आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 674/JP/2015
निर्धारण वर्ष/Assessment Years : 2012-13

Vijay Solvex Ltd., Bhagwati Sadan, S.D. Marg, Alwar (Raj.)-301001	बनाम Vs.	ACIT, Circle-2, Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACV6864A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by : Shri Varinda Mehta (CIT)
Shri P P Meena (JCIT)
निर्धारिती की ओर से/ Assessee by : Shri P C Parwal (CA)

सुनवाई की तारीख/ Date of Hearing : 01/11/2017
उदघोषणा की तारीख/Date of Pronouncement : 29/01/2018

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Ld. CIT(A), Alwar dated 29.06.2015 for Assessment Year 2012-13 wherein the assessee has taken the following grounds of appeal as under:-

"1.0 That the learned assessing officer has erred in law as well as on facts and circumstances of the case in making the following disallowance out of the relevant head of accounts and ld. CIT(A) has erred in sustaining the same:-

		Disallowed	*Sustained by CIT(A), Alwar*
1.1	*Repair & Maint. Expenses*	*Rs. 60000.00*	*30000.00*
1.2	*Travelling Expenses*	*Rs. 50000.00*	*20000.00*

2.0 Disallowance of interest of Rupees 39,13,101/-

2.1 That the learned assessing officer has erred in law as well as on the facts and circumstances of the case in giving a finding that the assessee company has invested its interest bearing funds in the investment in shares, whereas facts remains that assessee company has not invested the interest bearing funds in the shares, on the contrary, funds representing the non-interest funds in the form of reserve and surpluses have been invested in the shares and ld. CIT(A) has erred in sustaining the same.

2.2 That the learned assessing officer has erred in law as well as on the facts and circumstances of the case in making a disallowance of Rupees 39,13,101 by applying the rule 8D of the I.Tax Rules 1962 and ld. CIT(A) has erred in sustaining the same."

2. In the first ground of appeal, the assessee has challenged the sustenance of disallowance of repair maintenance expenses of Rs. 30,000/- and travelling expenses amounting to Rs. 20,000/-.

3. Briefly stated, the facts of the case are that during the year under consideration, assessee claimed repair maintenance expenses amounting to Rs. 40,10,000/- while filing its return of income. During

the course of assessment proceedings, the assessee was asked to produce the complete bills and vouchers along with books of account. In response, the assessee attended the proceedings and produced the books of account which were examined by the Assessing Officer on test check basis. It was observed by the Assessing Officer that expenses are not fully vouched and some of the vouchers were self-made and were not supported by the bills. It was held by the AO that the assessee has failed to furnish complete bills and vouchers of expenses and therefore, the expenses are not verifiable. A show cause notice was issued to the assessee as to why an amount of Rs. 60,000/- should not be added to the income of the assessee in absence of proper verification. In response, the assessee submitted that similar disallowance were made in AY 2009-10 which stands deleted by the ld. CIT(A) and it was accordingly submitted that the said decision may kindly be followed for the year under consideration. The AO observed that decision of ld. CIT(A) for AY 2009-10 has not been accepted by the Revenue and appeal of the department is pending before the ITAT. He accordingly disallowed an amount of Rs. 60,000/- out of the repair and maintenance expenses in absence of proper verification.

4. Similar factual position exists in respect of travelling expenses amounting to Rs. 58,19,000/- claimed by the assessee out of which Rs. 50,000/- was disallowed by the AO following the same reasoning as given in case of repair and maintenance expenses.

5. Being aggrieved, the assessee carried the matter in appeal before the ld. CIT(A). The ld. CIT(A) observed that as a percentage of the turnover, repair and maintenance expenses have declined substantially

from 0.10% in AY 2011-12 to 0.5% in the current year and given that in AY 2011-12, his predecessor CIT(A) has upheld disallowance of Rs. 30,000/- under this head, he held that it would be fair to restrict the disallowance to Rs. 20,000/- and the assessee was granted relief of Rs. 30,000/- on this account.

6. Regarding travelling expenses, the ld. CIT(A) observed that travelling expenses have increased from Rs. 47.07 lac in the preceding year to Rs. 58,19,000/- in the period under consideration and the turnover has also increased in the same proportion. Considering the material placed on record, the ld. CIT(A) observed that it would be fair to restrict the disallowance to Rs. 20,000/- and the assessee was granted relief of Rs. 30,000/-.

7. During the course of hearing, the ld. AR submitted that during the course of assessment proceedings, assessee submitted the ledger account of all the above expenses. These expenditure have been incurred for the purpose of the business. Looking to the volume of business the expenses are reasonable. The AO has not pointed any particular expense which is not for the purpose of business. No disallowance should be made just for the sake of making disallowance. The entire expenditure incurred by the assessee company is necessarily and exclusively for the purpose of business and qualify for deduction u/s 37(1).

8. It was further submitted that expenditure incurred under the Repair & Maintenance head is wholly for the purpose of the business and dully supported with proper supporting and bills. The expenses have declined both in volume and in terms of percentage to the

turnover as mentioned in Para 4.2 of the appeal order. The nature of these expenses is such that pakka bill is not possible and thus few payments are made on self made vouchers. Payment on self made vouchers does not mean that the expenses are not verifiable. Each such payment is supported by the signature of the recipient on the vouchers. Hence, simply because the payment is through self made vouchers, no adverse inference is called for. Hence, the disallowance sustained by CIT(A) be deleted.

9. It was further submitted that the travelling expenses as compared to the last year in terms of percentage of turnover have declined to 0.076% as compared to .077% in the last year. All expenses are fully detailed indicating the place of visit, nature of expenses, mode of transport and other details. Only because some of the bills of expenses are self made vouchers cannot be a reason for disallowance. Hence, the disallowance confirmed by CIT(A) be deleted.

10. We have heard the rival contentions and purused the material available on record. The repair and maintenance expenses amounting to Rs 60,000 out of total expenses amounting to Rs 40,10,000 incurred during the year has been disallowed by the AO. Further, travel expenses amounting to Rs 50,000 out of total expenses amounting to Rs 58,19,000 incurred during the year has been disallowed by the AO. The reasoning adopted by the AO while disallowing these expenses was that the expenses are not fully vouched and some of the vouchers were self-made and were not supported by the bills. It was held by the AO that the assessee has failed to furnish complete bills and vouchers of expenses and therefore, the expenses are not verifiable. The

explanation of the assessee company is that expenses have declined as a percentage of turnover and the nature of the expenses are such that pakka bills are not possible and self made vouchers where produced for verification cannot be discarded as non-verifiable in support of supporting bills. Nothing has been said by the assessee company regarding non-maintenance of the vouchers at first place as observed by the AO. Further, the explanation of the assessee company regarding self made vouches can be examined once the nature of such expenses for which pakka bills are not practically possible is brought on record which again the assessee company has failed in the instant case. Given the nature of discrepancies so pointed out by the AO and the fact that the assessee has failed to discharge the onus placed on him to satisfactory explain the purpose and nature of the expenses, we find that the ld CIT(A) has been quite reasonable where he restricted the disallowances so made by the AO. In the result, we donot see any basis to interfere in the findings of the ld CIT(A) and the same are hereby confirmed. In the result, ground no. 1 of the assessee company is dismissed.

11. Regarding Ground No. 2 of the assessee's where the assessee has challenged the disallowance of Rs. 39,13,101/- made u/s 14A read with rule 8D.

12. Briefly stated, facts of the case are that during the course of assessment proceedings, the AO observed that the assessee has declared exempt dividend income of Rs. 80,692/- in its return of income and a show cause notice was issued to the assessee as to why addition should not be made u/s 14A read with Rule 8D. In response, the

assessee submitted that it has not incurred any direct or indirect expenses in relation to the earning of dividend income. It was further submitted that the investment which has been made in the shares has been made out of its interest free funds. The response of the assessee was considered but not found acceptable by the Assessing Officer. As per the Assessing Officer, where the assessee is having exempt income, the calculation for disallowance u/s 14A read with rule 8D have to be strictly made with reference to total investments. After referring to the various decisions, the AO computed the disallowance under rule 8D(ii) amounting to Rs. 31,00,666/- and under rule 8D (iii) amounting to Rs. 8,12,435/-.

13. The ld. CIT(A) observed that the funds amounting to Rs. 18.15 crores have been deployed in these investments and have increased as compared to the preceding year where such investment was Rs. 18.11 crores. Referring to his earlier decisions in case of the assessee in AY 2010-11 and 2011-12 and the Hon'ble Delhi High Court in case of CIT vs. Taikisha Engineering India Ltd. 370 ITR 338, he held that disallowance of expenses made u/s 14A of the IT Act on exempt income is valid if AO is not satisfied with the claim made by the assessee. It was also held that if Rule 8D is applied, the assessee's claim that interest is not disallowable on ground of own funds is not acceptable. Accordingly, the disallowance made by the AO was confirmed. Now, the assessee is in appeal before us.

14. During the course of hearing, the ld. AR submitted that the total share capital and reserve and surplus of the assessee as on 31.03.2012 is Rs. 6489.18 lacs. As against this, the investment in shares as on

31.03.2012 is of Rs. 1815.11 lacs. Thus, the interest free funds far exceed the investment in shares. Hence, no disallowance out of interest expenses can be made.

It was further submitted that this issue has been decided by ITAT in assessee's own case for AY 2006-07 where the ITAT in ITA 202/JP/2016 dt. 23.09.2016 confirmed the order of CIT(A) where it was held that the AO while making the disallowance of interest failed to bring any adverse material on record to substantiate the contention that interest bearing funds have been directed for the purpose of making investment in shares and therefore the disallowance of interest made by AO is deleted.

It was further submitted that in various cases such as CIT vs Taikisha Engineering India ltd 370 ITR 338 (Del), CIT vs HDFC Bank Ltd 366 ITR 505 (Bom) and others, it has been held that if there are funds available both interest free and over draft and/or loans taken, then a presumption would arise that investment 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.

It was further submitted that the ITAT, Delhi Bench in case of Sahara India Financial Corporation Ltd., vs. DCIT (2014) 105 DTR 1 has held that the interpretation of provisions of sec. 14A r.w.r 8D leads to unanticipated absurdities wherein on applying the mechanical method of Rule 8D, disallowance u/s 14A is too much than the exempt income. This cannot be the intention of the legislature. Thus, it is held that the disallowance of expenditure u/s 14A cannot exceed the income earned and in the interest of justice, it is reasonable to estimate and disallow

50% exempt income as relatable to exempt income u/s 14A r.w.r. 8D. In the present case the dividend received is only Rs. 80,692/- and therefore the disallowance of Rs. 39.13 lacs is unjustified.

It was further submitted that in AY 07-08, the ld. CIT(A) vide order dt. 31.01.2012 in Appeal No. 52/11-12 has deleted the entire disallowance made by AO u/s 14A. In AY 08-09 also, the disallowance made by the AO u/s 14A was deleted by the ld. CIT(A) vide order dt. 16.01.2014 in Appeal No. 608/11-12 by relying on its predecessor order for AY 07-08.

It was further submitted that the ld. CIT(A) in confirming the disallowance has relied on its predecessor order for AY 10-11 & AY 11-12. It may be noted that against the said orders, the assessee has preferred an appeal before the Hon'ble ITAT. The Hon'ble ITAT in AY 2010-11 vide its order dt. 11.01.2016 in ITA No. 109/JP/2014 at para 19 held that where assessee has mixed fund, the presumption for interest free fund is applicable in case of the assessee but following the various decisions on this issue, sec. 14A r.w.r. 8D becomes redundant. However, considering the fact that the management as well as staff and other facilities are used for making investment in shares, it cannot be ruled out that no income can be generated without any expenditure. The quantum may be at variance and depend upon the investment made by the assessee. Therefore, in the interest of justice, disallowance u/s 14A was confirmed at Rs. 5 lacs as against Rs. 23,84,269/- made by the lower authorities. However, in giving this decision, the fact that assessee earned dividend income of Rs. 80,692/- only and the decision in case of Sahara India Financial Corporation Ltd. where disallowance was restricted to 50% of the dividend income was lost sight of.

Therefore, considering the fact that the dividend income earned for the year is only Rs. 80,692/-, even if a disallowance u/s 14A is to be made, it should be with reference to the dividend earned.

It was further submitted that the ITAT in AY 2011-12 vide its order dt. 18.03.2016 in ITA No. 642/JP/2014 at Para 13.3 allowed the appeal for statistical purpose by holding that if the assessee is able to demonstrate and show to the AO that it is having interest free funds in form of credit balances on the date when the investment was made, no addition can be made but if the assessee fails to prove the availability of interest free funds either in the form of share capital, etc. then the order of the AO shall be final. In the present case the assessee has submitted the analysis of the Balance Sheet as on 31.03.2012 showing and explaining the source of each and every investment as appearing in the Balance Sheet and from it, it is evident that the reserve and surplus which are non-interest bearing funds available with the company are the source of investment in the shares.

It was further submitted that the case law relied by the CIT(A) of Delhi High Court in case of CIT vs. Taikisha Engineering India Ltd. rather supports the case of assessee as in this case it is held that if and only if the AO is not satisfied about the claim of the assessee that no expenditure was incurred to earn the exempt income after making reference to the accounts, than he is entitled to adopt the method as prescribed under rule 8D. However, in the present case, the AO has not made any reference to the accounts and has also not considered the analysis of Balance Sheet submitted by the assessee and made the disallowance u/s 14A r.w.r. 8D merely because assessee has declared

dividend income which is exempt from tax. In view of above, disallowance of Rs. 39,13,101/- made by AO and confirmed by the CIT(A) be deleted.

15. On the other hand, ld. DR supported the orders of the authorities below.

16. We have heard the rival contentions and perused the material available on record. Regarding the first contention raised by the ld AR that the assessee company was having sufficient interest free funds and which were used for making the investment in shares. In this regard, we refer to observation of the ld. CIT(A) that the funds amounting to Rs. 18.15 crores have been deployed in these investments and have increased as compared to the preceding year where such investment was Rs. 18.11 crores. In other words, there are fresh investments to the tune of Rs 0.04 Crores during the year and rest all investments have been made in the earlier years and carried forward in the year under consideration. It would therefore be relevant to determine the position of interest free funds during the year and also in the earlier years for the purposes of making the subject investments.

17. In the immediately preceding year AY 2011-12, similar contention have been raised by the assessee company and the Coordinate Bench vide its order dated 5.7.2017 has set-aside the matter to the file of the AO with the following directions:

> "However, we are of the view that this analysis can be verified from the complete Balance sheet as on 31/03/2009. Therefore, we deemed it proper to restore this issue to the AO for verifying

the claim of the assessee that it was having sufficient funds available for making investment to compute the disallowance if any u/s 14A of the Act in respect of the interest component.

However, so far administration expenses and other expenses are concerned, the AO made disallowance of Rs. 2,38,317/- by applying the provisions as per rule SD, which in our considered view is justified.

In respect of interest expenditure, the AO would verify the claim of the assessee that whether it was having sufficient interest bearing funds, in the form of reserve and surplus and if it found that contention of the assessee is correct in that event he would delete the disallowance."

18. Since the findings in the set-aside proceedings have a bearing on the issue under consideration so far as the investments made in the earlier years are concerned and the status of the set-aside proceedings for AY 2011-12 are not known at the time of the hearing, we deem it appropriate to remand the subject matter to the file of the AO as well to verify the claim of the assessee as to whether it was having sufficient interest free funds in form of reserve and surplus to make the subject investments.

19. Regarding another contention of the ld AR that even where the disallowance under section 14A has to be made, the same cannot exceed the dividend income of Rs 80,692 earned during the year and in support, he has relied on the decision of the Coordinate Bench in case

of Sahara India Financial Corporation Ltd reported in 41 Taxmann.com 251. In the said decision, the Coordinate Bench has held as under:

"81. We have heard the rival contentions and perused the material available on record. It has not been disputed that the administration, expenses and books of account of investment division are separately carried out and maintained by the assessee. No infirmity has been found by the department in this behalf. One of the main issue is on whom lies the onus to establish nexus of available funds with free and taxable income. Similarly courts have held that a finding in objective terms about assessee working being unsatisfactory is to be recorded by AO in the order. Chandigarh Bench of the Tribunal in the case of Punjab State Co-op. & Marketing Fed. Ltd. (supra) has held that in any case the disallowance u/s 14A cannot exceed tax free income of the assessee. If mechanical method of rule 8D is applied, it leads to manifestly absurd results in as much as for tax free income of Rs.68,37,583/- disallowance of Rs.2,16,51,917 (enhanced by CIT(A) at Rs. 2,19,47,772) is made u/s 14A which is way too much than the exempt income. As the interpretation of provisions of sec. 14A r/w rule 8D is leading to unanticipated absurdities which cannot be the intention of legislature. Under these circumstances help of external aids of construction for interpretation of statute is called for. Looking at the varying interpretation offered by various courts and benches of tribunal in relation to sec. 14A, it is quite arduous to precisely decide the issue. In given facts and circumstances without going into all the issues, in our view it is appropriate to take guidance from Chandigarh bench judgment in the case of Punjab State Co-opt Marketing Fed. Ltd.

(supra) holding that the disallowance of expenditure in any case cannot exceed the income earned. In our view this judgment takes a holistic view that disallowance in terms of sec. 14A can be maximum to the extent of exempt income, there is no dispute that in this case which is at Rs. 68,37,583/-. This judgment implies that reasonable expenditure less than the exempt income can be disallowed. In our considered opinion, in the interest of justice, it will be reasonable to estimate and disallow, 50% of exempt income (Rs.68,37,583/-) as relatable to exempt income u/s 14A r/w rule 8D. We do not go into various plea taken by both sides offering diverse views based on judicial citations. This ground of the assessee is partly allowed."

20. Subsequently, the Hon'ble Delhi High Court in case of Joint Investment (P) Ltd 59 Taxmann.com 295 has held as under:

"9. In the present case, the AO has not firstly disclosed why the appellant/assessee's claim for attributing Rs. 2,97,440 as a disallowance under s. 14A had to be rejected. Taikisha Engg. India Ltd. (supra) says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assessee's claim or explanation. The second aspect is there appears to have been no scrutiny of the accounts by the AO-an aspect which is completely unnoticed by the CIT(A) and the Tribunal. The third, and in the opinion of this Court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is Rs. 48,90,000, the disallowance ultimately directed works out to nearly 110 per cent of that sum, i.e., Rs. 52,56,197. By no stretch of imagination

can s. 14A or r. 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in s. 14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case."

21. In light of above legal proposition, we agree with the contention of the ld AR that even where the disallowance under section 14A has to be determined, the same cannot exceed the dividend income amounting to Rs 80,692 earned during the impunged assessment year. The AO is accordingly directed to take the same into consideration in the set-aside proceedings. In the result, the ground no. 2 of the assessee's appeal is partly allowed for statistical purposes.

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

Order pronounced in the open Court on 29/01/2018.

Sd/-	Sd/-
(विजय पॉल राव)	(विक्रम सिंह यादव)
(Vijay Pal Rao)	(Vikram Singh Yadav)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 29/01/2018.
*Ganesh Kr.
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:
1. अपीलार्थी/The Appellant- Vijay Solvex Limited, Alwar
2. प्रत्यर्थी/ The Respondent- ACIT, Circle-02, Alwar

3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 674/JP/2015}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar