

IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, MUMBAI

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 900/MUM/2020  
(ASSESSMENT YEAR: 2014-15)  
&  
ITA No. 902/MUM/2020  
(ASSESSMENT YEAR: 2015-16)

The Dy. Commissioner of Income Tax,  
Central Circle – 6(4), Mumbai,  
Room No. 1925, 19<sup>th</sup> Floor,  
Air India Building, Nariman Point,  
Mumbai - 400021  
[PAN: AAACA6016F]

..... Appellant

Vs

Arshiya Limited,  
308, Level-3, F Block,  
Ceejay House, Shiv Sagar Estate,  
Dr. Annie Besant Road, Worli,  
Mumbai - 400021

..... Respondent

Appearances

For the Appellant/ Department : Shri Sunil Jha  
For the Respondent/Assessee : Shri Piyush Chhajed

Date of conclusion of hearing : 06.04.2022  
Date of pronouncement of order : 05.07.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. These are two appeals filed by the Department against the order dated 22.11.2019, passed by the Ld. Commissioner of Income Tax (Appeals)-54, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2014-15, appeal No. [CIT(A)-54/IT-272/DC.CC.6(4)/2016-17], and Assessment Year

2015-16, appeal No. [CIT(A)-54/IT-269/DC.CC.6(4)/2016-17], on 22.11.2019. The appeals were heard together as identical grounds were raised and are, therefore, being disposed of by way of a common order.

**ITA No. 900/Mum/2020) (Assessment Year 2014-15)**

2. We would first take up appeal for the Assessment Year 2014-15. The Revenue has raised the following grounds of appeal:
  - i. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in restricting the disallowance u/s 14A to the extent of exempt income as against the disallowance computed by the Assessing Officer in accordance with the provisions of Rule 8D(2) of the Income-tax Rules, 1962.*
  - ii. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition u/s 14A of the Act by ignoring the provisions of CBDT Circular No. 5/2014 dated 11/02/2014 wherein it has been clarified that the Rule 8D r.w.s. 14A provides for disallowance of expenditure even where the assessee in particular year has not earned any exempt income.*
  - iii. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the disallowance of interest expenditure of Rs. 33,32,46,991/- u/s 36(1)(iii) without appreciating the fact that the assessee advanced interest bearing loans as interest free advances to subsidiary concerns."*
3. Brief facts of the case are that the Assessee filed return of income on 01.12.2014 for the Assessment Year 2014-15 declaring loss of INR 12,01,53,922/-. A survey under Section

133A of the Act followed by a search under Section 132 of the Act was carried out in the case of the Assessee and its group companies including promoters and directors on 13.06.2014. Vide order, dated 30.12.2016, the Assessing Officer completed the assessment under Section 153A read with Section 143(3) of the Act on the Assessee at an income of INR 72,11,27,550/- under normal provisions of the Act after making disallowance of INR 50,80,34,481/- under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (Hereinafter referred to as 'the Rules') and computed book loss at INR 2,47,83,16,995/- after reducing the book loss of INR 2,98,63,51,476/- by the disallowance of INR 50,80,34,481/- made under Section 14A of the Act.

4. Being aggrieved, the Assessee filed appeal before CIT(A) against the additions made by the Assessing Officer while computing income under normal provisions of the Act. The CIT(A) allowed the appeal of the Assessee and deleted both the additions.
5. Being aggrieved, the Revenue is in appeal before us.

**Ground No. i and ii**

6. Ground No. i & ii of the Appeal are directed against order of CIT(A) deleting the disallowance made by the Assessing Officer under Section 14A of the Act.
  - 6.1. During the assessment proceedings, the Assessing Officer noticed that the Assessee had made investments of INR 4,98,79,52,656/- and INR 8,34,59,72,336/- as on 31.03.2013 and

31.03.2014, respectively. However, the Assessee had not made any disallowance under Section 14A of the Act in the return of income. Accordingly, the Assessee was asked to show cause why disallowance under Section 14A of the Act read with Rule 8D of the Rules. In response the Assessee filed submission, dated 22.11.2016, contending, inter alia, that the Assessee has neither earned any exempt income nor incurred any expenditure for earning in exempt income during the relevant previous year. However, not being satisfied the Assessing Officer invoked provisions of Section 14A of the Act read with Rule 8D of the Rules and proceeded to make disallowance of INR 47,46,99,668/- under Rule 8D(2)(ii) and INR 3,33,34,812/- under Rule 8D(2)(iii) of the Rules. Thus, the Assessing Officer made addition/disallowance of INR 50,80,34,481/- under Section 14A of the Act read with Rule 8D of the Rules. In appeal preferred by the Assessee, the CIT(A) deleted the addition made by the Assessing Officer under Section 14A of the Act by relying upon the decision of Hon'ble Bombay High Court in the case of PCIT vs. Zee News Ltd. (ITA No. 785 & 789 of 2015, dated 05.02.2018) as no exempt income was earned by the Assessee during the relevant previous year.

- 6.2. The Ld. Departmental Representative appearing before us submitted that the Assessing Officer was correct in making disallowance under Section 14A of the Act. During the assessment proceeding, the Assessee had not produced any cash flow statement to show the source of funds used for making investments and therefore the Assessing Officer was justified in concluding that borrowed funds were used for making investment. Interest pertaining to the aforesaid

borrowed funds is attributable to the investment made by the Assessee which are capable of yielding exempt dividend income.

- 6.3. Responding to the work, the Ld. Authorised Representative for the Appellant submitted that the issue stands covered in favour of the Assessee by the decision of this Tribunal and the judgment of Hon'ble Bombay High Court in the case of Zee News Ltd. (supra) relied upon by the CIT(A) and Pr. CIT Vs. Red Chillies Entertainment (P.) Ltd.: 2020] 116 taxmann.com 770 (Bombay).
- 6.4. We have considered the rival submissions and perused the material on record. In paragraph 8.1 of the assessment order, the Assessing Officer has noted that the Assessee has earned 'Nil' exempt income by way of dividend during the relevant previous year. The Hon'ble Bombay High Court in the case of Red Chillies Entertainment (P.) Ltd (supra) has held that in the absence of any exempt income during the relevant previous year the occasion to make any disallowance under Section 14A of the Act does not arise. We note that the CIT(A) has decided the issue in favour of the Assessee by following the decisions of the Hon'ble Bombay High Court in the case of Zee News Ltd. (supra). In view of the aforesaid, we do not find any infirmity in the order passed by the CIT(A) and therefore, Ground No. i and ii raised by the Revenue in the present appeal are dismissed.

**Ground No. iii**

7. Ground No. iii of the Appeal are directed against order of CIT(A) deleting the disallowance of interest made by the Assessing Officer under Section 36(1)(iii) of the Act.
- 7.1. During the assessment proceedings the Assessing Officer observed that the Assessee has borrowed funds of INR 1045,37,32,959/- as on 31.03.2013 and INR 1244,08,66,930/- as on 31.03.2014. During the relevant previous year, the loans and advances given by the subsidiaries companies stood at INR 295,98,40,457/- as on 31.03.2013 and INR 45,87,47,370/- as on 31.03.2015. The Assessing Officer was of the view that interest bearing loans have been used to grant interest free loans and advances to the subsidiaries by the Assessee. In response to questionnaire dated 19.09.2016 issued by the Assessing Officer the Assessee filed reply/submission dated 18.11.2016 explaining that the loans and advances given to the subsidiaries on account of business requirements and on account of requirements by banks and cooperated debt restructuring. However, the Assessing Officer disallowed INR 33,32,46,991/- as interest under Section 36(1)(iii) of the Act in respect of loans granted by the Assessee to Arshia Industrial Distribution Hub Ltd., Arshiya Northern FTWZ Limited, Arshiya Rail Infrastructure Ltd. and Arshiya Technologies India P. Ltd. by taking interest rate of 13.5% per annum. In appeal preferred by the Assessee, the CIT(A) deleted the addition made by the Assessing Officer under Section 36(1)(iii) of the Act by following the decision of Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities & Power Ltd. 313 ITR 340

and CIT vs. HDFC Bank Ltd. [2014] 49 taxmann.com 335 (Bombay).

- 7.2. The Ld. Departmental Representative appearing before us submitted that interest bearing funds were used by the Assessee to grant loans and advances to its subsidiaries as noted by the Assessing Officer in para 9.6 and 9.7 of the assessment order. The onus was on the Assessee to show that interest free funds were used by the Assessee to give loans and advances to subsidiaries. However, the Assessee did not file funds to statement during the assessment proceedings and therefore the Assessing Officer was justified in making disallowance under Section 36(1)(iii) of the Act as interest bearing funds were not used for the purpose of business of the Assessee. The Ld. Departmental Representative further submitted that the Assessee did not have sufficient own funds to grant interest-free loans and advances to the subsidiaries.
- 7.3. The Ld. Authorised Representative for the Appellant submitted that the CIT(A) had granted relief to the Assessee by following the decision of Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. (supra) where it has been held that if there are interest-free and interest-bearing funds available with the Assessee, a presumption would arise that interest-free funds were available to make investments.
- 7.4. We have considered the rival submissions and perused the material on record. The CIT(A) has in para 8.3 of the order impugned noted that the interest free loans given to the subsidiaries were much more than share capital and reserves

and has therefore, deleted the disallowance made by the Assessing Officer under Section 36(1)(iii) of the Act by following the judgment of the jurisdictional High Court in the case of Reliance Utilities & Power Ltd. (supra) and HDFC Bank Ltd. (supra). We also note that the Assessing Officer had not made proportionate disallowance of interest debited to the profit & loss account and had computed notional interest by adopting the rate of 13.5%. Such an approach adopted by the Assessing Officer cannot be countenanced. The CIT(A) has, at page 16 of the order impugned, returned a finding that the Assessee had itself disallowed interest expenditure to the tune of INR 107,43,60,603/- in computation of income which has not been controverted in the present appellate proceedings. In view of the aforesaid, we do not find any infirmity in the order passed by the CIT(A) and therefore, Ground No. iii raised by the Revenue in the present appeal dismissed.

8. In the result, the present appeal by Revenue (ITA No. 900/Mum/2020) is dismissed

**ITA No. 902/Mum/2020 (Assessment Year 2015-2016)**

9. Both the sides are in agreement that the facts and circumstances of the appeal for the Assessment Year 2015-16 are identical to those for the immediately preceding Assessment Year 2014-15 except for the amount of disallowances. Accordingly, adjudication of grounds of appeal for the Assessment 2014-15 shall apply mutatis mutandis to the identical grounds raised in the appeal for the Assessment Year 2015-16.

9.1. In view of the above, Ground No. i & ii directed towards order of CIT(A) deleting the addition of INR 76,15,37,854/- under Section 14A of the Act is dismissed. Further, Ground No. iii directed against the order of CIT(A) deleting disallowance of INR 5,61,43,256/- is also dismissed. Accordingly, appeal filed by the Revenue (ITA No. 902/Mum/2020) is dismissed.

10. In result, both the appeals filed by the Revenue are dismissed.

Order pronounced on 05.07.2022.

*Sd/-*

(Prashant Maharishi)  
Accountant Member

*Sd/-*

(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 05.07.2022  
*Alindra, PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai