

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. A.D. Jain, Vice President

Dr. B. R. R. Kumar, Accountant Member

**ITA No.2808/Del/2018
Asstt. Year: 2011-12**

Addl. Commissioner of Income Tax, Sp. Range-9, C.R. Building, I.P. Estate, New Delhi	Vs	M/s Tourism Finance Corporation of India Ltd. 13 th Floor, IFCI Tower, 61 Nehru Place, Delhi-110019
(APPELLANT)		(RESPONDENT)
PAN No. AAAC0706D		

**Revenue by : Sh. Sanjay Aggarwal, CA
Assessee by : ****

Date of Hearing: 10.05.2022	Date of Pronouncement: 27.06.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

** The Revenue filed letter of adjournment signed by the ITO of the Bench which has been rejected owing to the grounds taken up by the assessee.

The present appeal has been filed by the Revenue against the order of the Id. CIT(A)-42, New Delhi, dated 19.01.2018, relating to AY 2011-12.

2. The assessee is a public financial institution engaged in providing long term finance for tourism industry related projects. It borrows money by way of unsecured loans through issuance of bonds and secured loans through banks (refer schedule 'D' and 'C' of accounts). The same is then used for

financing the projects appraised and approved by the appellant at varying rates of interest. The financing is through term loans and subscription to debentures/ preference shares.

3. The AO made addition in this case on account of

a) disallowance of 132,06,920/- under section 14A of the Act .

b) disallowance of provision for bad & doubtful debts claimed under section 36(1)(vii)(c).The revenue is not in appeal against this deletion by theLd.CIT(A).

4. The appellant has filed detailed written submission before revenue authorities which is summarized as under:

"The learned Assessing Officer has made a disallowance ofRs, 4,52,06,920/- u/s 14A against the dividend income of Rs. 75,38,220/-. The disallowance has been worked out as under:-

<i>Interest cost</i>	<i>4,13,39,546</i>
<i>0.5% of average investment</i>	<i><u>38,67,374</u></i>
	<i><u>4,52,06,920</u></i>

The loans taken by the appellant by issuance of bonds etc. are for its business of lending for tourism and infrastructure projects. No interest bearing funds have been invested in shares/mutual funds.

Detailed chart showing the position of investments, Reserve, Loans position, Profit, Fixed Assets, Cash Flow on yearly basis is submitted herewith in proof of the fact that the appellant has not used interest bearing funds in making investments which result in income not chargeable to tax.

During the FY 2010-11 (relevant to AY 2011-12), assessee has earned interest income on loans amounting to Rs. 96,27,81,720/- and on deposits for Rs. 5,31,63,523/- (Refer Schedule-J to the Accounts) whereas, the interest expenses on borrowings for the year stands at Rs. 41,63,85,365/-.

Therefore, assessee has earned net interest income during the year and on net basis no interest expenditure has been incurred.

Reference in this regard is made to the judgement of Hon'ble IT AT, Kolkata In the case of DCIT vs. M/s Trade Apartment Ltd. (ITA No, 1277/Kol/211- AY 2008-09)

wherein Hon'ble ITAT has upheld that, ", once there is no net interest expenditure, as is the case before us- upon setting off of interest credited to profit and loss account, no part of interest debited can be disallowed as attributable to earn tax free dividend.

Reference is also made to the judgment of Hon'ble ITAT, Mumbai In the case of Morgan Stanley Indian Securities Private Limited (ITA No. 5072/Mum/2005 and ITA No. 6774/Mum/2008) wherein Hon'ble ITAT has categorically noted that, "there can be no dispute that since the amount of interest debited to Profit & Loss Account is on net basis, the disallowance of interest could should also be made only with reference to the net interest, as was done by the assessee." This implies that where the net interest is positive, disallowance on account of interest cannot be made u/s 14A.

Reference is also drawn to the judgment of Hon'ble ITAT, New Delhi in the case of Gillette Group India Put. Ltd. (ITA No. 267/Del/2012) wherein Hon'ble ITAT held that the disallowance u/s 14A cannot exceed the actual expenditure.

It has been held by the Hon'ble ITAT, Kolkata in the case of Narain Prasad Dalmia in ITA No. 1180/Kol/2011, ITA No. 1180/Kol/2011, ITA No. 1246/Kol/2010, ITA No. 1217/Kol/2009 and ITA No. 1139/Kol/2009 that where interest is incurred on loans for business, disallowance of interest cannot be made u/s 14A read with Rule 8D.

In Assessment Year 2012-13, the learned Assessing Officer, Circle-25(2), New Delhi has, after examining the audited accounts since the inception of the company and other details, given a clear finding in his order u/s 143(3) dated 25-02-2015 that upto the assessment year 2011-12 the assessee has not used any interest bearing funds in investments which

give income not chargeable to tax. Copy of the said assessment order is submitted herewith.

Therefore, no disallowance is called for on account of interest.

As regards the disallowance by way of 0.5% of average investments is concerned, the Hon'ble Delhi High Court in the case of *ACB India Ltd. vs. ACIT* in ITA No. 615/2014 vide order dated 24-03-2015 it has been held that only the investment yielding non-taxable income have to be considered for working out disallowance u/s 14A and not all the investments.

Accordingly, the disallowance works out to Rs. 7,03,934/- as per details and calculations enclosed.

Since the assessee has suo-moto disallowed Rs. 1,00,000/- in its computation as disallowance u/s 14A, the net disallowance may kindly be restricted to Rs. 6,03,934."

5. At the outset, the facts of the case are that during the year under consideration the assessee earned dividend of Rs.75,38,220/-. The details of the dividend received is as under:

Name of Company	Amount(Rs.)
Royale Manore Hotel & Industries	16,44,022
Union Bank of India	25,223
ITC Ltd.	21,17,950
IDFC Ltd.	11,025
Appu Hotels Ltd,	36,00,000
IFCI Ltd.	20,000
Nicco Parks & Resorts	1,20,000
Total	75,38,220

6. The AO asked the assessee to explain as to why the expenses relating of the dividend income as per rule 8D should not be disallowed. In response to query, assessee filed an explanation stating as follows:-

"The assessee is a public financial institution engaged in providing long term finance for tourism industry related projects. It borrows money by way of Unsecured Loans through issuance of bonds and Secured Loans through Banks (Refer Schedule 'D' and 'C' of accounts). This is then used for lending purposes to finance projects appraised and approved by the appellant at varying rates of interest. The financing is through term loans and subscription to debentures/preference shares."

7. The AO observed that during the year under consideration, the assessee has incurred interest of Rs. 41,63,85,365/-, The AO recorded satisfaction for disallowance u/s 14A of the Act, r/w Rule 8D of the Rules with following remarks:

"Since, the assessee company has invested its money for such huge investments in shares, mutual funds etc., which is capable to generate income which does not or shall not form part of total income of the assessee company and indirect cost in the form of administrative nexus between the exempted income, which the investments shall generate and the expenditures directly or indirectly involved in earning the said income. I am not satisfied with the method of computation of disallowance worked out by the assessee himself as per the provisions of Section 14A, hence, I am recording reasons to arrive at satisfaction for disallowance u/s 14A of the Act, r/w Rule 8D of the Rules."

8. Accordingly, the AO made disallowance of Rs. 4,52,06,920/- u/s 14A of the Act, r/w Rule 8D of the Rules as worked out as under:-

Particulars	Amount(Rs.)
Amount directly relatable to dividend income	Nil
Interest expenditure relatable to such income (41,63,85,365 X 77,34,74,853 / 7790690542)	4,13,39,546/-
One-half percent of average value of investment (0.5%* 77,34,74,853)	38,67,374/-
Total quantum of disallowance:	4,52,06,920/-

9. While working the above disallowance, the AO has taken the amount of interest expenditure at Rs. 41,63,85,365/-, the amount of average investment at Rs. 77,14,74,853/- and the amount of average total assets (as appearing in the balance sheet) - Rs. 7790690542/-.

10. Snippets of the order of the Ld.CIT(A):

- Rule 8D of the IT rules, relevant to the expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely: —

(i) the amount of expenditure directly relating to Income which does not form part of total income;

(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely

$$= A \times B/C$$

Where A= amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

(iii) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day ' of the previous year.

- The appellant submitted that the loans taken by the appellant by issuance of bonds etc. are for its business of lending for tourism and infrastructure projects and therefore, no interest bearing funds have been invested in shares/mutual funds.
- The appellant submitted detailed chart showing the position of merits, Reserve, Loans position, Profit, Fixed Assets, Cash Flow on yearly to showcase that it has not used interest bearing funds in making investments which result in income not chargeable to tax.
- Further, the appellant pointed out that during the FY 2010-11 (relevant to AY 2011-12), assessee has earned interest income on loans amounting to Rs. 96,27,81,720/- and on deposits for Rs. 5,31,63,523/- (Refer Schedule-J to the Accounts) whereas, the interest expenses on borrowings for the year stands at Rs. 41,63,85,365/-. Therefore, the appellant contended that it has earned net interest income during the year and on net basis, no interest expenditure has been incurred. It is noted that the assessee was earning net positive interest income which indicates that own funds of the assessee exceeded interest bearing funds.

- Further, the appellant invited attention to the fact that in Assessment Year 2012-13, the learned Assessing Officer, Circle-25(2), New Delhi has, after examining the audited accounts since the inception of the company and other details, given a clear finding in his order u/s 143(3) dated 25-02-2015 that upto the assessment year 2011-12 the assessee has not used any interest bearing funds in investments which give income not chargeable to tax.
- Further, it is noted that AO has also not made any disallowance based on the first limb of Rule 8D which provides for disallowance of interest expenses directly attributable to the earning of dividend income. Further, the AO made disallowance of Rs.4,13,39,546/- and Rs.38,67,374/- under the second limb & third limb of Rule 8D respectively.
- The AO justified the disallowance under second limb because of the fact that interest bearing funds are part of funds available with the assessee for investment in the assets, in view of the fact that there can be 4 scenarios of nexus between the borrowed funds and investments which are as under;
 - *An assessee has sufficient interest free funds for the investments yielding exempt income.*
 - *An assessee has sufficient interest free funds for the investments, however, has also borrowed funds for capital expenses, working capital, etc.*

- *Investments are made through a common pool of borrowed and own funds,*
- *Direct nexus, investment made out of borrowed funds.*
- In the present case, it is on record that the assessee has sufficient interest free funds for the investments, however, the assessee has also borrowed funds for capital expenses, working capital, etc. It may be worth mentioning that the assessee has failed to showcase the exact date wise details of sourcing of fund for investment out of non-interest bearing funds from its books of accounts. However, it remains an admitted fact that sufficient interest free funds were available with the assessee company.
- The exact details of source of funds are very critical to establish the direct linkage of investment with the interest bearing funds. However, it is a settled position that if own funds of the appellant exceed the borrowed funds and further, the non-interest bearing funds exceed the amount of investment yielding exempt income, in such a situation, the disallowance under second limb is not justified.
- It may be relevant to take note of the decision of Income Tax Appellate Tribunal - Delhi in the case of T & T Motors Ltd., DLF and Oriental Bank of Commerce Ltd. which followed the ratio decidendi down in the case of Hon'ble Bombay High Court in CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom), the disallowance made by the AO under second limb of

Rule 8D is not appropriate. The relevant extracts in this regard are as under

"Where assessee's capital, profit reserves, etc., were Higher than the investment in tax free securities, it would have to be presumed that the investment made by the assessee would be out of interest free funds available with the assessee and, consequently, no disallowance could be made u/s 14A of the Act. in view of the fact that the assessee's share capital with reserves and surpluses is far m excess of the amount invested in securities fetching exempt income, there can be no question of disallowance of interest amounting to '8,22,725/-. The disallowance to this extent is deleted."

- Regarding the disallowance made under third limb of Rule 8D, the appellant claimed that the AO, instead of adopting the average value of investment of which income is not part of the total income i.e. the value of tax exempt investment, wrongly chose to factor in the total investment itself.
- As regards the disallowance by way of 0.5% of average investments is concerned, the Hon'ble Delhi High Court in the case of ACB India Ltd. vs. ACIT in ITA No. 615/2014 vide order dated 24-03-2015 held that only the investment yielding non-taxable income have to be considered for working out disallowance u/s 14A and not all the investments. Accordingly taking into account the decision of Hon'ble Delhi High Court in the case of ACB India Ltd., the AO is directed to re-compute the disallowance under third limb of Rule 8D after taking the amount of investments of Rs.14,07,86,852/- in place of total

investment of Rs.77,34,74,853/-. The disallowance under third limb of Rule 8D works out to Rs.7,03,934/-. Since the assessee has suo-moto disallowed Rs. 1,00,000/- in its commutation as disallowance u/s 14A, therefore, the AO is directed to restrict the net disallowance at Rs. 6,03,934/-.

11. We have gone through the bare facts on record.

12. The assessee is found to be having sufficient own funds which exceed the borrowed funds. The availability of non-interest bearing funds exceed the amount of investment yielding exempt income. Ergo, we here by affirm the reasoned and well analysed order of the Ld.CIT(A).

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

Order pronounced in the open court on 27/06/2022.

Sd/-

(A.D. Jain)
Vice President

Dated: 27/06/2022

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR