

2. *The ld.CIT(A) erred in directing the AO to delete the addition made on account of Rule 8D(2)(i) and rule 8D(2)(ii) while sustaining the addition on account of rule 8D(2)(iii) without appreciating the fact that the method of computation as stipulated under Rule 8D(2) is inseparable and is the aggregate of Rule 8D(2)(i), (ii) and (iii).*
3. *The ld.CIT(A) erred in following the order of hon'ble IITAT when the facts of the case differed from the FY 2009-10 with that of the year under consideration.*
4. *The Ld.CIT(A) erred in restricting the addition made u/s 14A by 4,09,61,562/-."*

3. Both the learned Representatives next invited our attention to CIT(A)'s detailed lower appellate discussion deleting the impugned sec.14A r.w.s. 8D disallowance as under.

"XI) Ground No.5 in appeal relates to disallowance u/s 14A of the Income Tax Act, 1961. The appellant submitted that the Hon'ble ITAT in ITA No.1653/Hyd/2012 for A.Y.2009-10 vide order dated 10.10.2014 had considered the contention of the appellant on same facts. The Hon'ble ITAT, in this order stated as under:-

6. We have considered the submissions of the parties, perused the orders of the revenue authorities as well as other materials on record. We have also carefully applied our mind to the decisions relied upon by the parties before us. The undisputed facts are, assessee during the year has earned exempt income from dividend on mutual funds amounting to Rs.90,34,811. It is also not disputed that investments in mutual funds at the beginning of the year is at Rs. 1,42,46,585 and at the end of the year the same was at Rs. 2,950,566,474. There is no doubt that there is substantial increase in the investments made in the mutual funds during the year. However, on perusal of the month-wise investments and availability of funds, details of which are placed at page 34 of the assessee's paper book, it is to be noted that assessee is having reserves

and surplus more than the investments made in mutual funds in all the months except March'09 wherein reserves and surplus along with share capital is Rs. 205,86,24,554 as against mutual fund investments of Rs. 295,05,66,475, thereby resulting in excess of investment over the surplus funds available with assessee to the extent of Rs. 89,19,41,920. When this figure is juxtaposed to the month-wise borrowals made by assessee from banks, it is to be noted that only in the month of March'09, borrowals made by assessee from banks is more than the loan disbursed to the borrowers. Therefore, if at all there is any investment made by assessee out of borrowed funds in the mutual funds, then, the same can possibly be in the month of March'09 only . Further, on a perusal of the balance sheet, it appears that own funds available with the assessee from reserves and surplus and current liabilities is to the tune of Rs.314.82.01,550=00 whereas the total investments as on 31.03.2009 is Rs. 295,05,66,474. From this, it is clear that the investments made in mutual funds could have been made out of the own funds available with assessee without utilising the borrowed funds. In these circumstances, when assessee was having sufficient surplus funds to make investment in mutual funds no disallowance can be made towards interest expenditure unless nexus is established between the borrowed funds and the investments made. In this context, we rely upon the decision of the Hon'ble Bombay High Court in case of CIT Vs. HDFC Bank and the decision of ITAT, Delhi Bench in case of ACIT Vs. Mohan Export P. Ltd. (supra). Further on a perusal of P&L account of assessee for the impugned A Y along with its shoulders clearly shows a net positive interest income. When there is a positive interest income, no disallowance can be made u/ s 14A read with rule 8D. In this context, we rely on the decision of the coordinate bench in case of ITO Vs. Karnavati Petrochem (P) Ltd. (supra). Even, assuming that there is investment made by assessee in the mutual funds out of borrowed funds, but, as can be seen from the facts on record, such possibility arises only in respect of investment in March'09. However, for making any disallowance, it has to be established on record how much borrowed fund has been invested in the mutual funds and for what period. AO certainly cannot charge interest for the entire year when the investment is made by assessee for a month or few days. Further, a link is required to be

established between the actual amount of investment made out of borrowed funds. When AO has not undertaken any such exercise, presumptive disallowance on account of interest expenditure cannot be sustained. Though we respectfully agree with the ratio laid down by Hon 'ble Bombay High Court in case of Godrej and Boyce Manufacturing Co. Ltd. (supra), it needs to be stated that the said decision cannot be considered to be laying down a Proposition that disallowance of interest expenditure has to be made irrespective of the fact whether there is nexus between the borrowed funds and the investment made by assessee which resulted in earning of exempt income and further whether assessee has actually incurred any interest expenditure towards earning of exempt income. That being the case, we do not find any reason to sustain the addition of Rs. 13,49,17,666, towards interest expenditure under rule 8D(2)(iii). However, so far as disallowance of Rs. 74,12,030 @ 0.5% on the average value of investment under rule 8D(2)(III) is concerned, we are of the view that the same is in order. Reading of the provision u/s 14A and more specifically sub-section (3) of section 14A read with rule 8D(2)(iii) makes it clear, even where the assessee claims that he has not incurred any expenditure for earning exempt income, disallowance of expenditure deemed to have been incurred has to be worked out @ 0.5% on the average value of investments. As the AO has correctly computed disallowance in terms with rule 8D(2)(iii), the same deserves to be upheld. Accordingly, we sustain the addition of Rs. 74, 12,030 out of the total addition of Rs.14,23,29, 696 made u/ s 14A by the AO.

The decision of the Hon'ble ITAT has been respectfully followed. However, directed by the Hon'ble ITAT, it is seen that the specifically Section 14A(iii) rwr. 8D(2)(iii) has been considered. A disallowance @ 0.5% has to be made with reference to rule 8D(2)(iii). The AO is to follow decision of the Hon'ble ITAT and ply the same with reference to disallowance u/s.14A(iii). Hence, Ground No.5 in appeal is partly allowed.

4. Learned DR vehemently contended during the courser of hearing that the CIT(A) erred in law and on facts in deleting impugned sec.14A disallowance thereby placing reliance on the tribunal's foregoing earlier order

in AY 2009-10 despite the fact that these twin AYs involve to be set on facts qua the instant issue.

5. We have given our thoughtful consideration to revenue's sole substantive grievance and find no merit therein. This is more particularly for the reason that although it had pleaded distinction between the facts qua the instant sole issue in AY 2010-11 and 2012-13 none of the said distinction surfaced during the course of hearing before us. It rather transpires that tribunal's earlier order has already considered revenue's main grievance qua the method of computation under Rule 8D qua sec.14A disallowance under clauses (i) and (iii) involving direct, proportionate interest and administrative expenditure; respectively. Coupled with this, it has further come on record that the assessee had doubled its non-interest bearing funds only whilst deriving corresponding exempt income of Rs. 90,34,811/- in issue. We thus affirm CIT(A)'s detailed findings in view of all these facts on record.

This Revenue's appeal is dismissed.

Pronounced in Open Court on 17th August, 2021.

Sd/-

**(L.P. SAHU)
ACCOUNTANT MEMBER**

Sd/-

**(S.S. GODARA)
JUDICIAL MEMBER**

Dated: the 17th August, 2021.

* gmv

Copy of the Order forwarded to:

1. DCIT, Circle 3(2), Hyderabad.
2. M/s Spandana Sphoorthy Financial Limited, Plot no.. 79, Care Crystal, Near Indiranagar Bus Stop, Gachibowli, Hyderabad – 500 032, Telangana
3. ACIT, Range 3, Hyderabad.
4. CIT(A)-3, Hyderabad
5. Pr.CIT-3, Hyderabad
6. DR, ITAT, Hyderabad.
7. Guard File.