

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI

BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos. 3055, 3056, 3057 & 3058/Mum/2019
(A.Ys: 2010-11, 2011-12, 2013-14 & 2014-15)

DCIT 12(2)(2) Aayakar Bhavan, MK Road, Churchgate - 400020.	Vs.	M/s. India Infoline Finance Ltd., 8 th Floor, Hubtown, Salaris, Andheri, Mumbai - 400093
PAN/GIR No. : AABC12915C		
Appellant	..	Respondent

Appellant by :	Ms. Shreekala Pardeshi, DR
Respondent by :	None

Date of Hearing	02.06.2021
Date of Pronouncement	04.06.2021

आदेश / O R D E R

PER BENCH:

These four appeals are filed by the Revenue against the separate orders of the Commissioner of Income Tax (Appeals) -20 Mumbai, passed u/s. 143(3) r.w.s 254 and 250 of the Income Tax Act, 1961 for the A.Y 2010-11 & 2011-12 and against the order of CIT(A)-20 passed u/s 143(3) and 250 of the Act for the A.Y 2013-14 & 2014-15.

Since the issues involved in all these four appeals are similar and identical, hence they are clubbed, heard and consolidated order is passed.

For the sake of convenience, we shall take up ITA No. 3055/Mum/2019 A.Y 2010-11 as lead case and facts narrated therein. The revenue has raised the following grounds of appeal.

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in allowing relief of Rs. 1,64,77,989/- by concluding that where the funds of the company were sufficiently more than the investment made in a year, the provisions of Sec. 14A read with rule 8D(2)(ii) of the Act are inapplicable without analyzing the decision of Apex Court in the case of M/s Maxopp Investment Ltd Vs. CIT, New Delhi in Civil Appeal No. 104-109 of 2015?

2. The brief facts of the case are that the assessee company is engaged in the business of lending and investment activities and filed the return of income for the A.Y 2010-11 on 25.09.2010 with total income of Rs. 57,07,47,290/- and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act was issued and assessment was completed under 143(3) of the Act and determined the total income of Rs. 62,86,99,000/- on 11.03.2013 with a disallowance u/s 14A of the Act amounting to Rs. 5,76,76,010/-. The A.O

found that in this year the assessee has received dividend income of Rs. 11,84,62,251/- and claimed exempt and hence made disallowance u/s 14A of the Act. Against the order of the AO, the assessee has filed an appeal with CIT(A), whereas the CIT(A) has confirmed the disallowance u/s 14A of the Act. Against the CIT(A) order, the assessee has filed an appeal with the Tribunal. The Hon'ble Tribunal has set aside the issue of disallowance u/s 14A of the Act to the file of the A.O by order dated 25.07.2014 relying on the judicial decisions and issued directions.

As per the directions of the ITAT, the A.O has issued notice u/s 142(1) of the Act. In compliance, the assessee has submitted the details and contended that no disallowance u/s 14A of the Act is warranted. The assessee has filed the explanations referred at Para -7 to 10 of the order as under:

“7. The assessee submits that it has minimal activities relating to exempt income. It is neither an investor nor a trader in shares. It has made investments in the subsidiary companies to retain management and control of such companies and not to earn income. The said investments were made out of proprietary funds and not out of borrowed funds. In this regard, the assessee has relied on the decision of the ITAT Mumbai in the case of Garware Wall Ropes Limited V Additional CIT(ITA No 5408/Mum/2012 and ITA NO.4957/Mum/2012). To this effect, the ITAT has also directed the undersigned to reconsider the issue in light of such decision, As such, during the computation of

disallowance under rule 8D, the investment in subsidiaries is not being considered.

8. On the issue of borrowings being short-term, the assessee has submitted that the monies have been borrowed through commercial paper of short-term nature and through debentures, and such short term borrowings cannot be used for making long-term investments.

8.1 This plea of the assessee cannot be accepted. The assessee might have obtained short-term borrowings, but not all of the tax-free investments of the assessee are long-term investments. The break-up of tax-free investments of the assessee is as follows:

<i>Long Term investments</i>	<i>- 224,70,55,000</i>
<i>Current Investments</i>	<i>- 93,46,93,400/-</i>

8.2 Thus, roughly 29% of the investments of the assessee are in the form of current, short-term in nature. Further, since the investments in subsidiaries, which were the only long-term investments made by the assessee, are now being excluded from the computation, this plea of the assessee becomes academic in nature.

9. The assessee also submits that it has not incurred any expense in order to earn exempt income in the form of dividend. It has invested short term surplus funds in liquid schemes of mutual funds. Since the investments in mutual funds were made on short term basis in liquid mutual funds, no expense has been incurred for making such investments. All investments in such mutual funds have been made out of own funds only and borrowed funds have not been used to make any such investments.

10. It is worthwhile here to refer to section 14A(3) of the Act which calls for the application of rule 8D even in relation to a case where an assessee claims that no expenditure has been

incurred by him in relation to exempt income. As discussed in the foregoing paragraphs also, the investments into subsidiaries as well as mutual funds would require some expenses, the quantification of which would be done as per rule 8D, In fact, the ITAT Mumbai has also noted in its order the fact that expenses could be attributed for earning dividend income (para 5 of such order)

3. Whereas, the A.O has considered the facts referred at para 11.2 and calculated disallowance u/r 8D(ii) of the IT Rules of Rs. 1,64,77,689/- and under Rule 8D(iii) of Rs. 82,89,921/- and total aggregate disallowance u/s 14A r.w.r 8D worked out to Rs.2,47,67,610/- and assessed the total income of Rs. 59,57,70,604/- and passed the order u/s 143(3) r.w.s 254 of the Act on 11.09.2013.

4. by the order, the assessee has filed an appeal before the CIT(A). The Ld. CIT(A) has considered the grounds of appeal, facts of the case, findings of the A.O and submissions of the assessee and has dealt exclusively on the disallowance u/s 14A r.w.r 8D(2) and relied on the decisions of the Hon'ble High Court and Honble Tribunal. The CIT(A) has observed that the assessee company has made the investments out of its own funds not borrowed funds, whereas the borrowed funds are utilized for the purpose of business and the investments has been made to control the management of subsidiaries. The long term borrowings and short term borrowing cannot be used for

long term investments and therefore no disallowance u/s 14A r.w.r 8D(2)(ii) is warranted. Whereas the Ld. AR submitted that the assessee has sufficient interest free funds and the reserves and surplus and share capital is Rs. 1,231.5 crores and the interest free funds were used for investments. Further, the interest free funds available to the assessee are more than the investments made during the year and relied on the judicial decisions. The CIT(A) has dealt on the financial aspects and considered the facts that the assessee company investments are out of the interest free funds and therefore disallowance u/s 14A r.w.r 8D(2)(ii) is not sustainable and directed the A.O to delete the addition. Whereas, in respect of disallowance u/s 14A r.w.r 8D(2)(iii) the CIT(A) has upheld the action of the A.O and partly allowed the appeal of the assessee. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Honble Tribunal.

5. At the time of hearing, Ld.DR submitted that the CIT(A) has erred in directing the A.O to delete the addition as the exempt income is received by the assessee from investments and relied on the order of the A.O. None appeared on behalf of the assessee.

4. We heard the Ld.DR and perused the material on record. Prima-facie, the sole disputed issue envisaged by

the Ld.DR that the CIT(A) has erred in directing the A.O to delete the addition u/s 14A r.w.r 8D(2)(ii) of the IT rules. We find that the CIT(A) has relied on the facts and the financial statements and the submissions of the assessee, Whereas the assessee has made investments out of the surplus funds and no borrowed funds are utilized for investments and such investments have been made in subsidiaries to have control on the management of the subsidiaries and not to earn any income. Further, the borrowed funds were utilized only for the purpose of normal course of business. We find that the CIT(A) considered the facts, provisions of law, judicial decisions and financial statements and also the investments are made out of the interest free funds. We considered it appropriate to refer to the observations of the CIT(A) at page 6 to 7 para 4.4 to 4.4.3 of the order which is read as under:

4.4 Decision on ground Nos. 1 to 4:

4.4.1 I have considered the submissions of the appellant. In its order the Hon'ble ITAT had directed the AO to examine whether any part of the fund borrowed had been used for making investment income from which does not or shall not form part of appellant's total income. The Hon'ble ITAT also observed that prima facie, the appellant had sufficient funds of its own for making the investments. In its order, the Hon'ble ITAT had mentioned the facts and aspects to be considered by the AO while deciding the issue. The Hon'ble ITAT also

directed the AO to decide the issue in light of the decision of ITAT, Mumbai In the case of Garware Wall Ropes Ltd., (supra). Barring that, the Hon'ble ITAT did not give any direction as to how the disallowance under Rule 8D(2) was to be computed.

4.4.2 I have examined the appellant's claim that it had sufficient interest free fund of its own with reference to appellant's balance sheets and found that the claim is correct. The Hon'ble Bombay High Court in the case of Reliance Utilities & Power Ltd. (Supra) held as under:

"The principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments."

4.4.3 I find that in the impugned order the AO did not rebut the presumption with any specific finding. The AO argued that since roughly 29% of appellant's investments were short-term investments, those investments could have been out of short-term borrowings. The AO, however, did not rebut the presumption that the investments relatable to the exempt income were out of appellant's interest free funds with any specific finding. I, therefore, hold that the disallowance made by invoking the provisions of section 14A r.w.r 8D(2)(ii) is not sustainable. Therefore, I direct the AO to delete the addition of Rs. 1,64,77,689/- on this count. In the result, grounds No. 1 to 4 are allowed.

5. On perusal of the CIT(A) order, we find that the assessee could not substantiate before the lower authorities on the surplus funds including reserves and surplus and in this assessment year, the assessee has reserves & share capital to the extent of Rs. 1,231.5 crores, whereas the

investments are much less than the available surplus balances. The CIT(A) has relied on the Hon'ble Jurisdictional High Court decision in the case of Reliance Utilities and Power Ltd. (313 ITR 340) and HDFC Bank Ltd (383 ITR 529) and Honble Tribunal decisions. Further, the revenue has filed the SLP before the Honble Supreme Court in the case of Reliance utilities and Power Ltd. And it was dismissed. We find that the assessee has sufficient funds for making investments and the A.O has not doubted the availability of the funds but made disallowance invoking the provisions of Sec.14A r.w.r 8D(2)(ii).The Ld. DR could not substantiate or controvert the findings of the CIT(A) with any new cogent material or information but relied only on the order of the A.O. Accordingly, we do not find any merits in the submissions of the revenue and the CIT(A) considered the facts and relied on the judicial decisions and has passed a reasoned order. Accordingly, we uphold the order of the CIT(A) on this ground and dismiss the grounds of appeal of the revenue.

ITA.No..3056&3057&3058/Mum/2019,A.Y2011-12,/2013-14/2014-15.

6. As the facts and circumstances in these appeals are identical to ITA No3055/Mum/2019 for the A.Y.2010-11.the decision rendered in above paragraphs would apply mutatis mutandis for these three appeals also. Accordingly, grounds of appeal of the revenue are dismissed

7. In the result, all the four appeals filed by the revenue are dismissed.

Order pronounced in the open court on 04.06.2021

Sd/-

(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 04.06.2021

KRK, PS

M/s. India Infoline Investment Services Limited, Mumbai
ITA no3055/ 3056/3057/3058/M/2019.

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai