

**FINAL - IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI T.S. KAPOOR, ACCOUNTANT MEMBER
&
SMT. BEENA PILLAI, JUDICIAL MEMBER**

**I.T.A .No. 1333/Del/2012
(ASSESSMENT YEAR-2008-09)**

DCM Engineering Ltd., 6 th Floor, Vikrant Tower, Rajendra Place, New Delhi. AABCD2472M	vs	ACIT, Circle 10(1), New Delhi.
Appellant by	Sh. V.P. Gupta, Adv.	
Respondent by	Md. Mohsin Alam, CIT DR	

Date of Hearing	28.08.2015
Date of Pronouncement	01.09.2015

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER:

This is an appeal filed by the assessee against the order of Id. CIT(A)-XIII, New Delhi dated 01.02.2012 for A.Y. 2008-09 on the following grounds:

1. *“That the CIT(A) erred in upholding the disallowance of Rs. 26,40,830/- made by Assessing Officer u/s 14A of the Income Tax Act read with Rule 8D of Income Tax Rules in the facts and circumstances of the case without appreciating that no expenditure was incurred in earning of exempt income. He failed to appreciate that expenditure of Rs. 2 lacs offered by the appellant was reasonable and no further disallowance was called for.*

2. That the CIT(A) also erred in making wrong observations that no evidence was produced to the effect that shares were acquired out of own funds and profits of the appellant ignoring the details/documents submitted before him.
3. The appellant company craves leave to alter, amend, vary and/or add any of the grounds of appeal at any time hereinafter.”

2. Brief facts of the case are that the appellant company is engaged in the business of manufacturing and trading of grey iron casting, patterns, jigs and fixtures. The assessee had filed its return of income on 27.09.2008, declaring a total income of Rs.17,02,26,730/-. The return was processed u/s143(1). Assessee's case was selected for scrutiny and notice u/s.143(2) was issued. During the year under consideration the assessee had claimed exempt income of Rs.9,01,250/-, being dividend received the shares of SRF Ltd., during the year. The assessee offered Rs.2,00,000/- u/s.14A, during the course of the assessment proceedings on the ground that the amount represents 50% of salary of the concerned executive, who looks after the activities relating to investments. The assessee submitted before Id. A.O that since there was no activity during the year and dividend was received only from one company, the disallowance to the extent of Rs.2 lacs was justified. In the assessment order passed an amount of Rs. 26,40,830/- was added on account of expenditure related to earning exempt income.

Clause	Particulars			Amount
i.	Expenditure directly related to exempt income			
ii.	Disallowance of interest expenditure	409.04		
	A. Interest expenditure incurred during the year	<u>670.24+670.24</u>	<u>409.045</u>	
	B. Average Value of	2	<u>670.24</u>	
			<u>11890.24</u>	

	Investment C. Average of total assets Disallowance = A*B/C	$\frac{12406.6+11373.88}{2}$		28,0671
iii	Aggregate of Opening & Closing value of Investment (Average Value of Investment) ½% of above as per Rule 8D	670.24 X 0.5%		3.3512
	Total disallowance [Aggregate of (i), (ii) & (iii)]			26,4083

3. Aggrieved by the assessment order, the assessee preferred appeal before the Ld. CIT(A). The Ld. CIT(A) after going through the submissions confirmed the actions of the Ld. A.O.

Aggrieved by the Order of Ld. CIT(A), the assessee is in appeal before us now.

4. We have verified the above submissions by both the parties and perused the Statement of accounts submitted by the assessee in paper book. It is seen from the order of the Ld. CIT(A) that the appellant has made investments in the following companies:

S.No.	Particulars	Amount
i	SRF Equity Shares of Rs. 10 each	503.74
ii	Purearth Infrastructure Ltd. Equity Shares of Rs. 10 each	166.50

These investments have been made in the group companies for earning dividend income and retain the controlling stakes. The dividend income earned from such investments is exempt from tax. It has been claimed by the appellant before the Ld. CIT(A) that investment in SRF Shares was made in the F.Y. 2005-06 and in the shares of Purearth Infrastructure Ltd. it was made in the F.Y. 2006-07 out of the cash flow generated by the company from its profits. It is claimed by the appellant that company has declared profit of Rs. 2331.61 lacs in the F.Y. 2005-06 and Rs. 2169.75 lacs in F.Y. 2006-07. It has been claimed by the assessee that company was

having share capital and reserve of Rs. 5702.74 lacs and Rs. 6316.63 lacs during the Financial Year ending on 31st March, 2006 and 31st March, 2007 respectively. It has been claimed by the assessee company that no disallowance on account of interest payment is called for.

5. The Ld. CIT(A) has examined the contention of the appellant and it is recorded in the order passed by Ld. CIT(A), that funds borrowed for working capital requirement and for expansion purposes are kept in a common account and no separate account is maintained. The profit generated is also kept in a common hotch potch. It further observed that appellant had taken secured loan of Rs. 5057.62 lacs from Financial Institutions during the F.Y. 2006-07. This has increased to Rs. 5529.71 lacs during the year. The appellant has availed cash credit and over draft facility from banks of Rs. 1130.53 lacs in F.Y. 2006-07 and Rs. 2138.71 lacs during the year under consideration. The secured loans obtained by the company are coming from the earlier years. The majority of interest payments pertains to secured loans and cash credit and over draft facility availed by the appellant.

6. As discussed above the assessee has kept all the funds in a common account and investments and expenditure are made from the same account. No separate account is maintained for the investment purposes which could prove that funds used were not from the interest bearing loans obtained by the appellant. The Ld. CIT(A) has decided the issue on the facts stated above that investment in the shares of SRF Ltd. and Purearth Infrastructure

Ltd. was made out of the funds available in common account and there is no evidence that these investments were made from the profit earned by the company. The ld. CIT(A) thus confirmed the addition made by the ld. A.O.

7. We have perused the order passed by the authorities below and the decision of coordinate bench in assessee's own case for assessment year 2009-10 in ITA no. 5033/Del/2012 and 4582/Del/2012, which has been produced before us at the time of hearing. It is observed that the Tribunal in the subsequent assessment year has restored back the issue to the assessing officer to decide the disallowance u/s.14A read with Rule 8D on the investments of shares in question.

8. On the facts and circumstances of the present case, the Ld.CIT(A) held that investment would have been made out of common/mixed funds, and therefore the ld. AO has worked out the disallowance at Rs. 26,40,830/- on a proportionate basis with reference to investment of Rs.166.50lacz out of total interest of Rs.576.40 lacs paid on account of cash credits. The ld. CIT(A) should have passed a speaking order dealing with contentions of parties in specific terms with facts and figure. The decision of Hon'ble Delhi High Court in the case of Maxopp Investments, reported in 374 ITR 272, are very much relevant on the issue of working of disallowance u/s.14A r.w.Rule 8 D by the ld. A.O.

9. We thus following the decision of the coordinate bench in assessee's own case for assessment year 2009-10(supra), set aside the issue back to the file of A.O to decide the disallowance of

expenses u/s.14A r.w. Rule 8 D on the investments of shares in question as per the law, keeping in view the guidelines provided for the same in the case of Maxopp (supra), after affording opportunity of being heard to the assessee.

10. Ground no. 2 is incidental in nature and no specific determination is called for.

11. The ground of appeal in assessee's case is thus allowed for statistical purposes.

12. The Assessee's appeal thus stands disposed off.

The order is pronounced in the open court on 01/09/2015

Sd/-

(T.S. KAPOOR)

ACCOUNTANT MEMBER

Dated: 01/09/2015

**Kavita, P.S.*

Sd/-

(BEENA PILLAI)

JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

		Date
1.	Draft dictated on	31.08.2015
2.	Draft placed before author	31.08.2015
3.	Draft proposed & placed before the second member	01.09.2015
4.	Draft discussed/approved by Second Member.	01.09.2015
5.	Approved Draft comes to the Sr.PS/PS	01.09.2015
6.	Kept for pronouncement on	01.09.2015
7.	File sent to the Bench Clerk	01.09.2015
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	
10.	Date of dispatch of Order.	