

**IN THE INCOME-TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.1691/Ahd/2019
Assessment Year: 2016-17**

DCIT, Circle -2(1)(1) Ahmedabad	Vs.	M/s HDB Financial Services Ltd.
(Appellant / Revenue)		(Respondent/ Assessee)
PAN: AABCH 8761 M		
Revenue by	Shri S.S. Shukla, Sr. DR	
Respondent by	Shri Vartik Chokshi, AR	
Date of Hearing	08.03.2022	
Date of Pronouncement	25.05.2022	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

THIS APPEAL:

1. This appeal filed by the revenue is directed against the order dated 14.08.2019 of learned Commissioner of Income-Tax (Appeals)-2, Ahmedabad [**Ld. CIT(A)**] in Appeal No. CIT(A)-2/10214/DC.Cir.2(1)(1)/2018-19, which in turn arises out of the order of assessment dated 19.12.2018 passed by the learned DCIT, Circle-2(1)(1), Ahmedabad [**Ld. AO**] u/s 143(3) of the Income-tax Act, 1961 [**the Act**] for the Assessment-Year 2016-17.

BACKGROUND:

2. The assessee is a company engaged in the business of lending of loans, distribution of insurance products and BPO activities. It filed original

return of income declaring a total income of Rs. 9,15,19,44,530/- on 26.11.2016, followed by a revised return declaring a total Income of Rs. 9,42,40,59,340/- on 29.03.2018. During scrutiny, the Ld. AO found that the assessee had made investment in shares yielding exempt-income and yet not made any disallowance u/s 14A. Therefore the Ld. AO completed assessment u/s 143(3) of the Act at a total income of Rs. 9,44,61,35,880/- after making a disallowance of Rs. 2,20,76,536/- u/s 14A. For the purpose of section 14A, the Ld. AO had computed the disallowance of Rs. 2,05,92,536/- in terms of Rule 8D(2)(ii) and Rs. 14,84,000/- in terms of Rule 8D(2)(iii), thus aggregating to total disallowance of Rs. 2,20,76,536/- under Rule 8D. Simultaneously the Ld. AO also made an addition of Rs. 2,20,76,536/- to the Book-Profit u/s 115JB for MAT purpose. Aggrieved by the order of assessment, the assessee filed appeal to Ld. CIT(A). The Ld. CIT(A) deleted the disallowance of Rs. 2,05,92,536/- made in terms of Rule 8D(2)(ii) but confirmed the disallowance of Rs. 14,84,000/- made in terms of Rule 8D(2)(iii). Further the Ld. CIT(A) deleted the entire addition of Rs. 2,20,76,536/- from the Book-Profit u/s 115JB holding that the disallowance u/s 14A is notional and does not fall in the purview of section 115JB. Against the order of Ld. CIT(A), the revenue has filed this appeal and now before us.

GROUND:

3. The revenue has raised following grounds:

- “(1) The Ld. CIT(A) erred in law and on facts in deleting the disallowance u/s 14A without appreciating the fact that the assessee has not been able to prove the nexus between the interest free funds and the investment in shares.***
- (2) The Ld. CIT(A) failed to appreciate that the assessee had not produced any fund flow statement from which it could be derived that interest free funds had been deployed for investment in shares.***

(3) The Ld. CIT(A) has erred in law and on facts in holding that the disallowance u/s 14A is notional in nature and thus does not come under the purview of Explanation 1(f) of Section 115JB of the Act.”

GROUND No. 1 and 2:

4. Precisely stated the grievance of the revenue embedded in these two grounds is very simple and specific i.e. the Ld. CIT(A) has erred in deleting the disallowance of Rs. 2,05,92,536/- made by Ld. AO in terms of Rule 8D(2)(ii), without appreciating that the assessee has not been able to prove the nexus between the interest-free funds and the investment in shares.

5. Ld. DR supported the order of Ld. AO and insisted upon the contention that since the assessee has not submitted any cash-flow statement to prove that interest-free funds were used for making investment in shares, the Ld. AO has correctly made disallowance. Ld. DR submitted that it is the responsibility of the assessee to prove the availability of the interest-free funds for making investment. Having not done so, the Ld. AO has rightly computed the disallowance in terms of Rule 8D(2)(ii) and made addition of Rs. 2,05,92,536/- which needs to be upheld.

6. Per contra the Ld. AR invited our attention to the audited Balance-Sheet of the assessee placed in the Paper-Book. Referring to Page No. 6 of the Paper-Book, the Ld. AR showed us the following figures of shareholders' fund available with the assessee which were interest-free:

	31.03.2016 (Rs. In crore)	31.03.2015 (Rs. In crore)
(a) Share Capital	700.17	699.47
(b) Equity shares to be issued as per approved scheme of amalgamation	7.56	7.56

(c) Reserve and Surplus	2,936.08	2,491.17
Total	3,643.81	3,198.20

The Ld. AR submitted that the interest-free funds at the closing and at the start of the previous year were Rs. 3,643.81 crores and Rs. 3,198.20 crore respectively and thus the average quantum was Rs. 3,421.01 crore. Thereafter referring to Page No. 11 of the Paper-Book, the Ld. AR submitted that the investment in shares from which the exempt-income was earned was just Rs. 47.12 crores. The Ld. AR submitted that these figures of interest-free funds and the investment in shares are prominently figuring in the audited Balance-Sheet of the assessee and nothing more was required to be proved on the part of the assessee. According to the Ld. AR, the quantum of interest-free funds of Rs. 3,421.01 is manifold of the investment of Rs. 4712 crore in shares and therefore it is apparently visible that the assessee was having ample amount of interest-free funds to make investment in shares.

Thereafter the Ld. AR submitted that the assessee is engaged in the business of money-lending and therefore receiving interest income from the loans advanced and at the same time paying interest on the loans taken. The Ld. AR carried our attention to Page No. 20 of the Paper-Book and submitted that the assessee earned interest income of Rs. 3,021.79 crore against which interest expenditure of Rs. 1,571.53 crore was incurred and therefore the assessee earned net interest income of Rs. 1,450.26 crore. The Ld. argued that it has been held in numerous judgements that if the assessee has positive amount of interest income, the disallowance under Rule 8D(2)(ii) cannot be made.

Lastly the Ld. AR submitted that the similar disallowance was also made in the assessee's own case in assessment-year 2011-12 and 2012-13 but the same was deleted by this Bench itself in ITA No. 2465 / Ahd/ 2014 dated 19.09.2017 and ITA No. 3041/Ahd/2015 dated 30.01.2018 respectively.

With these submissions, the Ld. AR submitted that the Ld. CIT(A) has rightly considered the facts and figures of the case and thereafter deleted the addition made by Ld. AO. Hence the Ld. AR prayed to uphold the order of Ld. CIT(A).

7. We have given a careful thought to the rival submissions of the both sides and perused the material available on record. Without repeating the figures submitted by Ld. AR and narrated in the foregoing discussion, we observe that the assessee was having sufficient interest-free funds for making investment in shares from which the exempt income was derived. We also observe that the Ld. CIT(A) has considered all these financial figures and arrived at a conclusion that no disallowance was warranted in terms of Rule 8D(2)(ii) u/s 14A. We do not find any infirmity in the order of Ld. CIT(A). Therefore, we agree with the disallowance deleted by Ld. CIT(A). Accordingly, the Ground No. 1 and 2 of the Revenue are dismissed.

GROUND No. 3:

8. Now we take up the next Ground No. 3. In this Ground, the revenue has claimed that the Ld. CIT(A) has erred in holding that the disallowance u/s 14A is notional in nature and does not come within the purview of the Explanation 1(f) of section 115JB.

9. This issue is squarely covered by the decision of Special Bench in **ACIT Vs. Vireet Investment Pvt. Ltd., ITA No. 502/Del/2012 dated 16.06.2017** in favour of the assessee. The Ld. DR could not controvert this position. Respectfully following the decision of Hon'ble Special Bench, we are inclined to dismiss the Ground No. 3 of the Revenue.

DISPOSITION:

10. In the result, this appeal of Revenue is dismissed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 25.5.2022.

Sd/-

(SUCHITRA KAMBLE)
Judicial Member

Sd/-

(B.M. BIYANI)
Accountant Member

Ahmedabad **25th May, 2022**

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad Benches, Ahmedabad