foreign companies have no liability to pay dividend distribution tax u/s 1150 of the Act. Since company's investment in foreign subsidiary is not exempt in working out amount disallowable under Rule 8D, investment in foreign subsidiary is not to be taken into account".

3. The explanation offered by the assessee was not found acceptable by the Assessing Officer. According to him, there was no direct relation between the expenditure claimed by the assessee and the dividend received from other companies. He also observed that the investment decisions were very complex in nature and the same required substantial market research, day-to-day analysis and market trends. He also observed that the investment required capital, which had cost represented by interest. He relied on the CBDT's Circular No. 5/2015 dated 11.02.2014, wherein it was clarified that disallowance under section 14A is applicable even though there is no exempt income actually earned by the assessee during the relevant year on the corresponding investment. The Assessing

Officer, therefore, applied Rule 8D and worked out the disallowance to be made under section 14A on account of expenses incurred by the assessee in relation to the exempt income at Rs.10,72,47,695/- as under:-

(a)	Total investment value as on 31.03.2014	1447286000
	Total investment value as on 31.03.2013	1808923000
	Average investment	1628104500
	Without considering Government Securities Beneficial interest in shares held in Trust and investment in HNG Global GmbH	
(b)	Total assets as on 31.03.2014	39737436000
	Total assets as on 31.03.2013	44082389000
	Average total assets	41909912500
(c)	Total interest paid as per note 2.26 of the Audited Accounts	2565226000
	Less: Interest income as per note 2.21	14055000
	Net interest paid	2551171000

Disallowance

(i)	$\frac{\text{Total interest} \times \text{average investment}}{\text{Average total assets}}$ $\text{i.e. } \frac{2551171000}{1628104500} \text{ divided by } 41909912500$	99107173
(ii)	0.5% of average investment i.e. of 0.05% of 1628104500	8140522
	TOTAL	107247695

Accordingly disallowance to the extent of Rs.10,72,47,695/- was made by the Assessing Officer under section 14A of the Act read with Rule 8D in the assessment completed under section 143(3) vide an order dated 21.12.2016.

4. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the disallowance made by the Assessing Officer under section 14A read with Rule 8D and after considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) found merit in the contention raised on behalf of the assessee that the actual investment capable of yielding exempt income as on 31.03.2014 was Rs.71,38,54,000/- as against Rs.144,72,86,000/- taken wrongly by the Assessing Officer. He also found that own funds available with the assessee-company in the form of share capital and reserves during the year under consideration were to the tune of Rs.76639.81 lakhs, which were substantially higher than the investment of Rs.7138.54 lakhs made by the assessee-company. He accordingly held that the assessee-company had surplus own funds which were more than the investment capable of yielding exempt income as on 31.03.2014 and by relying, inter alia, on the decision of the Hon'ble Bombay High Court in the case of CIT -vs.- HDFC Bank Limited reported in 383 ITR 529, he deleted the disallowance made by the Assessing Officer under section 14A read with Rule 8D(2)(ii) on account of interest.

5. As regards the balance disallowance of Rs.81,40,522/- made by the Assessing Officer under section 14A on account of common administrative expenses by applying Rule 8D(2)(iii), the Id. CIT(Appeals) found that the said disallowance was worked out by the Assessing Officer by applying the rate of 0.5% to the entire cost of investment. In this regard, he relied on the decision of the Hon'ble Calcutta High Court in the case of REI Agro Limited -vs.- DCIT reported in 144 ITD 141, wherein it was held that the disallowance under section 14A read with Rule 8D(2)(iii) is required to be computed and restricted only to the investment that actually yielded the exempt dividend income to the assessee during the relevant year. He also noted that his predecessor in assessee's own case for assessment year 2012-13 vide its appellate order dated 24.11.2017 had directed the

Assessing Officer to restrict the disallowance under section 14A read with Rule 8D(2)(iii) only to the dividend earning investment. The Id. CIT(Appeals) accordingly directed the Assessing Officer to restrict the disallowance under section 14A read with Rule 8D(2)(iii) to Rs.4,31,280/- being the dividend income actually earned by the assessee during the year under consideration. The Id. CIT(Appeals) thus restricted the disallowance of Rs.10,72,47,695/- made by the Assessing Officer under section 14A of the Act read with Rule 8D to Rs.4,31,280/-.

6. Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal on the following grounds:-

“(1) Whether on the facts and in the circumstances of the case, the Id. CIT(A) has erred in not considering the dictum of Rule 8D to consider the average total investment and not just the investment yielding exempt income while working out the disallowance u/s 14A.

“(2) Whether on the facts and in the circumstances of the case, the Id. CIT(A) has erred in accepting the contention of the assessee-company when it failed to prove the investment being from its own funds”.

7. The Id. CIT(D.R.), while challenging the impugned order of the Id. CIT(Appeals) giving relief to the assessee on the issue of disallowance of interest as made by the Assessing Officer under section 14A read with Rule 8D(2)(ii), invited our attention mainly to the observations recorded by the Id. CIT(Appeals) in paragraph no. 5.3 of his impugned order to the effect that the relevant investment held by the assessee was brought forward from the earlier years and there was no fresh investment made in the year under consideration. He contended that the Id. CIT(Appeals) however did not specifically consider or appreciate the actual position that prevailed in the earlier years when the investment was actually made by the assessee. He contended that it was relevant to ascertain the source of investment when the same was actually made by the assessee in the earlier years and if such source was the loan borrowed by the

assessee, interest disallowance under section 14A read with Rule 8D(2)(ii) was warranted. As regards the relief given by the Id. CIT(Appeals) to the assessee on account of disallowance made by the Assessing Officer towards common administrative expenses by applying Rule 8D(2)(iii) by restricting the same only to the dividend earning investments, the Id. CIT(DR) relied on the order of the Assessing Officer in support of the revenue's case on this issue.

8. The Id. Counsel for the assessee, on the other hand, strongly supported the impugned order of the Id. CIT(Appeals) giving relief to the assessee on the issue of disallowance made by the Assessing Officer under section 14A read with Rule 8D. He contended that the investment capable of yielding exempt income as on 31.03.2014 was Rs.71.38 crores as against Rs.144.72 crores as wrongly taken by the Assessing Officer and since its own funds available with the assessee-company during the financial year 2013-14 to the tune of Rs.766.39 crores were sufficient to make the corresponding investment of Rs.71.38 crores, there was a presumption that the said investment was entirely made by the assessee out of its own interest-free funds and no interest bearing borrowed funds were utilized for making such investment. In support of this contention, the Id. Counsel for the assessee relied on the decision of the Hon'ble Bombay High Court in the case of Reliance Utilities & Power Limited reported in 313 ITR 340 as well as in the case of CIT -vs.- HDFC Bank Limited reported in 383 ITR 529.

9. As regards the relief allowed by the Id. CIT(Appeals) by restricting the disallowance made by the Assessing Officer under section 14A on account of common administrative expenses by applying Rule 8D(2)(iii) to the extent of exempt dividend income actually earned by the assessee during the year under consideration, the Id. Counsel for the assessee contended that this issue is squarely covered by the decision of the Hon'ble Delhi High Court in the case of Joint Investment Pvt. Limited -vs.-

CIT reported in 372 ITR 694, wherein it was held that the disallowance under section 14A cannot exceed the actual amount of exempt income earned by the assessee. He submitted that the Coordinate Bench of this Tribunal in the case of Patrex Vyapar Limited -vs.- ITO (ITA No. 1921/Kol./2017 dated 02.01.2019) has followed the said decision of the Hon'ble Delhi High Court in the case of Joint Investment Pvt. Limited (supra) to restrict the disallowance of Rs.8,81,839/- made by the Assessing Officer under section 14A read with Rule 8D to Rs.72,000/- being the exempt dividend income actually earned by the assessee during the relevant year.

10. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the disallowance of Rs.9.91 crores made by the Assessing Officer on account of interest under section 14A by applying Rule 8D(2)(ii) was deleted by the Id. CIT(Appeals) after having found that the actual investment capable of yielding exempt income as made by the assessee-company on 31.03.2014 was Rs.71.39 crores as against Rs.144.72 crores taken wrongly by the Assessing Officer and the assessee-company had sufficient own funds in the form of share capital and free reserves to the tune of Rs.766.40 crores as on 31.03.2014, which were higher than the said investment of Rs.71.38 crores. At the time of hearing before us, the Id. CIT(D.R.) has not disputed this finding recorded by the Id. CIT(Appeals) about the availability of sufficient own funds with the assessee-company during the year under consideration, which were substantially more than the corresponding investment yielding exempt income made by it. He, however, has contended that the said investment was made by the assessee-company in the earlier years as noted by the Id. CIT(Appeals) in paragraph no. 5.3 of his impugned order and, therefore, it is relevant to ascertain the source of funds utilized by the assessee for making the investments in the earlier years. We are unable to accept this contention of the Id. CIT(DR). As held by the Hon'ble Bombay High Court in the case of CIT -vs.- Reliance

Utilities & Power Limited (supra), what would be relevant to see in this context is the financial position of the assessee-company during the year under consideration as reflected in the relevant balance-sheet and if it is found that the assessee had sufficient interest-free funds of its own to meet its investment, it could be presumed that the investments were made from the interest-free funds available with the assessee and not from the interest bearing borrowed funds so as to warrant disallowance under section 14A. This decision rendered in the case of Reliance Utilities & Power Limited (supra) was subsequently followed by the Hon'ble Bombay High Court in the case of HDFC Bank Limited (supra) to hold that where both interest-free funds and interest bearing funds are available and the interest-free funds are more than the investments made, the presumption is that the investment in the tax-free securities would have been made out of the interest-free funds available with the assessee. Since the interest-free funds of its own available with the assessee-company in the form of share capital and free reserves available with the assessee-company during the year under consideration were substantially more than the corresponding investments made as found by the Id. CIT(Appeals), we are of the view that the disallowance made by the Assessing Officer on account of interest under section 14A read with Rule 8D(2)(ii) was rightly deleted by the Id. CIT(Appeals) by relying, inter alia, on the decision of the Hon'ble Bombay High Court in the case of HDFC Bank Limited (supra).

11. It is also observed that a similar issue relating to disallowance under section 14A read with Rule 8D(2)(ii) on account of interest was involved in assessee's own case for A.Y. 2012-13 and the Coordinate Bench of this Tribunal upheld the appellate order of Id. CIT(Appeals) deleting the said disallowance made by the Assessing Officer for the following reasons given in paragraph no. 6.1 of its order dated December 31, 2019 passed in ITA No. 184/KOL/2018 :-

“The second argument of the assessee that no disallowance can be made under Rule 8D(2)(ii) of the Income Tax Rules, 1962 ('Rules'), where own funds, which are not interest bearing, are more than the investment by applying the proposition of law laid down that the presumption in such cases is that, interest free funds have been invested in non-interest bearing investments [HDFC Bank l.td. v. Deputy Commissioner of Income-tax -2(3), Mumbai /2016/383 ITN 529 (Bombay)], [CIT vs. Rasoi Ltd. (ITA No. 109 of 2016) dt. 15/02/20171. The Id. CIT(A) at page 46 first para of his order, held that the proposition of law in the above referred judgments, are squarely applicable to the assessee's case and as the assessee has own surplus funds which are not interest bearing and which were sufficient to meet the cost of investments, no disallowance can be made under Rule 8D(2) (ii) of the Rules r.w.s. 14A of the Act. The Id. D.R. could not controvert this factual findings. Hence we uphold the same and dismiss Ground No. 10 of the revenue”.

12. The aforesaid decision rendered by the Tribunal in assessee's own case for A.Y. 2012-13 was subsequently followed by the Tribunal to delete the similar disallowance made on account of interest under section 14A read with Rule 8D(2)(ii) for A.Y. 2013-14 vide paragraph no. 6 of its appellate order dated 31.12.2019 passed in ITA No. 515/KOL/2019:-

“We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id. CIT(A) and other materials available on record. We note that the assessee is in appeal before us against the disallowance under Rule 8D(2)(ii) read with Section 14A of the Act. The Id. Counsel for the assessee submitted before us the Balance sheet of the assessee company as on 31.03.2013. On perusal of Balance sheet, we noticed that own funds of the assessee company is Rs.1,15,771/- lakhs, which is more than the investments in shares and securities to the tune of Rs. 18,089/- lakhs. Since Company's net owned funds in the form of equity capital and free reserves were substantially more than the cost of share investment, yielding dividend income, no part of the interest paid is disallowable because borrowed funds were not used for acquiring shares. For that we rely on the judgment of

*the Hon'ble Calcutta High Court decision in the case of
CIT vs HDFC Bank Ltd. [49 taxmann.com 335].*

*Therefore, the disallowance under Rule 8D(2)(ii) read
with Section 14A is not attracted in assessee's case
hence we direct the Assessing Officer to delete the
disallowance under Rule 8D(2)(ii) of the IT Rules”.*

13. As the issue involved in the year under consideration as well as all the material facts relevant thereto are similar to A.Ys. 2012-13 and 2013-14, we respectfully follow the decision of the Coordinate Bench of this Tribunal rendered for A.Ys. 2012-13 and 2013-14 by following the ratio of the decisions of the Hon'ble Bombay High Court in the case of Reliance Utilities & Power Limited (supra) and HDFC Bank Limited (supra) and uphold the impugned order of the ld. CIT(Appeals) deleting the disallowance made by the Assessing Officer on account of interest under section 14A read with Rule 8D(2)(ii).

14. As regards the disallowance of Rs.81,40,522/- made by the Assessing Officer on account of common administrative expenses under section 14A read with Rule 8D(2)(iii), it is observed that the same was restricted by the ld. CIT(Appeals) to Rs.4,31,280/- being the exempt dividend income actually earned by the assessee during the year under consideration by following, inter alia, the decision of the Hon'ble Calcutta High Court in the case of CIT -vs.- REI Agro Limited in G.A. No. 3581 of 2013 dated 09.04.2014 (ITAT No. 220 of 2013). At the time of hearing before the Tribunal, the ld. CIT(DR) has not raised any contention to dispute this position and has simply relied on the order of the Assessing Officer in support of the Revenue's case. The ld. Counsel for the assessee, on the other hand, has relied on the decision of the Hon'ble Delhi High Court in the case of Joint Investment Pvt. Limited -vs.- CIT (supra), wherein it was held that the disallowance under section 14A cannot exceed the actual amount of exempt income earned by the assessee during the relevant year. Respectfully following these judicial

pronouncements cited on behalf of the assessee as well as relied upon by the Id. CIT(Appeals) in his impugned order, we find no infirmity in the impugned order of the Id. CIT(Appeals) restricting the disallowance of Rs.81,40,522/- made on account of the common administrative expenses under section 14A read with Rule 8D(2)(iii) to Rs.4,31,280/- being the exempt dividend income actually earned by the assessee during the year under consideration and upholding the same, we dismiss this appeal of the Revenue.

15. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on August 14, 2020.

**Sd/-
(Justice P.P. Bhatt)
President**

**Sd/-
(P.M. Jagtap)
Vice-President**

Kolkata, the 14th day of August, 2020

- Copies to :*
- (1) ***Assistant Commissioner of Income Tax,
Circle-5(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069***
 - (2) ***M/s. Hindusthan National Glass & Industries Limited,
2, Red Cross Place, Kolkata-700001***
 - (3) *Commissioner of Income Tax (Appeals)-18, Kolkata;*
 - (4) *Commissioner of Income Tax- , Kolkata*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.