

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.279/Ind/2020**  
**(Assessment Year:2013-14)**

Bhatia Sons Ltd BCC House, 8/5 Manoramaganj Indore (Appellant / Assessee)	vs.	ITO-1(2) Indore (Respondent/ Revenue)
<b>PAN: AADCB8947K</b>		
Assessee by	Shri Harsh Vijayvargiya, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	17.08.2023	
Date of Pronouncement	21.08.2023	

**O R D E R**

**Per Vijay Pal Rao, JM:**

This appeal by the assessee is directed against the order dated 03.02.2020 of Commissioner of Income Tax(Appeals)-I, Indore, for Assessment Year 2013-14. The assessee has raised following grounds of appeal:

*“1. That on the facts and in the circumstance of the case both Ld. AO and Ld. CIT(A) has erred in making disallowance of Rs.8,82,978/- u/s 14A of the Income Tax Act, 1961.*

*2. That the order so passed is illegal & wrong.*

*3. That the assessee craves leave to add, amend, alter or delete any of the grounds of appeal.”*

2. The solitary issue arises in this appeal of the assessee is whether in the facts and circumstances of the case the ld. CIT(A) is justified in confirming the disallowance made by the AO of Rs.8,82,978/- u/s 14A of the Act. The assessee company filed return of income u/s 139(1) of the Act for the year under consideration on 29.09.2013 declaring total income of Rs.NIL. The case was selected for scrutiny through CASS and in the scrutiny assessment the AO noted that the assessee has diverted the interest bearing fund to the investment which is either earning the exempt income or no income. Further the assessee itself disallowed Rs.76,323/- u/s 14A of the Act. The AO asked the assessee to produce working of disallowance u/s 14A of the Act which was submitted by the assessee and reproduced by the assessing officer in the assessment order. The assessee has submitted that further disallowance of Rs.17,995/- may be made u/s 14A of the Act. The AO did not accept this working of disallowance u/s 14A submitted by the assessee and made the disallowance of Rs.9,59,301/- u/s 14A and after reducing suo motto disallowance made by the assessee of Rs.76,323/- the AO has made addition of Rs.8,82,978/-. The assessee challenged the action of the AO before the ld. CIT(A) but could not succeed.

3. Before the Tribunal ld. AR of the assessee has submitted that the assessing officer has made the disallowance by ignoring the facts that the assessee were having its own interest free fund sufficient to make the investment in shares and therefore, no disallowance is called for u/s 14A of the Act. He has referred to the balance sheet of the assessee and submitted that the assessee is having its own share capital and reserves & surplus to the tune of Rs.55,57,67,000/- as on 31.03.2013. Further the assessee has paid only Rs.27,781/- as interest during the year. Therefore, the AO is not justified in making disallowance u/s 14A when there was no claim of interest in the profit & loss account except a sum of Rs.27,781/-. In support of his contention he has relied upon the judgment of Hon'ble Bombay High Court in case of *Reliance Utilities & Power Ltd. vs. CIT* 313 ITR 340 as well as decision of the Mumbai Benches of the Tribunal in case

of *Bennett Coleman & Co. Ltd. vs. ACIT 89 taxmann.com 415*. The Ld. AR has also referred to the various decisions of this Tribunal on this issue where the assessee's own interest free fund are more than sufficient to make the investment then the disallowance u/s 14A in respect of interest expenditure is not called for.

4. On the other hand, ld. DR has relied upon the orders of the authorities below and submitted that the assessing officer has made the disallowance after considering the working submitted by the assessee for disallowance u/s 14A of the Act. The AO has given the credit of increase in the share capital during the year under consideration and then computed the disallowance at Rs.9,59,301/-.

5. In rejoinder the Ld. AR of the assessee has referred to the CBDT notification dated 2<sup>nd</sup> June 2016 on the amendment of Income Tax Rules 1962 and particularly Rule 8D. He has pointed out that as per the proviso to Rule 8D it is provided that the disallowance work out under Rule 8D shall not exceed the total expenditure claimed by the assessee.

6. We have considered the rival submissions as well as relevant material on record. The assessee has given details of the expenses for earning the exempt income of Rs.1,12,81,600/- which are reproduced by the AO in para 4 of the assessment order. As per the details given by the assessee the direct expenses relating to earning exempt income has shown as nil and interest paid during the year is Rs.27,781/-. The assessing officer has computed the disallowance u/s 14A of the Act based on the formula as provided under Rule 8D for disallowance of interest expenses. It is pertinent to note that in the profit & loss account the assessee has claimed the expenditure under the head financial cost at Rs.28,359/- comprising of interest expenditure of Rs.27,781/- and other borrowing cost of Rs.578/- totalling amounting to Rs.28,359/-. In the return of income the assessee has made suo moto disallowance u/s 14A of the Act of Rs.76,323/- which is more than the interest expenditure claimed in the profit & loss account. Further as per the balance sheet the assessee is

having non-interest bearing funds of Rs.55,55,55,315/- comprising of share capital reserve & surplus and share application money received whereas the total investment in the shares as on 31.03.2012 is Rs.55,57,67,000/-. Thus, the assessee's own fund is almost equivalent to the investment made in the share and there is no other asset or investment made by the assessee either in the fixed assets or current assets. Accordingly the disallowance made by the AO by applying the formula as provided for the interest expenditure provided u/s Rule 8D for interest expenditure is not justified when the assessee has claimed the interest expenditure of Rs.28,359/- in the profit & loss account and the suo moto disallowance made by the assessee is more than the said interest expenditure. Therefore, the disallowance u/s 14A on account of interest expenditure cannot be more than the actual expenditure claimed by the assessee. Accordingly in the facts and circumstances of the case when the assessee's own interest free fund is utilized for investment in the shares and assessee has made suo moto disallowance which is more than the interest expenditure claimed in the profit & loss account the disallowance made by the AO is not justified and the same is deleted.

7. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 21.08.2023.

**Sd/-**

**(B.M. BIYANI)**  
Accountant Member

**Indore, 21.08.2023**

**Patel/Sr. PS**

**Sd/-**

**(VIJAY PAL RAO)**  
Judicial Member

*Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File*

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*