

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)

ITA No. 6013/Del/2016  
(Assessment Year: 2011-12)

M/s. OPG Securities Pvt. Ltd, OPG House, 4/10, Asaf Ali Road, New Delhi PAN: AAACO1081C	Vs.	DCIT, Circle-13(1), CR Building, IP Estate, New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Rohit Jain, Adv Ms. Somya Jain, CA
Revenue by:	Ms. Rakhi Vimal, Sr. DR
Date of Hearing	06/10/2020
Date of pronouncement	23/10/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-7, New Delhi dated 20.09.2016 for the Assessment Year 2011-12 wherein, the disallowances u/s 14A of the Act of Rs. 173455/- and disallowances of the interest paid to the bank u/s 36(1)(iii) of Rs. 2677324/- made by the Id AO are confirmed.
2. The assessee has preferred the following grounds of appeal:-
  - “1. *That the Commissioner of Income Tax (Appeals) [“CIT(A)”] erred on facts and in law in upholding disallowance to the extent of Rs. 1,73,455 under section 14A of the Income Tax Act, 1961 (“the Act”), against suo-motu disallowance of Rs.50,000 made by the appellant.*
  - 1.1 *That the CIT(A) erred on facts and in law in upholding the action of the assessing officer in computing disallowance by invoking provisions of Rule 8D of the Income Tax Rules, 1962 (‘the Rules’), without appreciating that conditions precedent for applying provisions of the said Rule, including recording of satisfaction, were not satisfied.*
  - 1.2 *That the CIT(A) failed to appreciate that since the appellant was engaged in the business of trading in shares and securities, there was no warrant to make any further disallowance under section 14A of the Act.*
  - 1.3 *Without prejudice, that the CIT(A)/ assessing officer erred on facts and in law in computing disallowance under section 14A of the Act out of interest expenditure.*
  - 1.4 *Without prejudice, the CIT(A)/ assessing officer grossly erred on facts and circumstances of the case, in computing disallowance under section 14A of the Act,*

*inter alia, by wrongly including shares/ securities: (a) which did not yield exempt income; and (b) held as stock-in-trade.*

**Re: Disallowance of Interest paid to banks etc.**

2. *That the CIT(A) erred on facts and in law in upholding disallowance of interest expenditure of Rs.26.77.324 alleging that borrowed funds were diverted by the appellant in the form of interest free loans and advances to sister concerns.*
- 2.1 *That the CIT(A) erred on facts and in law in not appreciating that interest was paid by the appellant on short-term loan facilities in the form of FDR's lodged with NSE and bank overdrafts used for business purposes of the appellant.*
- 2.2 *That the CIT(A) erred on facts and in law in not appreciating that loans and advances were given by the appellant in earlier years out of own interest free funds available with the appellant.*
- 2.3 *That the CIT(A)/ assessing officer erred on facts and in law in not appreciating that loans and advances were given by the appellant in earlier years on account of commercial expediency out of own funds and not out of interest bearing borrowed funds.*
- 2.4 *Without prejudice, that the CIT(A)/ assessing officer erred on facts and in law in not netting off interest income earned with interest paid by the appellant.*
- 2.5 *Without prejudice, that the CIT(A)/ assessing officer erred on facts and in law in disallowing interest expenditure twice inasmuch as the same was considered while computing disallowance under section 14A of the Act r.w.s Rule 8D of the Rules and was again disallowed alleging diversion of borrowed funds to sister concerns.”*
3. Brief facts of the case shows that the assessee is a member of National Stock Exchange and Bombay Stock Exchange and is engaged in trading of shares and securities. For the impugned AY , assessee filed its return of income on 30.09.2011 at Rs. 26266200/- which was assessed u/s 143(3) of the Act by the Id DCIT, Circle-13(1), New Delhi (Id AO) at Rs. 30643130/- vide order dated 13.03.2014. The assessee preferred an appeal before the Id CIT (A), who passed an order on 20.03.2016 partly allowing the appeal of the assessee. The assessee is aggrieved by the addition of Rs. 2677324/- on account of disallowance of interest and confirmation of the disallowance of Rs. 173455/- u/s 14A of the Act. Therefore this appeal.
4. As per ground No. 1 the disallowances u/s 14A is being contested. The facts shows that the assessee has earned dividend income of Rs. 71507/- from shares in investment portfolio and Rs. 101947/- from shares held as stock in trade. Thus, Rs. 173455/- was claimed as exempt income u/s 10(34) of the Act. The assessee has disallowed suo motto a sum of Rs. 50,000/- u/s 14A of the Act. The Id AO noted that the above disallowance offered by the assessee is not as per method under Rule 8D of the Act. The Id AO issued show cause notice that why proportionate expenditure incurred to earn the exempt dividend income should not be disallowed u/s 14A of the Act as per Rule 8D. The assessee submitted that it has disallowed an adhoc amount of Rs. 50000/- on estimate basis as no separate expenditure were incurred

for the same. The Id AO rejected the explanation of the assessee holding that certain administrative indirect cost must have been incurred. Therefore, he computed the disallowances u/s 14A of under Rule 8D of Rs. 354198/-. Thus, disallowance of Rs. 304198/ was made. The assessee challenged the same before the Id CIT (A) who rejected the disallowance to the extent of dividend earned of Rs. 173455/ following the decision of the Hon'ble Delhi High Court in case of Joint Investment Pvt. Ltd Vs. CIT. The assessee is aggrieved with that.

5. The Id AR submitted that the Id AO has not recorded the satisfaction to the correctness of the claim of the assessee that no expenditure has been incurred to earn any exempt income and further suo motto disallowance offered of Rs. 50,000/ is how incorrect , without doing so, the Id AO could not have jumped to apply Rule 8D. He submitted that satisfaction is sine quo none before invoking Rule 8D. He further submitted that when the shares are held as stock in trade, provisions of section 14A does not apply. Alternatively, he also submitted that investments on which no exempt income is earned should have been excluded while working out disallowances under Rule 8D. He otherwise submitted that the assessee has interest free fund available of Rs. 37.05 crores whereas the investment as well as stock in trade of the assessee is merely Rs. 2.75 crores and therefore, even otherwise, interest expenditure under Rule 8D cannot be disallowed. He further stated that the assessee has earned interest of Rs. 43.85 lakhs and has incurred interest expenditure of Rs. 26.77 lakhs and therefore, net interest expenditure claimed by the assessee is Nil. In view of this he submitted that the Id AO as well as the Id mCIT (A) were wrong in disallowing the sum of Rs. 173455/- u/s 14A of the Act.
6. The Id DR vehemently supported the order of the lower authorities.
7. We have carefully considered the rival contention and perused the orders of the lower authorities. In the present case the assessee has though earned exempt income of Rs. 173455/- stated that it has not incurred any expenditure as well as suo motto disallowed a sum of Rs. 50,000/- on estimate basis. The Id AO without recording any satisfaction to the correctness of the claim of the assessee proceeded to apply provisions of Rule 8D of the Income Tax Rules for disallowances u/s 14A of the Act. This is against the mandate of the provisions of section 14A(2) of the Act. The recording of the satisfaction about the correctness of the claim of the assessee with respect examination of accounts is the primary conditions to invoke any disallowance u/s 14A of the Act. The several judicial precedents relied upon before us also held so. In view of this, as the Id AO has failed to record any satisfaction with respect to the correctness of claim of the assessee of not incurring any expenditure to earn exempt income , on examination of the account, the disallowance made

by the Id AO and disallowance restricted by the Id CIT(A) cannot be upheld. Accordingly, we direct the Id AO to delete the above disallowances of Rs. 173455/- u/s 14A of the Act. Thus, ground No. 1 of the appeal is allowed.

8. Ground no. 2 is with respect to disallowances of interest expenditure of Rs. 2677324/-. The Id AO noted that the assessee has given loans and advances to various sister concern and other parties on which interest has not been charged. The Id AO noted that the assessee has claimed deduction of expenditure of Rs. 2677324/- in profit and loss account. The Id AO questioned the assessee wherein the assessee submitted that it has owned capital funds sufficient enough to cover interest free loans and advances given by the company. It was also submitted that interest is mainly paid to the bank for overdraft facilities which has not been utilized for making loans and advances to other parties free of interest. The Id AO noted that as at the end of the year the assessee has advanced a sum of Rs. 17.32 crores to various parties without charging interest. He rejected the explanation holding that the assessee cannot claim that loans and advances are given out of interest free funds. Therefore, he disallowed total interest expenditure of Rs. 2677324/-. The assessee submitted the complete details of interest expenditure before the Id CIT (A). It also showed that interest bearing funds are used for the business purpose. The Id CIT(A) rejected the claim of the assessee stating that the assessee has claimed interest expenditure and has also given interest free loans and advances to its sister concern without any commercial expediency or business purposes and hence, he confirmed the disallowances.
9. The Id AR adverting to ground No. 2, submitted that complete details of the interest expenditure were provided and stated that the major interest expenditure of Rs. 24.36 lakhs is for working capital need for the business of the assessee. Even otherwise he submitted that the assessee has earned interest income of Rs. 4385941/- and expenditure is for RS 2677324/- therefore, it has offered net interest income for taxation. It was also stated that majority of the loans were advanced in earlier years and not during the year. He further submitted that as on 31.01.2011 the assessee has interest free funds in share capital and reserves amounting to Rs. 37.05 crores whereas the loans and advances given interest free is only of Rs. 17.32 crores and therefore, presumption arises in favour of the assessee that interest free funds are used for providing interest free advances, thus disallowances confirmed by the Id CIT(A) is deserved to be deleted.
10. The Id DR supported the orders of the lower authorities.
11. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the present case the assessee has interest free funds available in the form of share capital and free reserve amounting to Rs. 37.05 crores whereas interest free loans and

advances were only Rs. 17.32 crores. Therefore, it is apparent that assessee has sufficient interest free funds available to advance the above loan to its sister concern free of interest. The issue is squarely covered in favour of the assessee by the decision of the Hon'ble Supreme Court in CIT Vs. Reliance Industries Ltd 410 ITR 466 wherein, it has been held that when the interest free funds available to the assessee were sufficient to make its investment which could be presumed that such interest free loans are made from interest free funds available with the assessee. In view of this, we direct the Id AO to delete the disallowance of interest expenditure of Rs. 2677324/-. In the result ground No. 2 of the appeal is allowed.

12. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 23/10/2020.

-Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 23/10/2020  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi