

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member and
Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 675/KOL/ 2014
Assessment Year: 2009-2010**

**Deputy Commissioner of Income Tax,.....Appellant
Circle-4, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069**

-Vs.-

**M/s. Jay Shree Tea & Industries Limited,.....Respondent
Industry House, 15th Floor,
10, Camac Street,
Kolkata-700 017
[PAN: AAACJ 7788 D]**

Appearances by:

No n e, for the Department

Shri Bijay Kumar Chaturvedi, A.R., for the assessee

Date of concluding the hearing : January 03, 2017

Date of pronouncing the order : February 03, 2017

O R D E R

Per Shri P.M. Jagtap, A.M.:

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-IV, Kolkata dated 05.12.2013.

2. In Ground No. 1, the Revenue has challenged the action of the Id. CIT(Appeals) in deleting the disallowance of Rs.92,73,089/- made by the Assessing Officer under section 14A of the Act read with Rule 8D of the Income Tax Rules.

3. The assessee in the present case is a Company, which is engaged in the business of growing and manufacturing of tea, chemicals, fertilizers, tea trading, warehousing, development of real estate and educational activity. The return of income for the year under consideration was filed

by it on 30.09.2009, which was revised on 28.03.2011, declaring finally total income of Rs.2,12,22,360/-. In the said return, dividend income earned by the assessee was claimed to be exempt from tax and a disallowance of Rs.30,57,783/- was offered under section 14A on account of expenditure incurred in relation to the earning of the said exempt income. Since the said disallowance offered by the assessee was not computed as per the method prescribed in Rule 8D, the Assessing Officer recomputed the disallowance to be made under section 14A by applying the said Rule of Rs.1,30,08,824/- and made a further disallowance of Rs.92,73,089/-.

4. The disallowance made by the Assessing Officer under section 14A read with Rule 8D was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and the following submission was made on its behalf before the Id. CIT(Appeals) in support of the case that a further disallowance of Rs.92,73,089/- made by the Assessing Officer was not sustainable:-

"In the return filed by the assessee, a sum of Rs.30,57,783/- was added back in the income on account of disallowance u/s 14A of the Income Tax Act, 1961 which consists of average value of investment as well as other direct expenditure incurred for earning the exempt income. However, the Ld. Assessing Officer further disallowed a sum of Rs.92,73,089/- on account of proportionate interest. In this connection this may be noted that total investment of the assessee at the beginning of the year was Rs.94,68,05,193/- and at the end of the year i.e. as on 31.03.09 was Rs.1,00,70,62,725/-. The assessee has not made any investment out of the borrowed fund on which interest has been charged. The assessee was having sufficient reserve which was Rs.1,49,09,64,617/- as on 31.03.08 and Rs.1,52,41,35,078/- as on 31.03.09. Apart from the above, the assessee is having around 11 crore as share holders fund. Therefore, the interest paid on borrowed fund was on account of business activity of the company and was not relatable to investment made by the company out of which the exempt income was earned.

From the above facts and figures, your goodself can find that the assessee was having his own sufficient fund for

making investment out of which the exempt income has been earned. In this connection, the reliance is placed on the judgement of Hon'ble Supreme Court in the case of CIT vs. Walfort Share & Stock Brokers Pvt. Ltd. [326 ITR 1} and the recent judgement of the Hon'ble ITAT, Mumbai in the case of Justice Sam P. Bharucha vs. The Addl. Commissioner of Income Tax 11(3), Mumbai in the [ITA 3889/Mum/2011] wherein it was held that unless a direct nexus is made out between the expenditure incurred and the exempted income earned, no disallowance can be made.

Under the above circumstances, it is prayed before your goodself that the addition made by the Ld. Assessing Officer should be deleted”.

5. The ld. CIT(Appeals) found merit in the submissions of the assessee and deleted the disallowance of Rs.92,73,089/- made by the Assessing Officer on account of proportionate interest under Rule 8D(2)(ii) after having found that the assessee-company had sufficient funds of its own to make investment in shares at the relevant time.

6. At the time of hearing before us, the ld. D.R. has filed an application seeking adjournment. However, keeping in view the submission made by the ld. counsel for the assessee that both the issues involved in this appeal of the Revenue are squarely covered in favour of the assessee, the request of the ld. D.R. for adjournment is not acceded to and this appeal of the Revenue is being disposed of *ex parte* after taking into consideration the submissions made by the ld. counsel for the assessee as well as the material available on record. It is observed that a similar disallowance on account of proportionate interest expenditure by applying Rule 8D(2)(ii) was made in assessee's case for A.Y. 2008-09 and the order of the ld. CIT(Appeals) deleting the said disallowance was upheld by the Tribunal vide its order dated 13.07.2016 passed in ITA No. 2773/KOL/2013 for the following reasons given in paragraphs no. 6 & 7 of its order:-

“6. We have heard the rival submissions and perused the materials available on record. The facts stated hereinabove

remain undisputed and hence the same are not reiterated for the sake of brevity. Admittedly the disallowance u/s 14A to the tune of Rs.92,89,825/- have been made by the ld. AO by invoking the provisions of Rule 8D(2)(ii) of the Rules. We find that the assessee company is having share capital of Rs.10.67 crores and sufficient free reserves of Rs.123.67 crores as on 31.3.2007 and Rs.137.99 crores as on 31.3.2008, but whereas the total investments as on 1.4.2007 was Rs.105.86 crores and as on 31.3.2008 was Rs.94.68 crores. We find that the ld. CIT(A) had given relief after going through the copy of the agreement of consortium of the banks and sanction letters of the banks submitted by the assessee that the loan was sanctioned for the purpose of working capital and purchase of fixed assets. We hold that the assessee has got sufficient own funds to make the investments and when that point is not in dispute, no disallowance could be made u/s 14A of the Act read with Rule 8D(2)(ii) of the Rules. Reliance in this regard is placed on the following decisions:-

CIT-vs.- Reliance Utilities & Power ltd. reported in 313 ITR 340 (Bom.)

Interest on borrowed capital- investments by assessee- finding that investments were from interest free funds available with assessee-borrowed capital for the purposes of business-interest deductible under Income Tax Act u/s 36(1)(iii).

G.D. Metsteel Pvt. Ltd. -vs.- ACIT reported in 142 TTJ 641 (Mumbai Tribunal)

Held that the investments are made by the assessee's own funds and have been made in the earlier years, no disallowance u/s 14A is required to be made. The Head Note reads as under:-

"Business expenditure-Disallowance under section 14A- Apportionment of expenditure-When investments are made from own funds, merely because the assessee had to subsequently borrow the funds for business use, it cannot be said that the borrowed funds have been used for the purposes of investments".

CIT -vs.- HDFC Bank Ltd reported in 366 ITR 505 (Bom.)

Held, dismissing the appeal, (i) that the finding of fact given by the Tribunal was 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 was not one that was disputed. 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, 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.

6.1. Similar views were expressed in the following decisions:-

Woolcombers of India Ltd. -vs.- CIT reported in 134 ITR 219 (Cal.)

East India Pharmaceuticals Works Ltd. -vs.- CIT reported in (1997) 224 ITR 627 (SC).

6.2. We find that though the decision in the case of Reliance Utilities power Ltd. was rendered in the context of allowability of interest u/s 36(1)(iii) of the Act, the analogy drawn thereon would apply with equal force for adjudicating the issue of disallowance u/s 14A of the Act. We also find that the Hon'ble Bombay High Court in the case of CIT -vs.- HDFC Bank Ltd. reported in 366 ITR 505 (Bom.) had also held the same view.

7. In view of the aforesaid facts and findings and respectfully following the judicial precedents relied upon hereinabove, we hold that the Id. CIT(A) had rightly deleted the disallowance u/s 14A of the Act in the facts and circumstances of the case to the tune of Rs.92,89,825/-. Accordingly, the ground no. 1 raised by the revenue is dismissed”.

As the issue involved in the year under consideration as well as all the material facts relevant thereto are similar to that of A.Y. 2008-09, we respectfully follow the decision of the Coordinate Bench rendered in A.Y. 2008-09 and uphold the impugned order of the Id. CIT(Appeals) deleting the disallowance made by the Assessing Officer on account of proportionate interest under Rule 8D(2)(ii). Ground No. 1 of the Revenue's appeal is accordingly dismissed.

7. As regards Ground No. 2 of the Revenue's appeal, it is observed that the controversy involved therein as to whether the deduction on account of cess on green leaf is to be allowed from the composite income before applying Rule 8D or from 60% agricultural income after applying Rule 8D now stands resolved by the decision of the Hon'ble Supreme Court in the case of CIT -vs.- Apeejay Tea Co. Limited (Civil Appeal No. 1105 of 2006 dated August 06, 2015), wherein it was held that the deduction on

account of cess paid has to be allowed while computing the income of the tea grown and manufactured under Rule 8D. Respectfully following the said decision of the Hon'ble Supreme Court, we uphold the impugned order of the Id. CIT(Appeals) giving relief to the assessee on this issue and dismiss Ground No. 2 of the Revenue's appeal.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on February 03, 2017.

Sd/- (S.S. Viswanethra Ravi) Judicial Member	Sd/- (P.M. Jagtap) Accountant Member
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Kolkata, the 3rd day of February, 2017

- Copies to :*
- (1) **Deputy Commissioner of Income Tax,
Circle-4, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069**
 - (2) **M/s. Jay Shree Tea & Industries Limited,
Industry House, 15th Floor,
10, Camac Street,
Kolkata-700 017**
 - (3) **Commissioner of Income Tax(Appeals)-IV, Kolkata;**
 - (4) **Commissioner of Income Tax- ,**
 - (5) **The Departmental Representative**
 - (6) **Guard File**

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.