

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA No. 101/RPR/2021
(Assessment Year: 2013-14)

Dy. Commissioner of Income Tax (Central Circle-01), Raipur	Vs	M/s Real Ispat & Power Ltd. Vrindavan, Opp. Holy Hearts Schools, Raipur (C.G)
PAN No. : AABCR 9986 L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri G. S. Agarwal, CA
राजस्व की ओर से /Revenue by	:	None
सुनवाई की तारीख / Date of Hearing	:	12/06/2023
घोषणा की तारीख/Date of Pronouncement	:	14/06/2023

आदेश / ORDER

Per Arun Khodpia, AM :

The present appeal is directed against the order of Id. CIT(A)-3, Bhopal dated 01.09.2021 for the Assessment Year 2013-14. In this appeal of revenue following grounds were raised.

- “1. Whether on the facts and in law Ld. CIT(A) was justified in deleting the addition of Rs. 2,57,13,664/- made by the AO u/s 14A r.w.s 8D?
2. Any other ground may be pressed at the time of hearing.”

2. Brief facts as stated are that, the assessee is a company, engaged in manufacturing sale of Sponge Iron, Ingots, Billet, TMT, power generation and supply. The case of the assessee for year under consideration was selected for scrutiny through CASS. Statutory notice u/s 143(2) of the I.T. Act was issued. Further, notices along with questionnaire were also issued

to the assessee, in response AR of the assessee have attended the hearing from time to time and filed required documents/submissions. The Id. AO during the course of assessment proceeding has examined various issues and aspect of the case and after considering the various facts and circumstances, has made an addition by invoking section 14A of the I.T. Act, 1961.

3. Aggrieved with the order, the assessee preferred an appeal before the Id. CIT(A). The Id. CIT(A) deliberated upon the issues and deleted the addition. To assail against the decision of Id. CIT(A), now, the revenue is in appeal before us on the issue of deleting the addition made by AO u/s 14A read with rule 8D.

4. The sole controversy arise by the order of Id. CIT(A) and challenged by the revenue before us was regarding reversal of addition of Rs. 2,57,13,664/- made by the AO u/s 14A read with rule 8D.

5. In the present appeal non was appeared on behalf of the revenue, however, since, the matter is heard at length previously on 24th April, 2023 and was adjourned only for verification of amount of exempted dividend income declared by the assessee before the Id. AO. Since, now, the assessment records were available before us and the issue was already represented by the revenue in the previous hearing, we are of the view that

the appeal should be adjudicated on the basis of material available before us.

6. To start with the proceedings, Id. AR has been directed to briefly apprise the facts, in response, the Id. AR has drawn our attention to file 1, 2 & 3 of the paper book wherein the compilation of share capital, free reserve and investment, company wise details of investment for the year ended 31st March, 2013 and details of interest expenses were furnished. To peruse the factual aspect, all the three statements are reproduced here under:

M/s Real Ispat & Power Ltd., Raipur

Asstt. Year 2013-14

Compilation of Share Capital, Free Reserves and Investment

	<u>As on 31.03.2013</u>	<u>As on 31.03.2012</u>
Share Capital	Rs.29,70,70,450/-	Rs.29,02,20,450/-
Reserves & Surplus	Rs.1,36,73,18,039/-	Rs.1,29,19,33,572/-
	Rs.1,66,43,88,489/-	Rs.1,58,21,54,022/-
 Non Current Investment	 Rs.78,73,47,001/-	 Rs.77,27,09,971/-



REAL ISPAT & POWER LIMITED
DETAILS OF INVESTMENT FOR THE YEAR ENDED 31.03.2013

Particulars	Number of Shares As at 31.03.2013	Amount (Rs.)As at 31 March, 2013	Number of Shares As at 31.03.2012	Amount (Rs.)As at 31 March, 2012
Long term investments (at cost)				
<i>In Subsidiary Companies (Unquoted, Non trade fully paid-up)</i>				
Equity Shares of Shivalaya Ispat & Power Private Limited	80,59,950	52,79,97,500	64,27,200	44,63,60,000
Advance for purchase of 16,32,750 Equity share of Rs 10 Each in Shivalay Ispat and Power Private Limited.		-		8,16,37,500
Equity Shares of Real Power Private Limited	27,94,989	14,19,43,560	27,94,989	14,19,43,560
Non Cumulative Redeemable Preference Share of Real Power Private Limited	10,00,000	10,00,00,000	10,00,000	10,00,00,000
Equity Shares of C.G.Sponge Manufactures Consortium Coalfields Private Limited	14,75,826	1,47,58,260	12,123	1,21,230
Equity Shares of Shubh Infrastructure Limited	7,143	71,430	7,143	71,430
Equity Shares of Sarda Energy & Minerals Limited	15,500	25,65,251	15,500	25,65,251
Equity Shares of Vimal Infrastructure (India) Private limited	100	11,000	100	11,000
Total	1,33,53,508	78,73,47,001	1,02,57,055	77,27,09,971



M/s Real Ispat & Power Ltd., Raipur**Asstt. Year 2013-14****Details of Interest Expenses**

Particulars	Amount	Details
Interest on cash credit	4,60,15,063/-	applied for Cash credit facilities provided by the bank only for meeting the working capital requirement of the business and not for the making the long term investments. Paid Stock (Stock minus Trade payable) and debtor as on balance sheet date are Rs.5,75,16,393/- (58 Cr approx.) which is more than the cash credit bank balance of Rs.53,48,32,058/- (54 Cr. approx.) of the company.
Interest on SBI Cash Credit		
Interest on Overdraft	7,18,924/-	Overdraft taken against Fixed deposit and used in the business working capital of the company.
Interest on Term loan	1,85,26,969/-	Term loan and unsecured loan taken by the company for addition of fixed assets that is wire rod & HB wire division during the preceding year and interest paid thereon.
Interest on Unsecured loan	77,69,897/-	
Total	Rs. 7,30,30,853/-	



7. The Id. AR further submitted certain case laws to be relied upon in order to decide the issue in hand. The relevant case laws and observation in the referred case laws are as under:-

- South Indian Bank Ltd vs. CIT (2021) 130 taxmann.com 178 (SC), wherein Hon'ble Apex Court has held that:

"Income Tax: Where interest free own funds available with assessee-banks exceeded their investments in tax-free securities; investments would

be presumed to be made out of assessee's own funds and proportionate disallowance was not warranted under section 14A on ground that separate accounts were not maintained by assessee for investments and other expenditure incurred for earning tax-free income."

- Bilaspur Nagrik Sahkari Bank Ltd. vs. DCIT, Circle(1), Bilaspur in ITA No. 55/RPR/2017 dated 30/03/2022, wherein it has been held that:

"7. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record. As is discernible from the record, the assessee had made an investment of Rs.1.18 crore (approximately) in exempt income yielding investments. Admittedly, as can be gathered from financial statements of the assessee society, it had as on 31.03.2012 sufficient interest-free funds of Rs.6.17 crore (approximately) which would suffice to source the investment made by the assessee in the aforementioned exempt income yielding assets. In the backdrop of the aforesaid facts, we are of the considered view, that as stated by the Ld. AR, and rightly so, now when the assessee society had sufficient interest-free own funds available with it which would sufficiently justify the investment made in the exempt income yielding assets, therefore, no part of the interest expenditure could have validly been disallowed u/s.14A r.w Rule 8D(2)(ii) of the Income Tax Rules, 1962. Our aforesaid view is fortified by the judgment of the Hon'ble Supreme Court in the case of South Indian Bank Ltd. Vs. CIT (2021) 438 ITR 1 (SC). In the aforesaid judgment, it was observed by the Hon'ble Supreme Court that where interest-free own funds available with the assessee exceeded their investment in tax free securities, then, it would be presumed that investments were made by the assessee out of its own funds and no disallowance would be warranted u/s.14A r.w Rule 8D(2)(ii) of the Income Tax Rules, 1962 on the ground that separate accounts were not maintained by the assessee for investments and other expenditure incurred for earning of tax free income.

8. Backed by our aforesaid observations, we are unable to persuade ourselves to sustain the disallowance of interest expenditure of Rs.3,99,790/- made by the Assessing Officer u/s.14A r.w Rule 8D(2)(ii) of the Income Tax Rules, 1962 which is accordingly vacated. Thus, the Ground of appeal No.2 raised by the assessee is allowed in terms of our aforesaid observations."

- DCIT vs. Hira Industries Ltd. (2018) 90 taxmann.com 429 (Raipur-Trib), wherein it has been held that:

“Section 14A of the Income-tax Act, 1961- Expenditure incurred in relation to income not includible in total income (interest expenses)- Assessment year 2010-11- Where assessee-company made investment in its sister concern which were yielding exempt dividend income out of its non-interest bearing funds and same was not disputed by revenue, no disallowance of interest expenditure under section 14A was to be made-Held, yes [Para 14] [in favour of assessee]”

- DCIT vs. Godawari Power & Ispat Ltd. (2018) 100 taxmann.com 528

(Raipur Trib.) as held:

“Section 14A of Income-tax Act, 1961- Expenditure incurred in relation to income not includible in total income-Assessment year 2011-12 – Whether where own capital and free reserves of assessee-company were much more than investment made by assessee which was yielding exempt income to it, a presumption would arise that investment was made out of interest free funds generated or available with company and, thus, no disallowance under section 14A was to be made -Held, yes [Para 58] [In favour of assessee]”

8. The Id. AR, to substantiate the facts of the present case, in light of the case laws relied upon and the ratio of law laid down by the referred case laws have submitted that disallowance made under rule 14A was not in accordance with law as interpreted by Hon’ble Apex Court and thereafter, followed by the Co-ordinate Bench of ITAT, Raipur in the cases relied upon. It was the submission of the AR that the disallowance made was rightly deleted by Id. CIT(A), since, there was sufficient funds available with the assessee to make the investment which is apparent from the statements produced hereinabove. The 2nd of the contention of the Id. AR was that the assessee has earned exempt income of Rs. 46,500/- which is evident from P & L account of the assessee available at page 21 of the assessee’s paper book. The Id. AO has wrongly mentioned figure of exempted dividend

income as Rs. 1,94,953/- at page 5 of the assessment order. It was the prayer of the Id. AR that since, there were sufficient funds available with the assessee for making the investments without using any interest bearing funds, therefore, disallowance of interest was unwarranted and unlawful. There was no expenditure incurred by the assessee to earn the dividend income, therefore, $\frac{1}{2}$ % of the average investments disallowed by the assessee was also without any basis. It was thus the submission of the AR that disallowance made by the Id. AO was rightly, lawfully and after thoughtfully considering facts of the case was deleted by the Id. CIT(A), consequently, the finding of Id. CIT(A) deserves to be upheld. Ld AR further added that, the dividend income earned by the assessee was at Rs. 46,500/- only, therefore, even if disallowance u/s 14A is made, the same shall be restricted to Rs. 46,500/- only.

9. We have considered the contentions of Id. AR, perused the material available on record, have kept in our consideration the submissions of revenue in the earlier hearing and perused the case laws referred to and relied upon in the instant case, it is settled principle of law now that in a case where there were no utilization of interest bearing funds for making the investment to earn exempted income, no other expenses incurred to earn the exempted income and no exempted income was earned during the relevant assessment year then disallowance u/s 14A read with rule 8D cannot be made. On perusal of facts of the present case which were presented before us by the Id. AR and the substance of the same is

reproduced in the forgoing paras of this order in the form of statements of investment, interest etc. filed by the Id. AR, since in the case before us, it was established that no interest bearing funds were used for investment to earn exempted income, no other expenses were incurred to achieve exempted income, the interest paid also has no nexus with the amount of investment in question, however, an exempt income of Rs. 46,500/- was earned by the assessee in the form of dividend earned from long term investments. Therefore, we are of the considered view that disallowance u/s 14A read with rule 8D was not in accordance with law and therefore, the same is liable to be deleted, however, since, the assessee has gained an exempt income of Rs. 46,500/- during the relevant earlier year which was taken as Rs. 1,94,593/- by the Id. AO, this fact needs verification and thus, we restore the issue to the files of Id. AO, for the limited purpose to verify the amount of exempted income earned by the assessee during the year, with direction to restrict the disallowance made u/s 14A read with rule 8D to the amount of actual exempted income earned by the assessee during the year. Needless to say that assessee should cooperate with the Id. AO in verification of the issue remand back to the files of AO.

In the result, appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the court on 14/06/2023.

Sd/-

Sd/-

(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 14/06/2023

Ganesh Kumar, P.S(on tour)

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, रायपुर/ DR, ITAT,
Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur