

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'C' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.471/Del./2018  
(ASSESSMENT YEAR : 2014-15)**

M/s. Haldia Coke and Chemicals Pvt. Ltd., vs. Addl.CIT, Range 11,  
6<sup>th</sup> Floor, Mookambika Complex, New Delhi.  
Lady Desika Road, Mylapore,  
Chennai – 600 004 (Tamil Nadu).

**(PAN : AABCH5389P)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R. Sivaraman, Advocate  
REVENUE BY : Ms. Anupama Singla, Senior DR

Date of Hearing : 24.05.2022  
Date of Order : 05.07.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)-35, New Delhi dated 05.10.2017 pertaining to assessment year 2014-15.

2. The grounds of appeal raised by the assessee read as under :-

**“1. The order of the CIT(A) dated 05.10.2017 is contrary to law and facts of the case.**

**2. The CIT(A) erred in confirming the disallowance u/s.36(i)(iii) of Rs.3,35,30,367/-.**

**3. The CIT(A) erred in not appreciating the fact that the entire finance cost related to the appellant's business activities.**

**4. The CIT(A) erred in not appreciating the fact that the investments in shares and share application money (except the investments of Rs.4,99,400/- in Asia Coke Ltd) , which the Assessing Officer has taken into account for the purpose of computing disallowance u/s.36(i)(iii) were out of own funds.**

**5. The CIT(A) erred in confirming the disallowance made u/s.37(1) of Rs.1,12,47,302/-.**

**6. The CIT(A) erred in not appreciating the fact that the entire expenditure related to the appellant's business activities and hence disallowance u/s.37(1) is not attracted.**

**7. The CIT(A) erred in not appreciating the fact that the investments in shares and share application money (except the investments of Rs.4,99,400/- in Asia Coke Ltd) which the Assessing Officer has taken into account for the purpose of computing disallowance u/s.37(1) were out of own funds.**

**8. The CIT(A) erred in not appreciating the fact that the Assessing Officer cannot make disallowance twice once u/s.14A and again u/s.36(i)(iii) and 37(1).**

**9. For these and other grounds that may be adduced before or at the time of hearing, the Hon'ble ITAT may be pleased to delete the following additions:**

- i. Disallowance u/s. 36(i)(iii) of Rs.3,35,30,367/-**
- ii. Disallowance u/s.37(1) of Rs.1,12,47,302/-."**

3. Brief facts of the case are that the assessee during the year was engaged in the trading of coke and coal. In the course of assessment, the Assessing Officer (AO) noted that the assessee has made sizeable investment and the assessee has incurred sizeable amount of financial cost in this regard; that assessee has not made any disallowance with regard to interest expenses as well as other expenses inspite of the admission of the fact that certain investments made out of borrowed

funds. AO enquired from the assessee as to why disallowance should not be done under section 14A of the Income-tax Act, 1961 (for short 'the Act') and without prejudice to the above, justify the interest payment u/s 36(1)(iii). Assessee responded that assessee has made investment in the subsidiary companies; that investment in mutual funds of Rs.3,00,000/- has also been done; that assessee has not received any dividend income during the year; that investment made in subsidiary companies is not with the objective of earning dividend income but matter of commercial expediency. The assessee submitted following chart :-

Particulars of investments	31.03.2014	01.04.2013	Source of funds
<b>Indian Subsidiaries</b>			
Ennore Coke Limited	65,85,58,438	65,85,58,438	Out of capital
Wellman Coke ( India) Limited	2,52,52,659	2,52,52,659	Out of capital
Asia Coke Limited	4,99,400	4,99,400	Borrowed funds
Aditya Coke Products Pvt Limited	44,50,00,000	-	Transfer from share application money
Mahala Coke Products Pvt Limited	6,00,00,000	-	Transfer from share application money
Ennore Coke Limited	1,00,00,00,000	-	Conversion of loans and advances
<b>Foreign Subsidiaries</b>			
Mississippi Minerals Inc, USA (formerly known as Tiger American Minerals, Inc USA)	14,70,97,500	14,70,97,500	Out of capital
Laeger Minerals Inc, USA	11,12,12,500	11,12,12,500	Out of capital
<b>Mutual Fund</b>			
30,000 Units of Rs.10/-	3,00,000	-	Borrowed

each_ Union KBC Capital Protection Oriented Fund Series 5 - Regular Plan Growth			funds

As on 31.03.2014, there was a balance of share application money of Rs.6,00,00,000 paid to Scorpio Energy Resources Pvt. Ltd. The share application money does not qualify for computation of disallowance u/s.14A r.w. Rule 8D as the share application money is only an advance. It qualifies as investments for the purpose of computation of disallowance u/s.14A r.w. Rule 80 only after allotment of shares.

In this connection, we rely on the following ITAT Order :

- i. ITAT Delhi decision in the case of T&T Motors Limited Vs Addl.CIT, Range-16, New Delhi (I.T.A No.5096/Del/2011 dated 22.11.2013) -Annexure-2
- ii. Aban Investments (P.) Ltd Vs DCIT, Company Circle 1 (1), Chennai [2012] 52 SOT 36 (Chennai)(URO) - Annexure-3

In the following cases, it has been held that strategic investments made in subsidiary companies have to be excluded for computation of disallowance u/s.14A r.w. Rule 8D.

- I. ITAT Chennai in the case of EIH Associated Hotels Ltd Vs D CIT In I.T.A. No.1503/Mds/2012 date 17.07.2013 - Annexure 4
- II. ITAT Chennai decision in the case of L&T Infrastructure Development Projects Ltd Vs ITO (37 IIR (Trib) 10). - Annexure 5
- III. Interglobe Enterprises Ltd VS DCIT (ITA No.1362 & 1032 / Del / 2013 dated 04.04.2014 - Annexure 6

The investments in foreign subsidiary companies have to be excluded for computation of disallowance u/s.14A r.w. Rule 80 as the income from foreign subsidiaries is taxable.

In the following cases, it has been held that where no exempt income is received, disallowance u/s.14A r.to Rule 80 is not attracted.

- a. Chem Investments Vs CIT ( 234 Taxmann 761)- Annexure 7
- b. CIT Vs Correctech Energy Pot Ltd (372 ITR 97)- Annexure 8

The above case laws squarely applies to our case.

For the assessment year 2011-12, the Assessing Officer has made disallowance u/s.14A r.to.Rule 8D of Rs.2,03,27,420/-.

The break up of this amount is given below:

Rule 8D2(ii)	Rs. 1,77,24,516/-
Rule 802(iii)	<u>Rs. 26,05,935/-</u>
Total	<u>Rs.2,03,27,420/-</u>

The CIT(A) in his order in ITA No.211j14-15/CIT(A) dated 23.09.2015 has deleted the addition of Rs.2,00,83,808/- out of the addition of Rs.2,03,27,420/-. We are submitting herewith copy of the CIT(A)'s order for your kind perusal. (Annexure 9)

For the above reasons, we request you not to make any disallowance u/s.14A r.w. Rule 8D.”

4. AO rejected the assessee's plea that share application money does not quantify for disallowance u/s 14A. He also rejected assessee's submission that investment made as strategic investment in subsidiary can help the case of the assessee. He also rejected the plea that no dividend income has been earned so disallowance u/s 14A cannot be done. In this regard, he referred to the CBDT Circular issued by the Board. AO made lot of discussion why disallowance should be done even when exempt income has not been earned. AO further held that for AY 2012-13, the contention of the assessee was accepted that investments till AY 2012-13 in Ennore Coke Ltd. of Rs.65,85,58,438/- and Wellman Coke India Ltd. of Rs.2,52,52,659/- have been made out of capital. Hence he excluded the same. He further noted that since assessee has admitted that investment in Asia Coke Ltd. of Rs.4,99,400/- was made out of borrowed funds, therefore, interest was disallowed under Rule 8D(i). As regards share application money, it is construed that same

was made out of mixed funds. AO made disallowance u/s 14A by making following computations :-

Clause	Particulars	Amount
i.	Disallowance of interest directly related to investments in Asia Coke Ltd. Rule 8D(2)(i)	499400*0.15(interest taken at 15 %)  749810 8D(2)(i)
ii.	Disallowance of Interest expenditure Rule 8D(2)(ii)	
A	Interest expenditure incurred during the year	37,13,30,488* -14,86,32,823 (suomoto disallowance) = 22,26,97,665(A)
B	Average Value of Investment including share application money	(2065499400 + 1065499400)/2(B) = 1565649400
C	Average of Total assets	(10824373975+ 11339790014)/2(C)- (from the figure of balance sheet an amount of Rs.68,38,11,097 is reduced as the said investments were considered to be directly from the capital)
	Disallowance = A*B/C	10398270897 8D(2)ii) 3,35,30,367
iii.	Aggregate of Opening and Closing Value	Value of Investment 31.03.2014 Total for 300,79,20,497 8D(2)(iii)

	of Investment (Average Value of Investment including share application money) ½% of above	& 31.03.2013 174,93,10,497  Average value of investment including share application money  0.5% of above (274,96,10,497 + 174,93,10,497/2)*0.5%	
	Rule 8D(2)(iii)	The value of investments taken here are all domestic investments including share application money as this is pertaining to holding cost other than interest. **	1,12,47,302
	Total disallowance (Aggregate of (i), (ii) & (iii))		4,55,27,479
			4,55,27,479
	Amount to be disallowed		

\* Only the interest expenses of the total financial cost has been considered and the stamping handling charges, commission, bank charges have been excluded. The working of the above disallowance will change in case the assessee gets relief on ALP adjustment.

\*\* The value of domestic investments for the purpose of holding and maintenance cost for calculating disallowance u/s 37(1) is taken as total, whereas for the purpose of interest only relating to borrowed funds and mixed funds have been considered.

Therefore, the disallowance u/s 14A r.w. Rule 8D of 4,55,27,479 for the year under consideration is made accordingly. Penalty proceedings u/s 271(1)(c) is initiated accordingly.”

5. Thereafter, without prejudice to the above, AO proceeded to ask the assessee to justify the interest expenses u/s 36(1)(iii). In this regard, the AO noted as under :-

“ The assessee has made borrowings during the year and has incurred a sizable interest cost. The assessee had taken loan from Shriram EPC Ltd who holds 48.48% of the equity shares of the company and from Group companies and entities has paid an interest of Rs. 5.85 crores to Shriram EPC Ltd. and Rs. 1.19 Crores to Shriram Industrial Holdings Ltd., Rs. 7.39 lacs to Shriram City Union Finance Ltd. during the year and has also incurred a sizable financial cost including the above of processing fee,

LC Commissions, Bank Charges, Interest etc. The assessee has added an interest of Rs.14,86,32,823/- on account of advance to foreign subsidiary.

The assessee was asked to justify the interest expenditure u/s 36(1)(iii) of the Act as there was the sizable interest cost and the assessee had made non current investment of Rs.2447920497/- (including domestic and foreign investments) and Rs.6,00,00,000 towards share application money in case of Scorpio Energy Resources Pvt. Ltd and Rs.50,00,00,000 crores being amount paid for share application money for Wellman coke Ltd. The assessee replied that the investment in the Indian subsidiary i.e. Enmore Coke Ltd. and Wellman Coke India Ltd. were out of capital and only borrowed fund investment was made in Asia Coke Ltd. of Rs.4,99,400 out of borrowed capital.”

6. Thereafter, AO made some theoretical discussion about the reasons of disallowance. AO was of the opinion that assessee has to give justification for the purpose of business to claim the interest expenditure.

He further observed as under:-

“ The investments besides generation of income under the head capital gains on account of transfer can only generate an income under the head income from other sources in the form of dividend. The deduction for interest is provided u/s. 57 of the Income Tax Act, if the dividend falls as income u/s 56(1)(i) of Income Tax Act. The dividend from the shares and securities have been specifically made exempt u/s 10(34), 10(34A), etc., and as the dividend from domestic companies has been specifically made exempt u/s 10(34) of the Income Tax Act. Therefore, the investments made in shares and securities and the dividend yield from the same being .exempt from tax because of specific provision of the Act would not attract the head of income from other sources. The department, therefore cannot invoke the provision of section 56(1) under the head of income from other sources in the case of such investments and the assessee has also been thus snatched away from the deduction of relevant interest u/s 57 of the Act accordingly.

Therefore, the assessee in case of the domestic investments in shares and securities cannot claim deduction of such interest u/s 36(1)(iii) and also is not allowed deduction of such interest u/s 57 or u/s 48 (which anyway does not provide interest deduction.

The general and administrative expenses claimed u/s 37(1) and incurred by the assessee to the extent relatable to investment is also be disallowed invoking the same arguments as stated above as being not allowable u/s 57 or u/s 48 as the case may be.

While passing the assessment order for A.Y. 2012-13 the contention of the assessee was accepted that the investment made till A.Y. 2012-13 in Enmore Coke Ltd. of Rs.65,85,58,438 and Wellman Coke India Ltd. of Rs. 2,52,52,659 have been made out of capital.

Therefore the same is excluded from the disallowance for interest u/ s 36(1)(iii) and as the assessee has admitted that Asia Coke Ltd. investment of Rs. 499400 has been out of borrowed funds, therefore the interest is disallowed directly u/ s 36(1)(iii) as regards the share application money it is construed that the same have been made out of mixed funds, therefore the investment to asset ratio is applied for the interest disallowance. The total assets have been reduced by the cumulative figure of Rs 68,38,11,097 being directly attributed to capital of the investments in Enmore Coke Ltd. of Rs. 65,85,58,438 and Wellman Coke India Ltd. of Rs.2,52,52,659/-.”

7. AO noted that assessee has not made any reply regarding allowability u/s 36(1)(iii) and the expenditure is to be disallowed u/s 37(1). He made computation and came to an amount of Rs.4,55,27,479/- He bifurcated the same u/s 36(1)(iii) & 37 (1) and computed as under :-

“Therefore, the disallowance u/s 36(1)(iii) is 3,35,30,367 and disallowance u/s 37(1) is of Rs.1,12,47,302 for the year under consideration. This is without prejudice to the disallowance u/s 14A and if the same is not upheld then the disallowance would lie u/s 36(1)(iii) and u/s 37(1) as discussed above.”

8. AO further made disallowance of receipts not credited to profit & loss account as he noted that assessee has not submitted any reconciliation of receipts as per Form 26AS and he made the addition for interest income of Rs.37,629/- received from Corporation Bank, Jammu & Kashmir.

9. Against the above order, assessee filed an appeal before the Id. CIT (A). Ld. CIT (A) elaborately noted the submission of the assessee. He deleted the disallowance made u/s 14A. However, as regards disallowance u/s 36(1)(iii) & 37(1), by a rather mechanical order, he confirmed the addition as under :-

“The first issue is with respect to disallowance interest of Rs.3,35,30,367/- u/s. 36(1)(iii) and the second issue is regarding amount of Rs.1,12,47,302/- disallowed u/s 37(1) of the I.T. Act, 1961. In the assessment order, the AO has stated that the addition u/s 36(1)(iii) and u/s. 37(1) are made without prejudice to the disallowance u/s 14A and if the same is not upheld then the disallowance would lie u/s 36(1)(iii) and u/s 37(1). It is seen that the appellant has added an interest of Rs. 14,86,32,823/- on account of advance to foreign subsidiary. The assessment order has been perused in detail and it is noted that the AO has correctly worked out the value of domestic Investments for the purpose of holding and maintenance cost for calculating disallowance u/s 37(1) which is taken as total, whereas for the purpose of interest only relatable to borrowed funds and mixed funds have been considered. The submission filed by the appellant and case laws cited have been perused and arguments are not found to be tenable. I find no reason to interfere with the AO's order on the addition made u/s. 36(1)(iii) and u/s. 37(1). Appeal on these issues are dismissed.”

10. Against the above order, assessee is in appeal before the ITAT.

We have heard both the parties and perused the records.

11. We note that assessee has made elaborate submissions and relied upon several case laws before Id. CIT (A). Ld. CIT(A) did not deal with them and has passed rather laconic order. It is settled law that even administrative order has to be considered with rule of natural justice.

Moreover, we note that assessee has given following written submissions:-

“7. We are submitting herewith details of finance cost claimed by us and details of investments and sources of funds vide Annexure.

8. From the details of finance cost given vide annexure, it could be seen that they related to LC and LC related, interest on borrowings from a few companies for business needs and not for other than business needs. The entire finance cost was incurred for business purpose. The Assessing Officer disallowed under rule 8D 2(ii) interest of Rs. 3,35,30,367 and again he has chosen to disallow identical amount u/s.36(1 )(iii). 14A comes last in the sequence of disallowance of expense. Expenses allowable under sections 29 to 37 may get hit by section 14A and not the other way. The final test is 14A. Section 14A came to be inserted in the IT Act to overcome the difficulty in law in disallowing expenses incurred for investments appearing as part of business and generating income not forming part of total income. There cannot be uncertainty of sections chosen for disallowance and secondly in the case of business if section 14A is not applicable the question of disallowance u/s.29 to 37 does not arise as it is only after passing the test of allowance u/s.29 to 37 that the test u/s.14A needs to taken.

9. From the details of investments given, it could be seen that the investments were made out of capital (own funds).

10. Disallowance u/s 37(1) : Rs.1, 12,47,302

The Assessing Officer disallowed Rs.1,12,47,302 u/s 37(1) towards General & Administrative expenses incurred by the appellant to the extent relatable to investment as not allowable u/s 57 or 48. We submit that the entire general and administrative expenses related to our business activity and it does not relate to the investments in securities.

For the above reasons, we submit that no disallowance u/s 37(1) is attracted.

11. The Order of the Assessing Officer in making the addition u/s 36(1 )(iii) and u/s 37 is totally contrary to the decision of the Supreme Court in the case of CIT Vs Chettinad Logistics P Ltd - 80 Taxmann.com 221 Madras HC. The Hon'ble Supreme Court has dismissed the SLP ( Civil) Diary No.15631 of 2018 dated 02.07.2018. Redington (India) Ltd Vs Addl CIT 3921TR 633 Madras HC and also the Jurisdictional High Court Order. In Order to circumvent the decision of the Supreme Court and the Jurisdictional High Court, the AO has passed this order making additions u/s 36(1)(iii) and u/s 37.”

12. The factual details above also need verification. Hence, in the interest of justice, we remit the issue to the file of Id. CIT(A). Ld. CIT (A) is directed to pass a detailed order considering all facts of assessee's argument and case laws referred. Needless to add, assessee should be granted adequate opportunity of being heard.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open court on this 5<sup>th</sup> day of July, 2022.**

**Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 5<sup>th</sup> day of July, 2022  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-35, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**