

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA Nos.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
385/Hyd/15	2010-11	M/s. Chintalapati Holdings Pvt. Ltd., Hyderabad [PAN No. AABCC5085D]	Dy. Commissioner of Income Tax, Central Circle-1(2), [erstwhile Central Circle-2], Hyderabad
386/Hyd/15	2011-12		
1730/Hyd/16	2011-12		

निर्धारिती द्वारा / Assessee by: Shri H. Srinivasulu, AR
राजस्व द्वारा / Revenue by: Shri Kumar Aditya, DR

सुनवाई की तारीख/Date of hearing: 10/01/2023
घोषणा की तारीख/Pronouncement on: 16/01/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the orders passed by the learned Commissioner of Income Tax (Appeals)-XI & CIT(A)-1, Hyderabad ("Ld. CIT(A)"), in the case of M/s. Chintalapati Holdings (P) Ltd., ("the assessee") for the assessment years 2010-11 & 2011-12, assessee preferred these appeals. Facts involved for these assessment years are similar and mostly the grounds of appeal. We, therefore, deem it just and convenient to dispose of these appeals by

way of this common order, taking the appeal for the assessment year 2010-11 as a lead case.

2. Briefly stated relevant facts are that the assessee company is engaged in the business of earning income by way of interest from inter corporate loans and in the investments in the companies apart from lease of buildings for business purposes. Assessee also claims to have been doing business of money lending. For the assessment year 2010-11, it has filed its return of income on 15/10/2010 declaring loss of Rs. 1,10,86,790/-.

3. During the course of assessment proceedings, learned Assessing Officer observed that the assessee treated a sum of Rs. 38,86,827/- as income from business, though derived by way of rent, instead of income from house property. Assessee pleaded that leasing is one of the objectives of the business and placed reliance on the decision reported in *Chennai Properties and Investments (P) Ltd. vs. CIT 266 ITR 685 (Mad)*. Learned Assessing Officer, however, treated it as 'income from house property' and recomputed the same.

4. Learned Assessing Officer further observed that the assessee earned interest income and claimed the lending as main business activity. Learned Assessing Officer, however, was of the opinion that since the assessee did not have any permission or approval from the RBI, it is not expected to conduct any money lending business as non-banking financial institution, and, therefore, and income from such activity has to be treated as 'income from other source'.

5. On a perusal of the Profit and Loss Account (P&L Account), learned Assessing Officer found that an amount of Rs. 3,40,50,905/- was paid as interest on borrowed funds, whereas during the year though the assessee borrowed a sum of Rs. 21.55 crores, no amount was advanced and, therefore, no portion of such borrowed fund was used for the business of the assessee and accordingly, entire interest expenses attributable to such loan has to be disallowed. Learned Assessing Officer accordingly disallowed Rs. 1,52,31,379/-.

6. Further, learned Assessing Officer found that the assessee acquired Rs. 1,53,980/- shares of M/s. Ind-Barath Power Infra Ltd., at a premium of Rs. 240/- per share on 30/09/2006, which the assessee claims to have sold to the same company during the assessment year 2010-11 at the face value of Rs. 10/- thereby incurring a long term capital loss of Rs. 4,53,36,579/- against the indexed cost of acquisition at Rs. 4,68,76,378/-.

7. On this aspect, observation of the learned Assessing Officer was that just two months prior to the selling of shares by the assessee at Rs. 10/- per share, M/s. Ind-Barath Power Infra Ltd., raised money from private equity funds by allotting shares at a premium of Rs. 187.58 in October, 2009. Learned Assessing Officer also considered the statement of one Mr. K. Raghurama Krishna Raju to the effect that he paid the unrecorded consideration of Rs. 3,69,55,200/- to the assessee in that sale. Considering these aspects, learned Assessing Officer did not believe the statement of the assessee that they sold the shares at Rs. 10/- per share to incur the losses. He, therefore, added the difference between the purchase price and sale consideration in respect of such shares transacted

by the assessee, to the income of the assessee which was Rs. 3,69,55,200/-.

8. Aggrieved by the additions, assessee preferred appeal before the learned CIT(A). Insofar as the income from house property is concerned, learned CIT(A) directed the learned Assessing Officer to allow the deduction under section 24(b) of the Income Tax Act, 1961 ('the Act') on the assessee furnishing the relevant figure of interest.

9. Coming to the treatment of profits from money lending under the head 'income from other sources' by the learned Assessing Officer and allowing the interest only to the extent of incurring for the exclusive purpose of earning the same is concerned, learned CIT(A) found fault with the approach of the learned Assessing Officer on the premise that for conducting the business of money lending, simply because registration did not take place, it cannot be said that business was not conducted or the indexed cost of acquisition earned there from cannot be treated as 'business income'. Learned CIT(A), however, found that the assessee invested in equity shares but rejected the contention of the assessee that the source of such investment is its own funds. According to the learned CIT(A), the balance sheet of the assessee reveals that the assessee revalued the assets in land and equity shares, and such revaluation amount does not give rise to any cash flow for investment in equity.

10. On a thorough examination of the financials of the assessee, learned CIT(A) found that the own funds of the assessee were only to the tune of Rs. 14.59 crores, namely, equity: Rs. 2 crores; Reserve and surplus: Rs. 12.59 crores as on 31/03/2009; that as against that, it had fixed assets

of Rs. 3.64 crores and net current assets of Rs. 30.25 crores (total Rs. 33.89 crores); that any accretion to its own fund was only on account of amalgamation of ILS Park Pvt. Ltd., with the assessee company during the financial year 2009-10 by way of revaluation of shares and land and transfer of profits; and that, therefore it is incomprehensible that it had made investment out of its own funds because such fund was grossly inadequate to meet its regular business requirement. Learned CIT(A) thereby concluded that less than Rs. 8 crores was available in the hands of the assessee for investment, after exhausting the own funds in business assets, whereas the investment of the assessee to the tune of Rs. 304 crores which was obviously from out of the borrowed funds.

11. Learned CIT(A), therefore, took a view that interest expense only to the tune of Rs. 43,59,091/- alone could be attributed for business purpose and the balance out of Rs. 3,40,59,486/- claimed by the assessee as interest has to be treated as for non-business purpose. Since the learned Assessing Officer disallowed only a sum of Rs. 1,52,31,375/- on this score, learned CIT(A) thought it fit that the allowance of the balance must be subject to the restriction that the depreciation on building from which rent was earned not to be allowed, disallowance under section 14A of the Act and interest on borrowed capital allowed under section 24(b) of the Act has to be disallowed.

12. Learned CIT(A) found that the assessee earned Rs. 16,67,49,213/- towards exempt income on capital gains and dividend @ Rs. 16,36,95,597/- on account of long term capital gain and Rs. 30,53,616/- on account of dividend. Since this income flows from investments without

making the statutory disallowance under section 14A of the Act, learned CIT(A) proposed to make disallowance. Assessee pleaded that such an issue does not arise out of assessment order and, therefore, shall not be taken up at appellate stage.

13. Learned CIT(A) turned down such a plea stating that as far as the exempt income was treated as such without making statutory disallowance, the issue arises from the assessment order apart from the availability of plenary powers to the learned CIT(A) to make good the mistake committed by the learned Assessing Officer. She further recorded that at the time of computation of capital gains, disallowance of interest does not arise under any provision of the Act and since the dividend is exempt, there is no question of allowing deduction for interest which is attributable to such exempt income.

14. Learned CIT(A) accordingly proceeded further and recorded that the claim of the assessee to the effect that no expenditure was incurred for earning the exempt income cannot be accepted. She, therefore, while recording the reasons for her dissatisfaction on the ground that not the entire borrowed funds were utilised for business purpose, she opined that it is a fit matter to proceed to compute the disallowance under section 14A of the Act. She, therefore, directed the learned Assessing Officer to compute the disallowance under section 14A of the Act read with rule 8D of the Income Tax Rules, 1962 ('the Rules'). This action of the learned CIT(A) is challenged by the assessee under grounds 3 to 11 of this appeal.

15. Apart from this, learned CIT(A) also considered the addition on account of long term capital loss. She agreed with the learned Assessing

Officer in the light of the fact that the assessee purchased the shares at Rs. 250/- per share with a premium of Rs. 240/- per share and just before two months of assessee selling them to the very same company at Rs. 10/- per share, the company raised funds from private equity funds by allotting the shares at a premium of Rs. 187.58 per share. According to the learned CIT(A), considering the nature of material available on record, the preponderance of probabilities is against the assessee. Learned CIT(A) also referred to the confessional statement of Mr. Raghurama Krishna Raju recorded under section 132(4) of the Act. She accordingly confirmed the same and it is the subject matter of ground No. 12.

16. Assessee also filed additional grounds stating that the net interest after excluding interest income from interest expenditure debited to P&L Account should have been considered by the learned CIT(A) while quantifying the interest amount, in which event, interest disallowable under rule 8D(2)(ii) of the Rules has to be quantified in the proportion average investment in share capital bears to the average total assets. It is further stated that the learned CIT(A) failed to consider that the expenditure disallowable under section 14A of the Act read with rule 8D of the Rules, shall not exceed the interest expenditure debited to P&L Account plus administrative expenditure reduced by the interest allowed under the head 'business'.

17. On the aspect of section 14A by the learned CIT(A), argument of learned AR is threefold. Firstly, according to him, the satisfaction under section 14A(2) of the Act has to be recorded by the learned Assessing Officer and learned Assessing Officer alone and not by the learned CIT(A).

According to him, learned Assessing Officer did not record any such satisfaction, and, therefore, the satisfaction recorded by the learned CIT(A) has to be precluded from consideration. In support of this contention, he placed reliance on the decisions reported in *Azimuth Investment Ltd vs. ACIT*, ITA No. 283/Del/2013, A.Y.2009-10, dt. 08/01/2016; *EXIM Scripts Dealers (P) Ltd, 162 ITD 390 (ITAT, Kol)* and *Frick India Ltd., vs. DCIT [2022] 28 ITR (Trib)-OL 7 (ITAT [Del])*.

18. On this aspect, it could be seen from the impugned order that there was an objection taken before the learned CIT(A) to invoke the provisions under section under section 14A of the Act read with rule 8D of the Rules on the ground that such an aspect does not flow from the assessment order. Learned CIT(A) rightly rejected that contention stating that this income flew from the investment, the learned Assessing Officer treated the exempt income as such, but failed to make the statutory deduction and, therefore, while exercising the plenary powers, it is incumbent upon the learned CIT(A) to look into the aspect of disallowance which the learned Assessing Officer failed to do. We are in agreement with this finding of the learned CIT(A).

19. Having said that, we are of the opinion that while looking into the aspect of allowability or otherwise of an expenditure on the touch stone of section 14A of the Act read with rule 8D of the Rules, it is imperative for the learned CIT(A) to consider the statement of the assessee that no expenditure is incurred for making and maintaining such a huge investment, and in that process, the learned CIT(A) has necessarily to delve deeper and record a satisfaction. There is a subtle difference between the

learned Assessing Officer exercising jurisdiction 14A of the Act without recording satisfaction leaving it to be recorded by the learned CIT(A), and the learned CIT(A) looking into the aspect of learned Assessing Officer treating the exempt income as such but failing to enquire the allowability of relevant expenditure. This case falls in the second category whereas all the cases relied upon by the assessee fall in the first category. With this view of the matter, we reject the first contention of the assessee.

20. Coming to the second aspect canvassed by the learned AR, stating that there are enough own funds available in the hands of the assessee to invest in shares, the impugned order is very clear and the learned CIT(A) dealt with the aspect very extensively. Learned CIT(A) referred to the financials of the assessee and as a matter of fact found that the own funds of the assessee were only to the tune of Rs. 14.59 crores, namely, equity: Rs. 2 crores; Reserve and surplus: Rs. 12.59 crores as on 31/03/2009; that as against that, it had fixed assets of Rs. 3.64 crores and net current assets of Rs. 30.25 crores (total Rs. 33.89 crores); that any accretion to its own fund was only on account of amalgamation of ILS Park Pvt. Ltd., with the assessee company during the financial year 2009-10 by way of revaluation of shares and land and transfer of profits; and that, therefore it is incomprehensible that it had made investment out of its own funds because such fund was grossly inadequate to meet its regular business requirement. On this analysis, learned CIT(A) returned a finding that less than Rs. 8 crores was available in the hands of the assessee for investment, after exhausting the own funds in business assets, whereas the investment of the assessee to the tune of Rs. 304 crores which was obviously from out of the borrowed funds. No contrary material is placed on record to convert

this finding of the learned CIT(A). We agree with the learned CIT(A) and reject this contention.

21. Coming to the last contention urged by the learned AR that the disallowance under section 14A of the Act read with rule 8D of the Rules shall be restricted to the dividend income that was earned during the year under consideration and cannot exceed the same, there cannot be any quarrel with this proposition. Learned AR drew our attention to the statement where the details of amount of investments from borrowed funds, dates of borrowal and investment are provided and such information is available at page No. 3 of the paper book. Basing on this, he submitted that at best, an amount of Rs. 29,89,465/- alone could be disallowed. This is a verifiable fact. learned Assessing Officer has to verify these figures, the interest expense viz-a-viz the quantum of exempt income to recompute the disallowance.

22. In view of this need to verify the facts and figures, we are of the considered opinion that it would be in the interest of justice to set aside this issue to the file of the learned Assessing Officer for verification of the facts and figures and to compute the disallowance under section 14A of the Act read with rule 8D of the Rules. We accordingly set aside this issue to the file of learned Assessing Officer and direct him to recompute the disallowance under section 14A of the Act read with rule 8D of the Rules after verification of the necessary documents furnished by the assessee and also keeping in mind the principle that the disallowance under section 14A of the Act read with rule 8D of the Rules shall not exceed the exempt

income earned during the year under consideration. These grounds are accordingly treated as allowed for statistical purposes.

23. Next coming to the addition on account of long term capital gains, the grievance of the assessee is that the learned Assessing Officer referred to the confessional statement of Mr. Raghurama Krishna Raju recorded under section 132(4) of the Act but such a document was not furnished to the assessee. The assessee, therefore, complains of the violation of the principles of natural justice in its case.

24. Per contra, learned DR submits that though there is a reference to the statement of Mr. Raghurama Krishna Raju in the assessment as well as the first appellate order, the same is not the basis for reaching a conclusion that everything is not fine in the transaction of assessee selling the shares at Rs. 10/- per share which the assessee purchased with a premium of Rs. 240/- per share and which fetched the premium of Rs. 187.58 just two months prior to the sale of assessee to the company in buy back. He further submitted that at no point of time, the assessee sought an opportunity to controvert the statement of Mr. Raghurama Krishna Raju nor did the assessee seek a copy of such a statement. He, therefore, submits that non furnishing of the copy of statement is not at all relevant.

25. Facts on this aspect relied upon by the Revenue except the statement of Mr. Raghurama Krishna Raju, go uncontroverted. Assessee purchased the shares in question at Rs. 250/- per share, i.e., at a premium of Rs. 240/- per share. The very same shares fetched a premium of Rs. 187.58 just two months prior to the buy back of the shares of assessee by the company took place. No special reasons are assigned for the sale of

such shares at the face value of Rs. 10/- to the very same company. Assessee pleaded before the learned Assessing Officer that since the investment in such shares did not yield any return, even after five years of investment, when Mr. Raghurama Krishna Raju approached the assessee with buy back proposal the Board of the assessee company decided to exit and said investment. It is further pleaded that the assessee is not aware of the developments taking place in M/s. Ind Barath Power Infra (P) Ltd.

26. Even if we exclude the so called statement of Mr. Raghurama Krishna Raju, the facts narrated in the preceding paragraph do not inspire any confidence to believe that the sale of shares under buy back at Rs. 10/- per share. When the assessee made huge investment in M/s. Ind Barath Power Infra (P) Ltd., and when M/s. Ind Barath Power Infra (P) Ltd., raised funds in October, 2009 from equity funds by allotting shares at a premium of Rs. 187.58/-, it cannot be said that the assessee will be totally ignorant of such a fact.

27. We cannot lose sight of the fact that the assessee originally invested an amount of Rs. 3,44,95,000/- in M/s. Raghurama Renewable Energy Pvt. Ltd., and an amount of Rs. 40 lakhs in M/s. Dharmashala Hydro Power Ltd., during the financial years 2003-04 to 2005-06 and while transferring such shares to M/s. Ind Barath Power Infra (P) Ltd., assessee acquired the shares in question at a premium of Rs. 240/-. As a matter of fact, M/s. Ind Barath Power Infra (P) Ltd., was previously known as M/s. Kanumuri Holdings Pvt. Ltd., whose promoter was Mr. Raghurama Krishna Raju. So the journey of the assessee from M/s. Raghurama Renewable Energy Pvt Ltd., to M/s. Ind Barath Power Infra (P) Ltd., is too long enough to plead ignorance as to

the state of affairs of M/s. Ind Barath Power Infra (P) Ltd. The authorities are justified in disbelieving the transaction of the assessee selling the shares at face value of Rs. 10/- per share which it purchases at a premium of Rs. 240/-. It is not the case of the assessee that M/s. Ind Barath Power Infra (P) Ltd., is sinking into irrecoverable losses prompting them to exit the investment at a paltry bargain of Rs. 10/- per share. The transaction has to be viewed in the light of the common course of natural events, human conduct and public and private business, in their relation to the case on hand. Plea of assessee does not stand such tests.

28. It could be seen from the orders of the authorities below that while computing the long term capital gains, they are influenced by the statement of Mr. Raghurama Krishna Raju, and the assessee complains that the copy of it was never furnished it. Record does not reveal and for that matter, it is not the case of the assessee that the assessee made any attempt to secure such a copy or sought an opportunity to cross examine Mr. Raghurama Krishna Raju to controvert the so called statement made by him. What all assessee pleads that without furnishing a copy, the Revenue cannot made any addition, because, the principles of natural justice are violated in its case.

29. Since we reached a conclusion that the authorities are justified in not believing the transaction of sale of shares at Rs. 10/- per share, and seems to have based the computation of capital gains on the statement of Mr. Raghurama Krishna Raju, we are of the considered opinion that the ends of justice would be met by directing the learned Assessing Officer to furnish a copy of the statement of Mr. Raghurama Krishna Raju to the

assessee and to have a fresh look on this aspect. With this view of the matter, we set aside the findings of the authorities below on this issue also and restore it to the file of the learned Assessing Officer for considering it afresh after furnishing a copy of the statement of Mr. Raghurama Krishna Raju to the assessee. ITA No. 385/Hyd/2015, is, accordingly, treated as allowed for statistical purposes.

ITA Nos. 386/Hyd/2015 & 1730/Hyd/2016 (AY. 2011-12):

30. Dispute in these two appeals revolves around the addition made under section 14A of the Act read with Rule 8D of the Rules. It would be convenient to dispose of these two appeals together because, ITA No. 386/Hyd/2015 is in respect of the additions made originally under section 143(3) of the Act, whereas the other appeal is in respect of the very same addition but, while giving effect to the order of the first appellate authority.

31. During the course of assessment proceedings for the assessment year 2011-12, the learned Assessing Officer noted that the assessee towards investments to the tune of Rs. 3,00,00,62,779/- as on 31/03/2011 out of which dividend yielding investment of Rs. 2,72,90,28,519/- whereas the P&L Account reveals the claim of interest expense to the tune of Rs. 3,28,15,444/-. Assessee did not reveal any expenditure incurred for making and maintaining the investments.

32. Assessee's case was that during the year under consideration, it did not earn any dividend income and, therefore, pursuant to the decision of Kolkata Bench of Tribunal in the case of M/s. REI Agro Limited, Kolkata vs.

DCIT and the decision of Hon'ble Bombay High Court in the case of CIT vs. M/s. Delite Enterprises no disallowance under section 14A of the Act read with rule 8D of the Rules. Apart from this, the assessee had taken the plea that it did not utilize any borrowed funds for investment and, therefore, no disallowance could be made in respect of the exempt income to earn which no borrowed funds were utilized.

33. Learned Assessing Officer discussed this aspect while referring to the decisions referred by the assessee and also in the light of the CBDT Circular No. 5/2014 dated 11/02/2014 and reached a conclusion that the provisions under section 14A of the Act read with rule 8D of the Rules are applicable to the facts of the case, and proceeded to make addition under 8D(2)(ii) of the Rules and 8D(2)(iii) of the Rules to reach the figure of disallowance at Rs. 3,71,27,320/-. Learned Assessing Officer, however, restricted the same to the expense claimed.

34. Learned CIT(A) reappraised the material afresh and on a thread-bear analysis of the financials of the assessee found that the claim of the assessee that no interest bearing funds are utilized for investment and it is only the own funds of the assessee were put in investment. The specific finding of the learned CIT(A) is that as on 31/03/2011, the reserves and surplus of the assessee include the revalued assets of land and equity shares to the tune of Rs. 85,04,26,779.40, such amount of revaluation does not give rise to any cash flow and, therefore, has to be excluded to get a clear position as to the source of funds available to the assessee for investment in shares. After undertaking that exercise, learned CIT(A) found that the assessee's own funds were sufficiently exhausted in its business

asset and less than Rs. 15 crores was available for investment, whereas the assessee invested to the tune of Rs. 311.51 crores which is obvious that such funds flown from borrowed funds also.

35. According to the learned CIT(A), there is no scope for allowing the deduction of interest expense on the borrowed funds utilized for making investment. She recorded that such investment yields either capital gains or dividend. In respect of capital gains, there is no provision in the Act to allow deduction of interest while computing capital gains and in respect of the dividend, no question of allowing deduction of interest expense attributable to exempt income arise because, such income is totally exempt. She, therefore, concluded that disallowance of interest component attributable to the borrowed funds utilized in investment is imperative.

36. Learned CIT(A) recorded that the disallowable portion of the interest has to be ascertained by allocating the same in the same proportion as the borrowed funds utilized for business and investment, which is 11.22% and 88.78% respectively. On this basis, learned CIT(A) computed the disallowable portion of interest at Rs. 2,91,33,551/- and directed the learned Assessing Officer to compute the total disallowance under section 14A of the Act read with rule 8D of the Rules by adding an amount equal to one half percentage of the average value of the total investment, which yielded the exempt income. Aggrieved by the finding of the learned CIT(A), assessee preferred appeal in ITA No. 386/Hyd/2015.

37. Pursuant to the order of the learned CIT(A) referred to above, learned Assessing Officer completed the consequential assessment by

order dated 29/06/2015 making the addition that was directed by the learned CIT(A) under section 14A of the Act read with rule 8D of the Rules. This addition was appealed against but was confirmed by the learned CIT(A) by order dated 19/09/2016. Against this order, assessee preferred ITA No. 1730/Hyd/2016.

38. Learned AR submits that the orders of the authorities below cannot be sustained because the learned Assessing Officer failed to record dissatisfaction requisite under section 14(2) of the Act, they overlooked the fact that the assessee had enough funds and further that the disallowance cannot exceed the quantum of exempt income. Learned AR further submitted that the learned CIT(A) is not justified in passing the order which in fact had the effect of enhancing the total income without providing any opportunity to the assessee.

39. Per contra, learned DR submitted that there is an elaborate discussion by the learned Assessing Officer on the applicability of section 14A of the Act read with rule 8D of the Rules and, therefore, it cannot be said that the learned Assessing Officer did not record any satisfaction. He further submitted that since the learned Assessing Officer computed the disallowance under section 14A of the Act read with rule 8D of the Rules, but restricted the disallowance to the expense claimed and learned CIT(A) also directed only computation of disallowance under section 14A of the Act read with rule 8D of the Rules by considering the administrative charges at one half percentage only by taking such investments which yielded exempt income, no question of enhancement would arise in this matter.

40. On a perusal of the assessment order, we find that the learned Assessing Officer dealt with this issue in a detailed manner. He referred to the total amount of investment, dividend yielding net investment, figures in the P&L Account referring to the interest expense etc. he also sought the explanation of the assessee while proposing to make disallowance under section 14A of the Act read with rule 8D of the Rules. He considered the decisions relied upon by the assessee viz-a-viz the CBDT Circular No. 5 of 2014 to reach a conclusion that when once there is an exempt income from the investments and there is a claim of interest expenses in the P&L Account, provisions under section 14A of the Act read with rule 8D of the Rules are applicable.

41. There is no specific form to record the satisfaction or otherwise of the learned Assessing Officer under the Act or Rules and it is only the conclusions reached by the learned Assessing Officer when having regard to the accounts of the assessee, he is not satisfied with the correctness of the claim of the assessee, that would constitute the requisite dissatisfaction. The learned Assessing Officer, as a matter of fact found that there is an exempt income earned by the assessee, though it may not be the dividend as such, but in the form of claim under section 10(38) of the Act and also that the assessee incurred expenses. It is absurd for the assessee to say that when they are making and maintaining the huge investments to the tune of Rs. 330 crores, they do not incur any expenses. The quantum of interest and administrative expenses is a different matter, but according to us, it is suffice if the learned Assessing Officer considers the objections of the assessee before proceeding to invoke the provisions under section 14A of the Act read with rule 8D of the Rules. The discussion

of the learned Assessing Officer at paragraph Nos. 4.1 to 4.7 of the assessment order really constitutes the recording of dissatisfaction and nothing more is required. The first contention of the assessee is accordingly rejected.

42. Coming to the second contention of the assessee that the assessee holds sufficient own funds, the order of learned CIT(A) in the first round is self-explanatory. Her specific finding is that while investigating the source and application of funds by the assessee as on 31/03/2011, she found that the assessee revalued the assets (land and equity shares) by Rs. 85,04,26,779.40 which does not give rise to any cash flow and, therefore, cannot be considered as source of funds for investment in shares and accordingly have to be excluded. After excluding the same, learned CIT(A) found that assessee's own funds were substantially exhausted in its business assets and less than Rs. 15 crores was available for investment as against which an investment to the tune of Rs. 311.51 crores was made, leading to the irresistible conclusion that funds from the borrowed source have also flown for investment.

43. This factual finding of the learned CIT(A) remains undisturbed with reference to any facts and figures and there is no material before us to take a different view on this aspect. When once the assessee contracted loans for business purpose, and it is found that there is investment, it is for the assessee to establish with reference to the cash/funds flow that the borrowed amount is exhausted for business purpose. When once there is no evidence to show that the borrowed funds are not utilized fully and exclusively for the purpose of business, it cannot be said that the assessee

is entitled to claim deduction of the entire interest expense. When this fact is coupled with the observation of the learned CIT(A) that after exhausting the own funds in the business assets, the assessee holds only Rs. 15 crores or less in its hands where the investment was found to the tune of Rs. 311.51 crores, considering disallowance under section 14A of the Act read with rule 8D of the Rules is imperative. Learned CIT(A) has taken care to see that out of the total interest expense, such portion as could reasonably be attributed to the Business is not brought to the disallowance. It is quite fair and reasonable. We uphold the same and reject the contention of the assessee.

44. Further, learned Assessing Officer originally computed the disallowance under section 14A of the Act read with rule 8D of the Rules at Rs. 3,71,27,320/- by taking the entire interest expense and added the administrative expenses to it by taking the average value of the entire investment and thereafter, restricted the same to the expense claimed. Learned CIT(A), however, excluded that portion of interest which is attributable to the business and took into consideration only the interest attributable to the investment. Apart from this, she also directed the learned Assessing Officer to consider the half percentage only in respect of the exempt income yielding investments. This action of the learned CIT(A) tends to reduce the disallowance, but will not enhance it.

45. Coming to the last plea of the assessee that the administrative charges at one half percentage shall only be in respect of the investment which yielded the exempt income and the total disallowance under section 14A of the Act read with rule 8D of the Rules shall not exceed the exempt

income that is earned during the year under consideration, it is in consonance with the settled principles of law. We, therefore, while accepting the contention of the assessee, direct the learned Assessing Officer to recompute the disallowance while taking the average value only of the exempt yielding investment into consideration and by restricting the disallowance to the exempt income earned during the year under consideration. With this view of the matter, we allow the appeals in part.

46. To sum-up, ITA No. 385/Hyd/2015 is treated as allowed for statistical purposes and ITA Nos. 386/Hyd/2015 & 1730/Hyd/2016 are partly allowed.

Order pronounced in the open court on this the 16th day of January, 2023.

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 16/01/2023

TNMM

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1. M/s. Chintalapati Holdings Pvt. Ltd., No. 18, Software Units Layout, Ilabs Centre, Building No. 3, Madhapur, Hyderabad.
2. Dy. Commissioner of Income Tax, Central Circle-1(2) [erstwhile Central Circle-2], Hyderabad.
3. CIT(Appeals)-XI, Hyderabad.
4. CIT(Appeals)-I, Hyderabad.
5. Pr.CIT(Central)-Hyderabad.
6. Pr.CIT-1, Hyderabad.
7. DR, ITAT, Hyderabad.
8. GUARD FILE

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