IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA

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

I.T.A. No. 171/KOL/ 2012
Assessment Year : 2008-2009

Hindustan Motors Limited,.....Appellant
9/1, R.N. Mukherjee Road, 10th Floor,
Kolkata-700 001
[PAN : AAACH 7328 B]

-Vs.-

Deputy Commissioner of Income Tax,.....Respondent
Circle-6, Kolkata,
P-7, Chowringhee Square,
Kolkata-700 069

Appearances by:
Shri R.N. Bajoria, Sr. Advocate, for the assessee
Shri Kalyan Nath, JCIT, for the Department

Date of concluding the hearing : November 17, 2015
Date of pronouncing the order : November 20, 2015

O R D E R

Per Shri P.M. Jagtap:-

This appeal is preferred by the assessee against the order of ld. Commissioner of Income Tax (Appeals)-VI, Kolkata dated 24.11.2011 for the assessment year 2008-09.

2. The issue involved in Ground No. 1 relates to the addition of Rs.2,11,27,261/- made by the Assessing Officer and confirmed by the ld. CIT(Appeals) on account of disallowance 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 manufacturing and sale of cars, etc. The return of income for the year under consideration was filed by it on 27.09.2008 declaring

total income of Rs.50,97,10,615/-. In the said return, dividend income of Rs.1,59,83,440/- received on shares was claimed to be exempt by the assessee. The disallowance on account of expenditure incurred in relation to the earning of the said exempt income was also offered by the assessee under section 14A of the Act read with Rule 6D to the extent of Rs.36,51,843/-. According to the Assessing Officer, the computation of the said disallowance as worked out by the assessee was not in accordance with the relevant provisions of the Income Tax Act. He noted that expenditure incurred on interest amounting to Rs.14,40,52,291/- was claimed as deduction by the assessee, but the same was not considered for the purpose of computing the disallowance to be made under section 14A read with Rule 8D. He accordingly recomputed the disallowance under section 14A read with Rule 8D at Rs.2,47,79,104/- taking into consideration the amount of deduction claimed by the assessee on account of interest also and made a further disallowance of Rs.2,11,27,261/- under section 14A read with Rule 8D.

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 ld. CIT(Appeals) and the following submissions, *inter alia,* were made by the assessee before the ld. CIT(Appeals) in support of its stand that there was no interest expenditure, which was required to be allocated under Rule 8D(ii) of the Income Tax Rules for the purpose of computing disallowance under section 14A of the Act :-

> *"The appellant also produced copies of bank accounts and submitted that from the details of interest paid and claimed in the return, it will be clear that the entire borrowings were for the purpose of business and no part of borrowings on which interest was paid was used for making investments.*
>
> *Capital and reserves of the appellant during the were Rs.174.49 crores. The total income as computed by the AO in the assessment order is Rs.53.35 crores. The total investments held by the appellant on the opening date were Rs.70.61 crores. The appellant has invested Rs.1.18 crores during the year. The opening investment of Rs.70.61*

crores was made by the appellant in several earlier years out of its own funds and not out of any borrowings. The appellant filed evidence before the AO in support of its contention that no part of the interest paid during the year on the borrowings related to investment made during the year.

In the income-tax assessments of the appellant for earlier years (assessment years 2006-07 and 2007-08), the AO himself has accepted similar contention of the appellant that interest expenses paid on borrowings for business should not be allocated against exempt dividend income. There is no change in the facts of the case during the year".

5. The ld. CIT(Appeals) did not find merit in the submissions made by the asseessee and rejected the same for the following reasons given in paragraphs no. 5, 6 & 7 of his impugned order:-

"5. I have carefully considered the observations of the Assessing Officer and submissions of the assessee. The assessee company is a leading manufacture of cars and has invested Rs. 71.79 crores on which it has earned dividend. The assessee has loans of Rs. 189.23 crores as on 1.4.2007 and Rs.112.32 crores as on 31.3.2008 as per the statement of accounts. The assessee has its own assets as per audited accounts amounting to Rs. 174.49 cores as on 31.3.2008. The assessee has submitted that all the loans are for specific purposes. None of the loan money has been utilised for the investments. There is no separate account maintained by the assessee for investments. The funds are used from the common kitty. There is no immediate correlation between the: funds taken for loan and investments in the shares. However, there is otherwise also no direct relation between the investment and the capital being raised out of which the money is invested. It is a mixed account out' of which the funds are being taken out for business and investments. Every time the money is taken out from the bank is only because there is a credit balance in the name of the assessee. But still there may be over draft facility used from the same or other banks and loans outstanding in the name of the assessee.

6. The loans may have been taken for purchase of machinery but out of the use of the machinery the manufacturing process is carried out and the manufactured goods are sold. The said sale price on receiving may be going for investment. Therefore, it can. b.e said that there is no relation between the loans taken by the assessee and the investments made by the assessee but it cannot also be established that loan funds never move out of business & in all forms are used exclusively for business. Further it is seen that there are carried forward business losses

of Rs. 138.69 crores on 31.3.2008. The total business loans and investments amounts to Rs.210.48 crores, while the capital reserve is only Rs.74.49 crores leaving thereby a deficit of Rs. 35.99 crores. The assessee has said during the appellate proceedings that the book loss has been counted by him and only thereafter figure of Capital and Reserve & Surplus have been arrived at. The plea of the assessee is not acceptable since the Income Tax Act provides depreciation on real use basis and the market value of the asset normally is same office such use. While in the Companies Act, 1956 the depreciation is provided at fixed rate irrespective of the year of purchase. Therefore, the business loss as per income tax is real loss to look into the capital of the assessee and to compute income of the assessee or real assets value as per Income Tax Act, 1961.The assessee has relied upon various case laws but the case laws cited by the assessee are prior to assessment year 2008-09 and Rule 8D of I.T. Rules 1962 has become applicable from AY. 2008-09.

7. There is no presumption provided in the Act that if the assessee has interest free loans and interest bearing loans and is earning exempt and taxable income then it should be presumed that the exempt income is out of the this own funds. Rule 8D(2)(b) of I.T. Rules 1962 Provides any expenditure by way of interest which is not directly attributable to any particular income or receipt then the interest has to be calculated as per formula provided therein. Now, the law has provided a specific method of calculation of interest expenditure on exempted income from AY. 2008-09 and it is applicable directly in the case of the assessee. In this case, it can not be said that the loans have been taken for specific purposes and that money is entirely being used throughout the period for the said specific purpose only. Whenever there is any receipt out of the said loan amount in the form of sales then it can be said that the same is again utilized only for manufacturing/ business purposes or the business purpose out of which income earned is taxable. The assessee cannot also say that any sale of investment is to be routed only for investment and does not part take character of business expenditure/payment. It is a criss cross transaction between the capital, investments, loans and business expenditure. In absence of any presumption in favour of the assessee and specific rule i.e. Rule 8D(2)(iii) being applicable from assessment year 2008-09 the expenditure by way of interest has to be calculated as per the specific provision provided in Rule 8D".

6. For the reasons given above and relying on the decision of the Hon'ble Calcutta High Court in the case of ISG Traders Ltd. –vs.- CIT (ITA No. 264 of 2003) and in the case of Dhanuka & Sons –vs.- CIT [12

Taxman.com.227), he confirmed the disallowance made by the Assessing Officer under section 14A of the Act read with Rule 8D.

7. The ld. Counsel for the assessee while challenging the disallowance made by the Assessing Officer and confirmed by the ld. CIT(Appeals) on account of interest under section 14A read with Rule 8D has mainly raised two-fold contentions. Firstly he has invited our attention to the assessment order passed by the Assessing Officer under section 143(3) in assessee's case for assessment year 2006-07 (copy placed at pages no. 60 to 66 of the paper book) to point out that the entire interest expenditure claimed by the assessee in that year was allowed by the Assessing Officer after recording a finding that no interest expenses was found to have been incurred by the assessee for the purpose of making investment. He also pointed out from the assessment order passed by the Assessing Officer under section 143(3) for assessment year 2007-08 that no disallowance on account of interest was made by the Assessing Officer under section 14A even in the assessment year 2007-08 thereby accepting that there was no interest expenditure incurred by the assessee for purchase of shares. He contended that since the investment made by the assessee-company in the shares in the earlier years has continued even in the year under consideration and there is no fresh investment made in the purchase of shares during the year under consideration, there is no case to make disallowance on account of interest under section 14A in view of the finding already recorded by the Assessing Officer in the assessments completed for the earlier years, i.e. A.Ys. 2006-07 and 2007-08 that interest bearing borrowed funds were not utilized by the assessee for making investment in shares. He also invited our attention to the written submissions filed before the Assessing Officer as well as before the ld. CIT(Appeals) to point out that it was specifically contended on behalf of the assessee before the authorities below that the investment in shares was made entirely out of its own funds and the borrowed funds were fully utilized for the purpose of business and not for making any investment in shares.

8. The second contention raised by the ld. Counsel for the assessee was that the disallowance of Rs.36,51,843/ was offered by the assessee under section 14A on account of expenses incurred in relation to the exempt income as worked out by applying Rule 8D and the disallowance as worked out by the assessee was not accepted by the Assessing Officer and the same was further enhanced without recording any reason for having not satisfied with the correctness of the claim of the assessee in respect of such expenditure having regard to the accounts of the asseessee. Relying *inter alia* on the decision of the Coordinate Bench of this Tribunal in the case of REI Agro Limited –vs.- DCIT reported in 144 ITD 141, as affirmed by the Hon'ble Calcutta High Court in ITAT No. 161 of 2013 dated 23.12.2013, he contended that in the absence of such satisfaction recorded by the Assessing Officer, no further disallowance under section 14A could be made by him.

9. Ld. D.R., on the other hand, strongly supported the impugned order of the ld. CIT(Appeals) confirming the disallowance made by the Assessing Officer under section 14A read with Rule 8D. He contended that Rule 8D is made applicable from assessment year 2008-09 and, therefore, the assessment made by the Assessing Officer in assessee's own case for A.Ys. 2006-07 and 2007-08 making no disallowance under section 14A on account of interest has no relevance to decide the issue relating to disallowance under section 14A in the year under consideration where Rule 8D is now made applicable.

10. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the investment in shares on which the exempt dividend income is earned by the assessee during the year under consideration was actually made in the earlier years and in the assessment completed for assessment year 2006-07 under section 143(3), no disallowance on account of interest was made by the Assessing Officer under section 14A after recording a finding that

the borrowed funds were entirely utilized by the assessee for the purpose of business and the same were not used for making any investment in shares. Even in the assessment completed for A.Y. 2007-08 under section 143(3), no disallowance under section 14A on account of interest was made by the Assessing Officer thereby accepting that the investment in shares was made by the assessee out of its own funds and there was no utilization of interest bearing borrowed funds for making such investment. As pointed out by the ld. Counsel for the assesese from the relevant documentary evidence, the investment made in shares by the assessee-company in the earlier years has continued substantially in the year under consideration and there being no fresh investment made by the assessee in shares, it follows that investment in shares is entirely made by the assessee out of its own funds and there was no utilization of borrowed funds for making such investment as found by the Assessing Officer himself while completing the assessments for the earlier years. In this regard, ld. D.R. has contended that Rule 8D having been made applicable for the year under consideration for the first time, the issue has to be looked into from different angle and the view taken by the Assessing Officer in the earlier years has no relevance. We are unable to accept this contention of the ld. D.R. Once it is found that the investment in shares is made by the assessee out of its own funds and there is no utilization of borrowed funds for making such investment, we are of the view that no disallowance on account of interest under section 14A can be made even by applying Rule 8D as the said Rule 8D will have application only in such cases where there is any nexus between the interest bearing borrowed funds and investment made in shares. Even a perusal of the balance-sheet of the assessee-company as on 31.03.2008 shows that sufficient own funds to the extent of about Rs.132 crores were available with the assessee-company at the relevant time and the same being more than the investment of about Rs.72 crores made in shares, we are of the view that there was no case for making disallowance on account of interest under section 14A even by applying Rule 8D as the assessee had sufficient own fund to make investment in shares and the

interest bearing borrowed funds were not utilized for making such investment.

11. It is also observed that in the computation of total income, disallowance of Rs.2,47,79,104/- was offered by the assessee under section 14A in relation to the expenditure incurred in relation to earning of exempt income and there was no reason given by the Assessing Officer, having regard to the accounts of the assessee, to show his dissatisfaction with the correctness of quantum of expenditure disallowed by the assessee under section 14A. In the case of REI Agro Limited (supra) cited by the ld. Counsel for the assessee, it was held by the Coordinate Bench of this Tribunal that where the assessee makes a claim that only a particular amount is to be disallowed under section 14A and if the Assessing Officer proposes to invoke section 14A, he has to record the satisfaction as to how the claim of the assessee is not correct having regard to the accounts of the assessee. It was held that if there is no such satisfaction recorded by the Assessing Officer, no disallowance could be made by him by invoking the provisions of section 14A. Keeping in view this decision of the Coordinate Bench of this Tribunal in the case of REI Agro Limited, which has been affirmed by the Hon'ble Calcutta High Court, we hold that in the absence of requisite satisfaction recorded by the Assessing Officer showing how the disallowance offered by the assessee under section 14A was not correct having regard to its books of account, it was not permissible to the Assessing Officer in law to invoke section 14A and make a further disallowance. As such, considering all the facts of the case, we are of the view that the disallowance made by the Assessing Officer and confirmed by the ld. CIT(Appeals) under section 14A read with Rule 8D is not sustainable either in law or on the facts of the case and deleting the same, we allow Ground No. 1 of the assessee's appeal.

12. As regards the issue raised in Ground No. 2 relating to the addition to be made on account of disallowance made towards interest under section 14A while computing book profits of the assessee-Company under

section 115JB of the Act, we find that this issue no more survives for consideration independently on merit as a result of deletion by us of the disallowance made by the Assessing Officer and confirmed by the ld. CIT(Appeals) on account of interest under section 14A while deciding Ground No. 1 involved in this appeal of the assessee. Consequently this ground is treated as allowed.

13. As regards the issue involved in Ground No. 3 relating to the assessee's claim for allowing MAT credit against tax before levy of surcharge and education cess, the ld. Counsel for the assessee at the time of hearing before us has relied, *inter alia*, on the decision of the Hon'ble Allahabad High Court in the case of CIT –vs.- Vacment India reported in 369 ITR 304, wherein it was held by relying on the entries made in relevant form ITR-6 providing the method of computation of tax liability that the 'tax payable' is to be arrived at after deducting credit on account of minimum alternate tax from 'gross tax payable' and on this amount of 'tax payable', surcharge and cess are to be computed. However, as held by the Hon'ble Supreme Court in the case of CIT –vs.- Tulsyan NEC Limited reported in 330 ITR 226 in the context of calculation of interest under section 234A, 234B and 234C, it is immaterial that relevant form prescribed under the Income Tax Rules provided for set off of the MAT credit balance against the amount of tax plus interest. It was held that this method of working given in the relevant form was directly contrary to a plain reading of section 115JAA(4) and a form prescribed under the Rules, in any case, can never have any effect on the interpretation or operation of the parent statute. It is also interesting to note that in the relevant working as given on page no. 235 of the report and approved by the Hon'ble Supreme Court, the set off of MAT credit was allowed only after levy of surcharge on the tax payable. In our opinion, the issue involved in Ground No. 3 of the assessee's appeal thus is squarely covered against the assessee by the decision of the Hon'ble Supreme Court in the case of CIT –vs. – Tulsyan NEC Limited (supra), and respectfully following the same, we uphold the impugned order of the ld. CIT(Appeals)

holding that MAT credit has to be allowed after calculation of tax plus surcharge and education cess. Ground no. 3 is accordingly dismissed.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on November 20, 2015.

Sd/-	**Sd/-**
(S.S. Viswanethra Ravi)	**(P.M. Jagtap)**
Judicial Member	**Accountant Member**

Kolkata, the 20th day of November, 2015

Copies to : *(1)* ***Hindustan Motors Limited,***
9/1, R.N. Mukherjee Road, 10th Floor,
Kolkata-700 001

(2) ***Deputy Commissioner of Income Tax,***
Circle-6, Kolkata,
P-7, Chowringhee Square,
Kolkata-700 069

(3) *Commissioner of Income-tax (Appeals)-VI, Kolkata*
(4) *Commissioner of Income Tax, Kolkata*
(5) *The Departmental Representative*
(6) *Guard File*

By order

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

Laha/Sr. P.S.