

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI**

**BEFORE JUSTICE (RETD.) C V BHADANG, HON'BLE PRESIDENT &  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA NO.1148/MUM/2024  
Assessment Year 2016-17**

M/s.JSW Cement Limited,  
3<sup>rd</sup> Floor, JSW Centre,  
Bandra-Kurla Complex,  
Bandra East, Mumbai 400 051.  
PAN:AABCJ-6731-B

- Appellant

Vs.

Deputy Commissioner of Income Tax  
Circle 5(2)(1), Mumbai  
Aaykar Bhavan, M.K. Road,  
Mumbai – 400 020

- Respondent-

Appellant by : Ms. Vinita Shah  
Respondent by : Ms. Rajeshwari Menon –SR.DR  
Date of Hearing : 05/06/2024  
Date of Pronouncement : 11/06/2024

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER :**

The assessee has filed this appeal challenging the order dated 17-01-2024 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2016-17. The issue contested herein relates to the disallowance made u/s 14A of the Act.

2. The facts relating to the above said issue are discussed in brief. The assessee company is engaged in the business of manufacture and sale of ground granulated blast furnace slag, (GGBS), Portland Slag Cement (PSC) & Ordinary Portland Cement (OPC). During the year under consideration, it earned exempt dividend income of Rs.31,19,220/-. The assessee disallowed a sum of Rs.2,43,721/- u/s 14A of the Act. The AO, however, took the view

that the disallowance should be computed under Rule 8D r.w.s. sec. 14A of the Act. Accordingly, he computed disallowance at Rs.16,44,109/- u/r 8D, which consisted of interest disallowance of direct expenses of Rs.1,921/- u/r 8D(2)(i); interest expenses of Rs.15,21,188/- u/r 8D(2)(ii) and expenditure disallowance of Rs.1,21,000/- u/r 8D(2)(iii). Accordingly, the AO added the difference amount of Rs.14,00,388/- (16,44,109.- less 2,43,721/-) to the total income of the assessee. The AO also added the very same amount of disallowance computed by him u/s 14A of the Act to the book profit computed u/s 115JB of the Act.

3. The assessee challenged both the additions by filing appeal before Ld CIT(A). However, the Ld CIT(A) adjudicated the ground relating to the addition made to book profit computed u/s 115JB of the Act, but did not adjudicate the disallowance computed u/s 14A of the Act r.w.r 8D of I T Rules. Aggrieved, the assessee has filed this appeal.

4. We heard the parties and perused the record. With regard to the interest disallowance computed by the AO u/r 8D(2)(ii), it is the submission of the assessee that the own funds available with the assessee is more than the value of investments and hence no disallowance of interest expenditure is required to be made as per the decision rendered by Hon'ble Bombay High Court in the case of HDFC Bank Ltd (366 ITR 505). We examined the Balance Sheet of the assessee and notice that the own funds available with the assessee as on 31-03-2016 was Rs.422.31 crores, while the value of investment stood at Rs.2.42 crores as on that date. The Hon'ble Bombay High Court has held in the case of HDFC Bank Ltd (supra) that, when the own funds available with the assessee exceeds the value of investments, then the presumption is that the investment has been made out of own funds. The relevant observations made by Hon'ble Bombay High Court in the above said case are extracted below:-

*“5. We find that the facts of the present case are squarely covered by the judgment in the case of [Reliance Utilities and Power Ltd.](#) (supra). The finding of fact given by the ITAT in the present case is that the*

*Assessee's own funds and other non-interest bearing funds were more than the investment in the tax-free securities. This factual position is not one that is disputed. In the present case, undisputedly the Assessee's capital, profit reserves, surplus and current account deposits were higher than the investment in the tax-free securities. In view of this factual position, as per the judgment of this Court in the case of Reliance Utilities and Power Ltd (supra), it would have to be presumed that the investment made by the Assessee would be out of the interest-free funds available with the Assessee.*

*We therefore, are unable to agree with the submission of Mr Suresh Kumar that the Tribunal had erred in dismissing the Appeal of the Revenue on this ground. We do not find that question (A) gives rise to any substantial question of law and is therefore rejected.”*

Since the own funds available with the assessee exceeds the value of investments, the disallowance of interest expenditure of Rs. 15,21,188/- made by the AO u/r 8D(2)(ii) of I T Rules is against the decision of jurisdictional High Court. Since this issue is covered by the decision rendered by the Hon'ble jurisdictional Bombay High Court, we prefer to adjudicate it. Accordingly, we direct the AO to delete the interest disallowance of Rs.15,21,188/- made u/r 8D(2)(ii) of I T Rules.

5. The disallowance computed by the AO u/r 8D(2)(i) and 8D(2)(iii) is less than the disallowance of Rs.2,43,721/- made by the assessee u/s 14A of the Act. Accordingly, we direct the AO to accept the disallowance made by the assessee voluntarily u/s 14A of the Act.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 11 June, 2024.

Sd/-

[Justice (Retd) C V Bhadang]  
President

Sd/-

(B.R. Baskaran)  
Accountant Member

Mumbai, Date : 11 June, 2024

VM.

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "F" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai