

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DLEHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA Nos. 4640/Del/2016, 4398 & 4399/Del/2017
Assessment Years: 2012-13, 2013-14 & 2014-15**

**ACIT, Central Circle-3,
New Delhi.** vs. **Bhushan Energy Ltd.,
1st Floor, International Trade Tower,
Nehru Place, New Delhi.**

**C.O. No. 160/Del/2019
(in ITA No. 4640/Del/2016)
Assessment Year: 2012-13**

**Bhushan Energy Ltd.,
1st Floor, International Trade Tower,
Nehru Place, New Delhi.** vs. **ACIT, Central Circle-3,
New Delhi**

**PAN : AACCB7445H
(Appellant)**

(Respondent)

Revenue by : Sh. Satpal Gulati, CIT/DR
Assessee by : Sh. Ashwani Kumar, CA
Sh. Rahul Chaurasia, CA

Date of hearing: 05/07/2021
Date of order : 08/07/2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Challenging the orders dated 23.06.2016 for A.Y. 2012-13 and dated 11.04.2017 for A.Yrs. 2013-14 & 2014-15, passed by the learned Commissioner of Income Tax (Appeals)-23, New Delhi ("Ld. CIT(A)"), in

the case of Bhushan Energy Ltd. ("the assessee"), the Revenue filed these three appeals. The assessee has also filed cross-objections in appeal for A.Y. 2012-13, which has been withdrawn by Id. AR of assessee.

2. Brief facts of the case relevant for disposal of all these appeals are that the assessee is a company engaged in the business of power generation. For all these three assessment years, the assessee derived exempt income and made *suo moto* disallowance u/s. 14A of Rs.5,00,045/- for assessment year 2012-13, Rs.1,25,81,066/- for assessment year 2013-14 and Rs.1,28,76,558/- for assessment year 2014-15. Assessing Officer, however, calculated disallowance u/s. 14A of the Income Tax Act ("the Act) read with Rule 8D of the Income-tax Rules ("the Rules") at Rs.21,28,28,842/- for assessment year 2012-13, Rs.27,14,75,759/- for assessment year 2013-14 and Rs.13,53,28,564/- for assessment year 2014-15 and made an addition of Rs.21,23,28,797, Rs.25,88,94,693/- and Rs.12,24,52,006/- for assessment years 2012-13 to 2014-15 respectively. Assessing Officer also recomputed the book profits u/s. 115JB of the Act by adding this amount determined u/s. 14A read with Rule 8D.

3. In appeal, Id. CIT(A) on reappraisal of the material available on record and also by requiring some clarifications from the parties, reached a conclusion on facts that the assessee is not liable to allocate any interest amount to the exempt income, but the assessee is liable to disallow the administrative expenses relating to the exempt income under Rule 8D(2)(iii) of the Rules. Inasmuch as the assessee is not liable to allocate interest component, CIT(A) deleted the same computed u/r. 8D(2)(ii) for all the three years, but upheld the disallowance so far as the

calculation u/r. 8D(2)(iii) is concerned. Since the assessee already disallowed the same, CIT(A) allowed the appeals in *toto* and also directed the Assessing Officer to recompute the MAT payable by assessee after excluding this disallowance u/s. 14A read with Rule 8D.

4. Aggrieved by the same, the Revenue is in these appeals on identical grounds.

5. Having heard the counsel on either side, we have gone through the record in the light of such submissions. In so far as the disallowance under Rule 8D(2)(i) is concerned, the Assessing Officer did not make any disallowance. In so far as the disallowance for A.Y. 2012-12 u/r 8D(2)(ii) is concerned, on verification of the details of expenditure debited in the accounts of assessee, Id. CIT(A) found that the assessee has submitted the details of expenditure debited in the accounts and that out of the total expenditure of Rs. 12,232.75 lakh a sum of Rs. 11,152.03 lakh is entirely relatable to its manufacturing/business activities of the appellant company, and therefore only Rs. 1,080.72 lakh may be allocated in accordance with s. 14A of the Act, and accordingly the appellant has computed Rs.1,21,36,000/- as the amount which may be allocated as per Rule 8D(2)(iii) of the Rules; that as regards the interest expenses, vide order sheet dt. 08.06.2016 the appellant's AR was asked to submit details of the interest expenses of Rs. 17.98 crore debited in accounts, which have been submitted according to which interest claimed are interest paid on term loan of Rs. 166.08 crore, interest on ECB (external commercial borrowing) of Rs. 11.50 cr., interest on OD against CC loan of Rs.66.64 lakh, and interest on FLC (foreign letter of credit) (Rs.35.97 crore being interest related to project under commission and booked in

accounts as pre-operative expenses); that as per Note-4 & 8 of the audited accounts the amount of term loan is Rs. 1165.35 crore and Rs.625.00 crore including FLC of Rs.347.73 crore, and the CC loan is Rs.2.43 crore, detailed explanation being given in the foot notes according to which these loans are for various phases of power projects at Orissa; that such interest expenses is not allocable to the exempt income; and that there is no nexus between the interest paid and claimed as expenditure and the exempt income and therefore no disallowance u/r 8D(2)(ii) of the Rules is called for.

6. In respect of assessment years 2013-14 and 2014-15, the Id. CIT(A) observed that the assessee had submitted the details of expenditure debited in the accounts and the expenditure entirely relatable to its manufacturing/business activities of the appellant company, and therefore only Rs. 21539.69 lakh and Rs. 18582.93 lakh respectively in the above two assessment years could be allocated in accordance with s. 14A of the Act, and accordingly the appellant has computed Rs.66,34,106/- and Rs.28,99,215/- respectively in the above two assessment years as the amount which may be allocated as per Rule 8D(2)(iii) of the Rules; that the computation of the appellant submitted in the WS dt. 10.04.2017 is incorrect in as much as the disallowable expenditure under Rule 8D(2)(iii) of the Income Tax Rules,1962 would be Rs.2,12,04,095/- and Rs. 1,37,23,450/- respectively in the above two assessment years being 0.5% of the average value of investment of Rs.274,46,90,000/- and Rs.424,08,19,000/- respectively in the above two assessment years; that as regards the interest expenses, vide order sheet dt. 10.03.2017 the appellant's AR was asked to submit details of the interest expenses

debited in accounts, which have been submitted, according to which interest claimed are interest paid on term loan of Rs.213.20 crore and Rs.206.63 crore, interest on ECB (external commercial borrowing) of Rs. 7.88 crore and Rs.7.37 cr., interest on OD against CC loan of Rs.80.24 & Rs.437.21 lakh, and interest on FLC (foreign letter of credit) of Rs.2.30 crore and Rs.1.34 crore respectively in the above two assessment years beside interest u/s 234C and interest on TDS; that as per detailed explanation given in the foot notes of the audited accounts these loans are for various phases of power projects at Orissa; that the interest expenses is not allocable to the exempt income; and that there is no nexus between the interest paid and claimed as expenditure and the exempt income and therefore no disallowance u/r 8D(2)(ii) of the Rules is called for.

7. While applying the law laid down by Hon'ble jurisdictional High Court in the case of CIT vs. Indian Sugar Exim Corporation Ltd. (2012-TIOL-137-HC-DEL-IT), CIT vs. Taikisha Engineering India Ltd. (370 ITR 338)(Delhi) dated 25.11.2014 and CIT vs. HDFC Bank Ltd. (336 ITR 505) (Bom), Id. CIT(A) directed the deletion of interest component u/r.8D(2)(ii) of the Rules for all these three years.

8. In so far as the findings of facts by the Id. CIT(A) are concerned, it is not disputed by the Revenue before us that any of these facts is incorrect or contrary to the record. When once the CIT(A) reached a factual conclusion that the interest expense incurred by assessee is not allocable to the exempt income, in the absence of any material to the contrary, we find it difficult to disturb the same. Further, learned CIT(A) applied the binding precedents to these facts. In these circumstances, we

do not find any illegality or irregularity in the findings of the Id. CIT(A) in deleting the interest component u/r. 8D(2)(ii) of the Rules. Though the CIT(A) confirmed the addition of disallowance under rule 8D(2)(iii), the assessee had already *suo moto* disallowed the same and it does not require any interference.

9. Coming to the direction of the Id. CIT(A) to recompute the MAT payable by assessee after excluding the disallowance u/s. 14A of the Act, such a finding is fortified by the decision of Special Bench of this Tribunal in the case of ACIT vs. Vireet Investment (P) Ltd reported in (2017) 82 taxmann.com 415 (Delhi-Trib.) (SB). We, therefore, confirm the same and dismiss the appeals of the Revenue. The cross objections filed by the assessee are also dismissed as withdrawn.

10. In the result, the appeals of the Revenue and Cross-objection of assessee are dismissed.

Order pronounced in the open court on this 8th day of July, 2021.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 08/07/2021
'aks'