

**आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।**

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

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND  
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.7383/Mum/2012

(निर्धारण वर्ष / Assessment Year : 2009-10)

M/s Silvassa Estates Pvt. Ltd., M/s Natvarlal Vepari & Co., Oricon House, 4 <sup>th</sup> floor, 12, K. Dubash Marg, Mumbai - 400 023.	<b>बनाम/</b> v.	The Income Tax Officer, Ward 8(3)(2), Aaykar Bhavan, 2 <sup>nd</sup> floor, Maharshi Karve Road, Mumbai - 400 020.
स्थायी लेखा सं./PAN : AAACS6303D		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by	Shri N. Jayendra
Revenue by :	Shri Vishwas Jadhav,DR

सुनवाई की तारीख / **Date of Hearing** : 17-03-2016

घोषणा की तारीख / **Date of Pronouncement** : 14-06-2016

**आदेश / ORDER**

**PER RAMIT KOCHAR, Accountant Member**

This appeal, filed by the assessee company, being ITA No. 7383/Mum/2012, is directed against the order dated 27-08-2012 passed by learned Commissioner of Income Tax (Appeals)- 18, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2009-10, the appellate proceedings before the learned CIT(A) arising from the assessment orders dated 29-12-2011 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income Tax Act, 1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee company in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") read as under:-

“1. The Commissioner of Income tax (Appeals) - 18, Mumbai, ([CIT(A)] erred in confirming the disallowance of Expenses of Rs.7,45,425/- made by the Income-tax Officer, Ward 8(3)(2), Mumbai (AO) u/s.14A of the Act, as against Rs.73,740/- disallowed by the appellant in the return of income.

2. The AO erred in taking finance cost of Rs.25,75,333/- for the purpose of working of indirect expenses, while computing disallowance u/s.14A of the Act, read with Rule 8D, without substantiating the fact that, the loans on which interest have been paid has been utilized for the purpose of investment in shares.

3. Each of the above grounds is without prejudice to one another.”

3. The brief facts of the case are that the assessee company is carrying on the business of construction of residential and industrial houses. The assessee company was asked to furnish the details of computation of disallowance of expenses u/s 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 for earning exempt income. It was asked by the A.O. that the assessee company had obtained loans and paid interest of Rs. 25,75,333/- and the assessee company had invested Rs. 1,47,38,012/- in the quoted shares, while in computing disallowance u/s 14A of the Act, the assessee company has not considered the interest either under Rule 8D(2)(ii) or 8D(2)(iii) of the Income Tax Rules, 1962. The assessee company in reply submitted that the loans taken had been applied primarily towards the projects and no part of the money had been applied towards investments in shares. The assessee company submitted that the assessee company had acquired these shares long back and no part of such investments in shares had been out of borrowed funds. It was submitted that the borrowed funds had been utilized by the assessee company for the purpose of business and

not for the purpose of acquisition of equity shares. It was observed by the A.O. that the opening and closing balance of investment shown by the assessee company was at Rs. 1,47,48,012/- and Rs. 1,47,48,012/- respectively, however, the assessee company had not attributed any expenditure which had been incurred for earning exempt income from investments yielding exempt income. Thus as per the AO, the assessee company has not made disallowance of any expenditure incurred for earning exempt income as the assessee company cannot earn any income from investments without systematic management. The investment decisions are very complex and requires substantial market research and day to day analysis of market trends and both indirect and direct expenses are to be incurred which need to be disallowed u/s 14A of the Act . The A.O. held that all expenses connected with the exempt income have to be disallowed u/s 14A of the Act regardless of whether they are direct or indirect. The AO observed that disallowance u/s 14A of the Act can be made even if no exempt income is actually earned or received during the year from the investments in stock, stakes tax free bonds etc. The A.O. in support, relied upon the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Co. Ltd. v. DCIT in ITXA No. 626/2010 & writ petition No. 758/2010 and not being satisfied with the correctness of the claim made by the assessee company that no expenditure has been incurred by the assessee company in relation to the income which does not form part of the total income and hence disallowance was made as per Section 14A of the Act in accordance with the provisions of Rule 8D of Income Tax Rules, 1962 by the AO as under:-

i)	The amount of expenditure directly relating to income which does not form part of the total income.	--	--
ii)	Proportionate of interest expenditure computed in accordance with the formula	$(A \times B/C)$ 25,75,333/- X 147,48,012	Rs. 6,71,684/-

	give in Rule 8D(2)(ii)	/5,65,45,990	
iii)	Amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income as appearing in the balance sheet of the assessee on the first day and last of the previous year.	0.5% of Rs. 1476,48,012/-	Rs. 73,741/-.
	Total expenditure disallowed u/s 14 A		Rs. 7,45,425/-

Note	
i)	A= Interest (finance cost) debited to P&L A/c Rs. 25,75,333/-
ii)	B= Average of exempt income bearing investments = Rs. 1,47,48,012/-
iii)	C= Average of total assets appearing in the balance sheet on the first and last day of the previous year = Rs. 5,45,990/-

B Average value of investments-

Opening balance of investments + Closing balance of investments

2

= Rs. 1,47,48,012/- + Rs. 1,47,48,012

2

= Rs. 1,47,48,012”

Thus, total expenditure disallowed u/s 14A was Rs. 7,45,425/- out of which interest expenditure of Rs. 6,71,684/- and amount equal to one half percent of the average of the value of investment, income from which does not form part of the total income of Rs. 73,741/- was disallowed under Rule 8D of Income Tax Rules, 1962, vide assessment orders dated 29.12.2011 passed by the AO u/s 143(3) of the Act.

4. Aggrieved by the assessment orders dated 29.12.2011 passed by the A.O. u/s 143(3) of the Act, the assessee company carried the matter before the learned CIT(A) in first appeal.

5. Before the learned CIT(A), the assessee company submitted that the interest expenses of Rs. 25,13,455/- incurred by the assessee company on account of borrowings was not utilized for the purpose of investments in shares and therefore no part of the money has been applied towards investment in equity shares. It was submitted that the assessee company acquired these equity shares long back and no part of such investments has been out of borrowed funds, hence, no part of interest can be disallowed u/s 14A of the Act read with Rule 8D of Income Tax Rules, 1962. It was submitted that the assessee company had net worth of Rs. 1.9 crores as on 1st April, 2008 and the amount of investment in shares were Rs. 1.47 crores. The assessee company relied on the decision of Hon'ble Bombay High Court in the case of CIT v. Reliance Utilities & Power Ltd., (2009) 313 ITR 340(Bom. HC) whereby the Hon'ble Bombay High Court held that if there be interest free funds available to an tax-payer sufficient to meet its investments and at the same time the tax-payer raises an interest bearing loan, it can be presumed that the investments were made from the interest free funds available with the tax-payer. The assessee company also relied on the decision of Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. v. CIT, (2011) 203 Taxman 364(Del.HC) wherein it was held that the requirement of the A.O. embarking upon a determination of the amount of expenditure incurred in relation to exempt income would be triggered only if the A.O. returns a finding that he is not satisfied with the correctness of the claim of the tax-payer. The assessee company submitted that the finance cost of Rs. 25,13,455/- is not be considered as indirect expenses for the purpose of disallowance u/s 14A of the Act. It was also submitted that while computing the indirect expenses for the purpose of disallowance u/s 14A, the A.O. has taken average total assets

at Rs. 5,65,45,990/- as against Rs. 8,34,70,490/- for which no working has been provided to the assessee company for taking average total asset at Rs.5,65,45,990/-. Thus it was submitted that average total assets worked out by the A.O. of Rs. 5.65 crores is ad-hoc and arbitrary. The correct amount of average total assets as worked out by the assessee company is follows:-

Sr No.		31 <sup>st</sup> March,2009	31 <sup>st</sup> March, 2009
1	Fixed assets	44,76,237	42,19,014
2	Investments	1,47,48,012	1,47,48,012
3	Current assets and loans and advances	7,10,49,650	5,77,00,054
	Total assets	(A)9,02,73,899	(B)7,66,67,080

The average of total assets  $\frac{A+B}{2} = 8,34,70,490$ "

2

The assessee contended that based upon the correct working, the total disallowance u/s 14A of the Act would work out to Rs. 5,17,831/- as under:-

1. Expenditure directly related to dividend income	Rs.4,44,091
2. Interest not directly attributable	
A*B/C	
A. Interest	25,13,455
B. Avg. value of investment	1,47,48,012
Opening bal.	1,47,48,012
Closing balance	1,47,48,012
C Avg. of total assets	8,34,70,490
Opening bal.	7,66,67,080
Closing Bal.	9,02,73,899
3. 0.5% of Av. Value of investments	<u>73,740</u>
Total (1+2+3)	<u>5,17,831</u>

The assessee company submitted that no interest is disallowable u/s 14A of the Act.

The learned CIT(A) observed that the assessee company has contended that the proportionate interest should Rs. 25,13,455/- as against Rs. 25,75,333/- taken by the AO, as the following three factors will have to be excluded since they are relating to the business and have no relation to the exempt income:-

(i)	Bank charges	Rs. 45,878/-
(ii)	Loan processing charges	Rs. 4,000/-
(iii)	Inspection charges	Rs. 12,000/-
		<u>Rs. 61,878/-</u>

Hence , the learned CIT(A) held that the amount of Rs. 61,878/- has to be excluded from the total interest payment of Rs. 25,75,333/- and interest will become Rs. 25,13,455/- on which the disallowance has to be worked out. The learned CIT(A) also observed that the A.O. has erred in taking the average of total assets on 1st and last day of previous year at Rs. 5,65,45,990/- whereas the correct figure is Rs. 8,34,70,490 which is as under:-

Sr No.		31 <sup>st</sup> March, 2009	31 <sup>st</sup> March, 2009
1	Fixed assets	44,76,237	42,19,014
2	Investments	1,47,48,012	1,47,48,012
3	Current assets and loans and advances	7,10,49,650/-	5,77,00,054
	Total assets	(C) 9,02,73,899	(D) 7,66,67,080

The average of total assets

$$\frac{A+B}{2} = 8,34,70,490$$

Hence as per learned CIT(A), the disallowance under this head comes to Rs. 4,44,091/- and not Rs. 6,71,684/- as done by the A.O. and disallowance of Rs.4,44,091/- was confirmed by learned CIT(A) vide appellate orders dated 27-08-2012. The other contention of the assessee company was with regard to 0.5% of the average value of investments, which was dismissed by the ld. CIT(A) because as per learned CIT(A) the AO has followed Rule 8D of Income Tax Rules, 1962 correctly and disallowance of Rs.73,741/- was confirmed by learned CIT(A) vide appellate orders dated 27-08-2012.

6. Aggrieved by the appellate orders dated 27-08-2012 of the learned CIT(A), the assessee company filed second appeal with the Tribunal.

7. The learned Counsel for the assessee company submitted that disallowance of 0.5% of average investment as contemplated u/s 14A of the Act read with Rule 8D(2)(iii) of Income Tax Rules, 1962 was voluntarily disallowed by the assessee company on its own in the computation of income filed with return of income filed with the Revenue. The learned counsel drew our attention to page 7 of paper book filed before the Tribunal which is computation of income whereby disallowance u/s 14A of the Act of Rs.73,740/- was made by the assessee company of its own while filing return of income with Revenue which has not been considered by the AO and the learned CIT(A). It is stated that the investments are very old and no fresh investments were made during the previous year. It is submitted that the net owned funds of the assessee company comprising of 'reserves and surplus' and 'share capital' are much more than the investments made by the assessee company in the shares yielding exempt income. The assessee company submitted that it has made investment of Rs. 1.47 crores as at 31-03-2009 which was also the opening balance as on 01-04-2008 as no new investments were made by the assessee company during the relevant previous year. The assessee company's own funds comes to Rs. 1.86 crores as on 31<sup>st</sup> March,

2009 and Rs. 1.91 crores as on 31<sup>st</sup> March, 2008. The assessee company relied upon the decision of Hon'ble Bombay High Court in the case of CIT v. Reliance Utilities and Power Ltd. (2009) 313 ITR 340(Bom HC) and in the case of HDFC Bank Ltd. v. DCIT (2014) 366 ITR 505(Bom HC) and decision of Hon'ble Bombay High Court in writ petition in HDFC Bank Limited v. DCIT(2016) 67 taxmann.com 42(Bom. HC) . The assessee company submitted that the it has made investment in the group companies which comes to Rs. 1,43,50,400/- which are unquoted shares out of total investments of Rs.1,47,48,012/-. All the investments are old investments. There is no change in the investments during the year. The investments to the tune of Rs.1.44 crores were made into the group companies as strategic investments. The assessee company further relied upon the decision in the case of J.M. Financial Ltd. v. CIT in ITA No. 4521/Mum/2012 and the decision of the Tribunal in the case of M/s Sylvex Cable Co. Pvt. Ltd. v. DCIT in ITA No. 8581/Mum/2011 for the assessment year 2008-09 dated 24<sup>th</sup> February, 2016.

6. The learned D.R. submitted that the learned CIT(A) has already given the relief to the assessee company. He further relied upon the order of the learned CIT(A).

7. We have considered the rival contention and also perused the material available on record including the case laws relied upon by the assessee company . We have observed that the assessee company has made investments of Rs. 1.47 crores in shares yielding exempt income which is same as in the preceding year as no fresh investment has been made during the year, while net owned funds of the assessee company comprising share capital and reserves are to the tune of Rs.1.86 crores as on 31-03-2009 and Rs.1.91 crores as on 31-03-2008 which are far in excess of the investments made by the assessee company of Rs.1.47 crores in shares yielding exempt

income. The assessee company has stated that the borrowed funds are utilized for project and none of the borrowed funds were used for the purposes of making investments in shares yielding exempt income which is also not controverted by the Revenue. In any case since there are net owned funds which are far in excess of investment in shares as set out above, presumption will apply as per decisions of Hon'ble Bombay High Court in the case of CIT v. Reliance Utilities and Power Ltd. (2009) 313 ITR 340(Bom HC) and in the case of HDFC Bank Ltd. v. DCIT (2014) 366 ITR 505(Bom HC) and decision of Hon'ble Bombay High Court in writ petition in HDFC Bank Limited v. DCIT(2016) 67 taxmann.com 42(Bom. HC) and hence no disallowance is warranted for interest paid by the assessee company under Section 14A of the Act read with Rule 8D(2)(ii) of Income Tax Rules, 1962 . Further, we have observed that the assessee company had made disallowance of Rs.73,740/- voluntarily of its own under Section 14A of the Act read with Rule 8D(2)(iii) of Income Tax Rules, 1962 and the learned CIT(A) confirmed the same amount in his appellate orders dated 27-08-2012 which has led to double disallowance of the same amount which is added twice to the income of the assessee company which is not permitted under the Act. Hence we order deletion of the additions made by the AO as sustained by learned CIT(A) u/s 14 A of the Act read with Rule 8D of Income Tax Rules, 1962. It is also not brought on record that the Revenue is in appeal against the appellate orders of the learned CIT(A) . We order accordingly

8. In the result, the appeal filed by the assessee company in ITA NO. 7383/Mum/2012 for the assessment year 2009-10 is allowed as indicated above.

Order pronounced in the open court on 14<sup>th</sup> June , 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 14-06-2016 को की गई ।

Sd/-  
(C.N.PRASAD)  
JUDICIAL MEMBER

sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 14-06-2016

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व.नि.स./ R.K., Ex. Sr. PS

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "G" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mumbai