

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : C : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI JOGINDER SINGH, JUDICIAL MEMBER

ITA No.1546/Del/2014
Assessment Year : 2008-09

Indiabulls Capital Services Ltd.,
F-60, Malhotra Building,
IInd Floor, Connaught Place,
New Delhi.

Vs. ACIT,
Range-11,
New Delhi.

PAN: AABCI3613B

(Appellant)

(Respondent)

Assessee By : Shri Rakesh Gupta &
Shri Somil Agarwal, Advocates &
Mrs. Pankaj Jain, CA
Department By : Shri Arun Kumar Yadav, Sr. DR

Date of Hearing : 01.08.2018
Date of Pronouncement : 02.08.2018

ORDER

PER R.S. SYAL, VP:

This appeal filed by the assessee arises out of the order passed by the
CIT (A) on 31.01.2014 in relation to the assessment year 2008-09.

2. The solitary grievance projected through various grounds is against the confirmation of disallowance amounting to Rs.9,12,39,472/- made by the Assessing Officer u/s 14A of the Income-tax Act, 1961 (hereinafter also called 'the Act') read with Rule 8D of the Income-tax Rules.

3. Briefly stated, the facts of the case are that the assessee is engaged in the business of financing, borrowing, lending, advancing money, dealing in debt instruments, investing, depository services and portfolio management services. The assessee received exempt dividend income of Rs.3,38,62,672/-. In the absence of any disallowance offered u/s 14A of the Act, the Assessing Officer required the assessee to show cause as to why disallowance be not made. The assessee tendered some explanation. Not satisfied with the assessee's point of view, the Assessing Officer invoked the provisions of Rule 8D and computed disallowance at Rs.9,12,39,472/- comprising of two parts, namely, disallowance of interest expenditure amounting to Rs.8,53,28,239/- under Rule 8D(2)(ii) and disallowance of other expenses under Rule 8D(2)(iii) @ $\frac{1}{2}\%$ of the average value of investments. The Id. CIT(A) echoed the disallowance, against which the assessee has come up in appeal before the Tribunal.

4. Having heard both the sides and perused the relevant material on record, it is found that the Assessing Officer invoked the provisions of Rule 8D for the purposes of computing disallowance u/s 14A of the Act. The Hon'ble Supreme Court in *CIT vs. Essar Teleholdings Ltd. (2018) 401 ITR 455 (SC)*, has held that Rule 8D is prospective and, hence, applicable from the assessment year 2008-09. Since the assessment year under consideration is the first year of the applicability of Rule 8D, it is held, in principle, that the provisions of Rule 8D were rightly invoked.

5. Coming to the calculation of disallowance, we first take up Rule 8D(2)(iii) as per which the Assessing Officer computed disallowance of Rs.59,11,233/- at 0.5% of the average value of investments. The Assessing Officer adopted the figure of Rs.1,18,22,566/- as the average value of investments. The Id. AR contended that the Assessing Officer rightly noticed that the exempt dividend income of Rs.3.38 crore and odd was earned in respect of six securities enumerated on page 2 of the assessment order. He submitted that for calculating the average value of Investments, the Assessing Officer wrongly considered the value of all the investments appearing in the balance sheet, including those in respect of which no

dividend income was earned during the year. This contention could not be factually controverted on behalf of the Revenue.

6. The Hon'ble Delhi High Court in *ACB India Ltd. vs. CIT (2015) 374 ITR 108 (Del)*, has held that the average value of investments, for the purposes of Rule 8D(2)(iii), should be confined to those securities in respect of which exempt income is earned and not the total investments. Similar view has been taken by the Special Bench of the Tribunal in the case of *ACIT vs. Vireet Investments (P) Ltd. (2017) 165 ITD 27 (Del) (SB)* holding that only those investments should be considered for computing average value of investments which yield exempt income during the year. In view of the afore referred binding precedents, we set aside the impugned order to this extent and remit the matter to the file of Assessing Officer for re-computing the disallowance under Rule 8D(2)(iii) by considering only such investments in calculating the average value of investments, which have yielded exempt income during the year.

7. Now, we espouse the first component of disallowance, being, interest expenditure amounting to Rs.8,53,28,239/- under Rule 8D(2)(ii). In this

regard, it is seen that the Assessing Officer took the amount of interest expenditure at Rs.9,51,01,095 for calculating disallowance, which is the same figure as was claimed by the assessee in its Profit & Loss Account and, thereafter, calculated proportionate amount of disallowance at Rs.8.53 crore and odd. The ld. CIT(A) noticed that the assessee during the year purchased 4,22,684/- shares of Bajaj Holding and Investment Ltd.; 33 lac shares of Ambuja Cement Ltd.; 255000 shares of ICRA Ltd.; 1168891 shares of NITCO Tiles Ltd.; and 936900 shares of Reliance Liquidity Funds. It was, thus, observed that the assessee made investment during the year in shares/mutual funds to the tune of Rs.291.12 crore as against the share capital of only Rs.5 crore with opening balance of secured loans at Rs.124.49 crore. This was seen in contrast to the investments of Rs.111,30,09,245/- in the shares as on 31.03.2007 with corresponding figure of loans and advances at Rs.5,26,64,161/-. It was, thus, opined that the opening stock of shares was acquired through the borrowed funds and further investments in new shares of Rs.291.12 crore made during the year were also out of borrowed interest bearing funds. This was countered by the ld. AR contending that interest of Rs.9.51 crore was paid in respect of

borrowed funds which were not utilized for the purposes of investments in the current as well as the preceding year. It was further submitted that though the assessee made fresh investment of Rs.291.12 crore during the year, at the same time, it also sold investments of Rs.344.87 crore during the relevant period. The Id. DR strongly supported the impugned order on this score by putting forth that interest paid by the assessee during the year was in respect of interest bearing funds utilized for the purposes of investment in such securities and hence the disallowance of interest as per rule 8D(2)(ii) was rightly made and confirmed.

8. We find that though the Id. CIT(A) has discussed the fresh investments made during the year at Rs.291.12 crore, but, he did not consider the amount of realizations from sale of investments at Rs.344.87 crore during the year. The Assessing Officer simply went by the figure of interest given in the Profit & Loss Account and apportioned it to the amount of investments for the purpose of making disallowance. In our considered opinion, the approach adopted by the authorities below cannot be countenanced. The onus is on the Assessing Officer to demonstrate that the funds deployed for making investments in shares etc. were from interest

bearing funds. In view of the fact that all the material facts were not considered by the authorities below in making the disallowance of interest, we deem it appropriate to send the matter back to the AO for considering all such aspects before making disallowance of interest under rule 8D(2)(ii). As such, we set aside the impugned order to this extent and restore this issue to the file of Assessing Officer for a *de novo* adjudication after properly finding out the source of funds utilized for making investments in the securities.

9. The ld. AR submitted that in the order of assessment for the A.Y. 2007-08, the Assessing Officer added a sum of Rs.5 lac u/s 14A towards salary costs and administration expenses u/s 14A on agreed basis. It was, therefore, submitted that no disallowance of interest should be made in respect of the securities purchased during the preceding years. He relied on the judgment of the Hon'ble Karnataka High Court in *CIT vs. Sridev Enterprises (1991) 192 ITR 165 (Kar.)* and certain other decisions canvassing the proposition that if the assessee's claim in the previous assessment years regarding interest on borrowed capital has been accepted, the Revenue cannot make disallowance of interest in the succeeding years

on the opening balance of such investments. He further relied on the judgment of the Hon'ble Bombay High Court in the case of *HDFC Bank Ltd. vs. DCIT (2016) 383 ITR 529 (Bom)* for the proposition that the parameters for allowing interest u/s 36(1)(iii) apply in respect of disallowance to be made u/s 14A as well.

10. We are not convinced with the proposition tendered by the Id. AR to the effect that no disallowance of interest can be made u/s 14A in respect of the opening balance of investments even if those are found to have been financed out of interest bearing borrowed funds. *Sridev Enterprises (supra)* and other decisions hold that once the claim of the assessee for allowing interest in the previous assessment year has been accepted, then, no disallowance can be made in the succeeding year. Adverting to the facts of the instant case, we find that the assessment year under consideration is 2008-09. It is from this year onwards that the mandate of Rule 8D has come into force. All the Hon'ble High Courts are unanimous that the disallowance u/s 14A is to be made only on 'reasonable basis' up to assessment year 2007-08. Such a disallowance has to be made in a holistic manner *de hors* any reference to individual items of expenses, including

interest, as is the position under rule rule 8D applicable from the year under consideration. Thus, it is graphically clear that the question of specific disallowance of interest u/s 14A read with rule 8D is and could have occurred for the first time in the year in question and there can be no presumption that the AO accepted in the preceding year that no interest bearing funds were utilized by the assessee in making the investments in respect of opening balance of investments, so as to disable him from making disallowance of interest under rule 8D, even if it is proved that interest bearing funds were utilized for the purpose. Ergo, this contention of the Id. AR is jettisoned. It is, therefore, directed that the Assessing Officer will examine the question of disallowance of interest under Rule 8D(2)(ii) in the above hue and compute the same after allowing opportunity of being heard to the assessee.

11. It is noticed that the assessee earned exempt dividend income of Rs.3,38,62,672/-. The Hon'ble jurisdictional High Court in *Cheminvest Ltd. vs. CIT* (2015) 378 ITR 33 (Del) and *CIT vs. Holcim India P. Ltd.* (2014) 90CCH 081-Del-HC has held that if there is no exempt income, there can be no question of making any disallowance u/s 14A. A fortiori, the

disallowance u/s 14A of the Act has to be restricted to the amount of exempt income. As such, we direct that the disallowance computed by the Assessing Officer in the fresh proceedings should not cross the amount of exempt dividend income of Rs.3,38,62,672/-.

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

The order pronounced in the open court on 02.08.2018.

Sd/-

[JOGINDER SINGH]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Dated, 02nd August, 2018.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.