

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SHRI R S SYAL, VICE PRESIDENT
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

ITA No. 5242/Del/2014

A.Y. 2011-12

DCIT Circle 8(1), Room no.248 C.R.bldg. IP Estate New Delhi 110 002	vs.	M/s SIL Investment Ltd. Pachpahar road Bhawani Mandi Jhalawar Rajasthan 326 502
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CROSS OBJECTION NO. 142/Del/2015

(IN ITA No. 5242/Del/2014)

A.Y. 2011-12

M/s SIL Investment Ltd. vs. DCIT, Circle 8(1)
Jhalawar, Rajasthan New Delhi

(Appellant)	(Respondent)
Appellant by	Shri Atiq Ahmad, Sr.D.R.
Respondent by	Sh. Rohit Jain, Adv. & Sh. Anshul, C.A.
Date of Hearing	16 th November, 2017
Date of Pronouncement	22 nd November, 2017

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

The present appeal by Revenue and Cross Objection filed by assessee has been filed against order dated 24/07/14 passed by Ld. CIT (A)-11, New Delhi for assessment year 2011-12 on the following grounds of appeal:

ITA No. 5242/del/2014

“That the Ld.CIT(A) has erred in deleting disallowance made by AO amounting to Rs.4,87,35,014/- under Rule 8D(2)(ii) of I.T. Rules read with Section 14A of the I.T. Act, 1961.

The appellant craves leave to amend, modify, alter, add or forego any grounds of appeal at any time before or during the hearing of this appeal.”

CO No. 142/del/2015

1. That the CIT(A) erred on facts and in law in confirming disallowance out of administrative expenses amounting to Rs.61,73,967/- u/s 14A of the Income Tax Act, 1961 (the Act) as computed by applying formulae given in Rule 8D(2)(iii) of the Income tax Rules, 1962 (the Rules).

1.1. That the CIT(A) erred on facts and in law in not restricting the disallowance u/s 14A to the amount of Rs.55,76,775/-, suo motu disallowed by the appellant in the return of income.

1.2. That the CIT(A) failed to appreciate that in the absence of ‘satisfaction’ being recorded by the AO u/s 14A(2) of the Act, Rule 8D of the Rules had no application.

1.3. That the CIT(A) erred on facts and in holding that ‘satisfaction’ in terms of 14A(2) of the Act could also be recorded by the CIT(A).

1.4. That the CIT(A) erred on facts and in holding that the basis/formula adopted by the appellant for making disallowance out of administrative expenses was not reasonable/scientific.

2. That the CIT(A) erred on facts and in law in confirming levy of interest u/s 234B and 234D of the Act.

The respondent craves leave to add, amend, alter or vary from the above grounds at or before the time of hearing.”

2. Brief facts of the case are as under:

Assessee filed its return of income on 22/09/11 declaring a total income of Rs.2,56,26,013/-which was processed under section 143 (1) of the Act. The case was selected for scrutiny and notice under section 143 (2) and 142 (1) of the Act was issued. In response to the above notices representatives of assessee appeared and filed details/documents as called for.

2.1. Ld. AO during the assessment proceedings observed that assessee has claimed exempt income of Rs.7,92,83,324/-being dividend on long-term investment and current investment. During the course of assessment proceedings, assessee was specifically asked as to why Rule 8D be not applied, in working out disallowance to be made under section 14A. Assessee replied and furnished working of disallowance under section 14A, which has been *suo-moto* made in the return of income to the extent of Rs.55,76,775/-.

2.2. Ld. AO was of the opinion that assessee has not adopted any scientific or cogent method for arriving at the disallowance made under section 14A, and therefore was not satisfied with the correctness of the claim of assessee. Ld.AO thus completed assessment by computing the disallowance under section 14 A to an extent of Rs.4,93,32,206/-, after giving credit to the *suo moto* disallowance made by assessee.

3. Aggrieved by the order of Ld. AO, assessee preferred appeal before Ld. CIT(A).

4. Ld.CIT(A) observed that, difference of opinion regarding the attributability of interest expense in respect of the tax-free dividend income has caused the disallowance under section 14 A by Ld. AO. It was observed by Ld. CIT(A) that assessing officer attributed interest amounting to Rs. 8,59,56,292/-being the entire interest expenses debited in P&L account by assessee, as relatable to tax-free dividend income of Rs. 7.92 crores shown by assessee. It has been categorically recorded by Ld. CIT(A) that assessee established the activity of financing from which major portion of income amounting to Rs. 12.05 crores has been earned through differential rate of interest on borrowings. It has been recorded by Ld. CIT(A) that assessee categorically established complete flow of funds from its borrowings at a lower rate of interests and their destination to different corporate entities at a slightly higher rate of interest on the basis of the details furnished, the bank accounts through which these funds have travelled. Ld. CIT (A) was of opinion that assessee had established nexus of interest expenses with its main activity of financing and there was not a single amount of interest bearing borrowings which could be related to the investment which yielded tax free dividend income.

4.1. It has been further observed by Ld. CIT (A) that similar issue had arisen for assessment year 2006-07 when Rule 8D was not in existence but no such attributability of interest expenditure relating to tax-free dividend income was found by an order passed by this Tribunal. Further Ld. CIT (A) also observed that for assessment year 2009-10 in assessee's own case, no such finding was given by

assessing officer although Rule 8D was applied by him. The Ld. CIT (A) while deleting the addition for the year under consideration, placed reliance on his own order for assessment year 2010-11 in assessee's own case, where no disallowance under rule 8D (2) (ii) was called for.

4.2. The Ld.CIT(A) however confirmed addition amounting to Rs.61,73,967/-made by Ld.AO under rule 8D (2) (iii) of the Act.

4.3. Aggrieved by the order of Ld. CIT (A) both revenue as well as assessee are in cross appeals before us.

4.4. We shall first deal with appeal filed by Revenue.

5. Ld. DR places reliance upon the assessment order in support of his arguments.

6. Ld. AR submitted that amount of investments held by assessee decreased from Rs.123.61 crores at the beginning of the relevant year to 123.33 crores at the end of the relevant year. It was submitted that investment held by the assessee is primarily comprised of the opening investments which were carried forward from the preceding assessment year and no fresh funds were utilised for making any investments. Ld. AR thus submitted that in the absence of any fresh funds being used for making any investments in the relevant assessment year no part of the borrowings of the assessee could be said to have any nexus whatsoever with the investment which are actually carried forward from the preceding assessment year.

6.1. Ld. AR referred to page 47, 48, 49 of paper book wherein, details of income credited to the profit and loss account, details of

loan taken and details of secured loan taken during the year and repaid during the year and its application, has been recorded being part of the audited balance sheet. Ld. AR submitted that the borrowings increased from Rs. 60.15 crores to 105.42 crores. He submitted that the opening amount of borrowings being 60.15 crores which has been established in the immediately preceding assessment year, were utilised for granting loans or for repayment of existing loans. It has been submitted by Ld. AR that the additional borrowings of Rs. 45 crores were also utilised in the relevant assessment year for granting the intercorporate loans or for repayment of existing loans only and therefore the same had no nexus with the investments held by assessee during the relevant assessment year.

6.2. Ld. AR submitted that the one-to-one nexus of such additional borrowings with inter corporate loans granted or repaid during the relevant assessment year is demonstrated before the Ld. CIT (A). For the sake of convenience the submissions made by assessee before Ld. CIT (A) at pages 5 and 6 of Ld.CIT(A)'s order is reproduced herewith:-

“Without prejudice, on facts, borrowings made in relevant Assessment Year had no relation with investments yielding exempt income

On perusal of balance sheet of the appellant for the relevant Assessment Year, it would be noted that the borrowings increased from Rs.60.15 crores to Rs.105.42 crores. The opening amount of borrowings of Rs.60.15 crores, as established by appellant in appellate proceedings for immediately preceding assessment year, were wholly utilised for granting inter corporate loans or for repayment of existing loans. The additional borrowings of Rs.45

crores apx. were also, it is respectfully submitted, utilised in the relevant Assessment Year for granting inter corporate loans or for repayment of existing loans only and therefore, the same had no nexus with the investments held by appellant during the relevant assessment year. The one to one nexus of such additional borrowings with inter corporate loans granted or repaid during the relevant Assessment Year is demonstrated as under.

The composition of the amount of borrowings at the beginning of the relevant assessment year amounting to Rs.60.15 crores is as under.

Name of the party from whom loan taken	Amount of loan (Rs. In crores)	Rate of interest
Aditya Birla Finance Ltd.	15	9%
L&T Finance Ltd.	20	12%
Bajaj Auto Finance Ltd.	10	12.25%
Tata Capital Ltd.	15	9.5%
Total	60	

The composition of the amount of borrowings at the end of the relevant assessment year amounting to Rs.105.42 crores is as under.

Name of the party from whom loan taken	Amount of loan (Rs. In crores)	Rate of interest	Utilisation of amount of loan
L&T Finance Ltd.	20	10.5%	Carried forward from preceding AY
L&T Finance Ltd.	20	10.10%	Utilised for granting loan to RTM Investment & Trading Co.Ltd. at interest rate of 14% and 13% p.a.
Bajaj Auto Finance Ltd.	10	10.5%	Carried forward from preceding AY
Tata Capital Ltd.	15	11.99%	Carried forward from preceding AY
Tata Capital Ltd.	20	11.5%	Utilised for granting following inter corporate loans: <ul style="list-style-type: none"> • Loan of Rs.5 crores to RTM Investment & Trading Co.Ltd.

			<p>at interest rate of 14% and 13% p.a.</p> <ul style="list-style-type: none"> • Loan of Rs.9 crores to the Oudh Sugar Mills at interest rate of 13.5% p.a. • Loan of Rs.5.5 crores to Sutlej Textiles & Industries Ltd. • Balance 0.5 crores kept in hand for payment of interest etc.
Morgan Stanley India Capital Pvt.Ltd.	20	10.25%	<p>Utilised for repayment of existing loan and granting of a inter corporate loan as follows.</p> <ul style="list-style-type: none"> • Repayment of Rs.15 crores to Aditya Birla Finance Ltd. • Loan of Rs.5 crores to SCM Investment & Trading Co.Ltd. at interest rate of 14% and 13% p.a.
Total	105		

On careful perusal of the aforesaid facts of the case, it would be appreciated that no part of the borrowings were utilised for making investment, on the contrary the borrowed funds were utilised for giving interest bearing advances/loans, resulting in taxable income in the hands of the appellant.

In view of the aforesaid, as the entire borrowings were directly utilised in undertaking financial activities and no part of the same was utilised for making investment, as also verified and certified as correct by the tax auditor, disallowance of interest was not warranted in the present case under Rule 8D(2)(ii) of the Rules.”

6.3. On the basis of the above Ld. AR submitted that Ld. CIT (A) was right in deleting the addition made by Ld.AO under rule 8D (2) (ii) of the Act.

7. We have perused the submissions advanced by both the sides in the light of the records placed before us.

7.1. It is observed that assessee has demonstrated complete flow of funds from its borrowing at a lower interest rate to the granting of intercorporate loans at a higher rate of interest and therefore the nexus of interest expenses with the Finance activity has been substantiated for the year under consideration.

7.2. Assessee has demonstrated at page 49 the details of secured loans taken during the year under consideration and its utilisation which is as under.:

Details of secured loans taken during the year and its application

Sl. No.	Secured loan taken from	Amount -Rs.	Application of secured loan (in repayment of secured loans and loans and advances given)	Amount - Rs.
1.	Morgan Stanley India Capital Pvt.Ltd.	2000	Aditya Birla Finance Ltd. (repayment) SCM Investment & Trading Co.Ltd.	1500 500
2.	Tata Capital Ltd.	2000	RTM Investment & Trading Co.Ltd. The Oudh Sugar Mills Ltd. Sutlej Textiles and Industries Ltd. Funds remain with us for payment of interest etc.	500 900 550 50
3.	L&T Finance Ltd.	2000	RTM Investment & Trading Co.Ltd.	2000
	Total:	6000	Total:	6000

7.3. A joint reading of the above table along with the details of loan taken/repaid during the year at page 48 proves to explain that not a single amount of interest-bearing borrowings could be related to investments which yielded tax free dividend income for the year under consideration.

7.4. In the preceding assessment year the Ld. CIT (A) as well as this Tribunal for assessment year 2006-07 and 2010-11 has observed that there is no single amount of interest-bearing borrowings that could be found related to the investments which yielded tax free dividend income. This Tribunal in assessee's own case for assessment year 2010-11 has observed as under:

“ 17. The assessing officer has failed to establish any nexes between the interest-bearing bore road funds and the investment in the assets yielding tax free income.

18. In our opinion, the findings of Learned Commissioner of income tax (appeals) on the issue in dispute is well reasoned and no interference is required on our side. Further, assessing officer in the assessment year 2009-10, has also accepted the fact of having no nexus between the borrowed funds and the investment in assets yielding tax free income and accordingly has not made any disallowance under rule 8D (2) (ii) of the act. Thus, the rule of consistency also demand that no disallowance under section rule 8D (2) (ii) of the act can be made in the year under consideration. In view of the above we uphold the findings of Ld. Commissioner of income tax (appeals) on the issue in dispute and the ground of appeal of revenue is dismissed.”

7.5. On the basis of the above discussion as well as the decision of this Tribunal in assessee's own case for assessment year 2010-11 we are of the considered opinion that in the decision of Ld. CIT (A) cannot be found fault with. Accordingly the ground raised by the revenue stands dismissed.

8. In the result appeal filed by the revenue stands dismissed.

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9. The cross objection filed by assessee is against addition made by Ld. AO under rule 8D (2) (iii) of the Act.

Ground No.1

10. Ld. AR submitted that the disallowance under rule 8D (2) (iii) of the Act may be restricted to 0.5% of investment, which actually have resulted in dividend income. He further submitted that assessing officer himself has observed, there is no direct expenses that could be attributable in respect of the tax free dividend income, which is apparent from the computation of disallowance made by assessing officer under Rule 14 A in the assessment order.

10.1.Ld. AR submitted that this tribunal in assessee's own case for assessment year 2010-11 has decided the issue at para 16 which is as under:

"16. With regard to the ground of revenue's appeal we find that the ld.CIT(A) has decided the issue as under.

8.7. Keeping these financial results in mind, now, the AO's computation of disallowance u/s 14A is analysed, as under.

(a) The AO has observed that there are no directly attributable expenses in respect of tax free dividend income. The appellant has

also reiterated the same. Therefore, as far as disallowance u/s 14A of the Act read with Rule 8D(2)(i) of the I.T.Rules is concerned, the same has been rightfully accepted as NIL.

(b) There has been a difference of opinion regarding the attributability of interest expenses in respect of tax free dividend income. This is the main bone of contention of the appellant company. The AO has attributed interest amounting to Rs.10,61,78,431/- (entire interest expenses debited in P&L Account) as relatable to tax free dividend income of Rs7.01 crores shown by the appellant, and following the Rule 8D(2)(ii) the disallowance has been computed at Rs. 6,83,66,201/-. On the other hand, the appellant very elaborately has given the complete details of its interest income and payment of interest as debited in the profit and loss account. The appellant has established that the activity of financing from which major portion of income amounting to Rs. 11.93 crores has been earned, the same has been earned through differential rate of interest in borrowing on which the interest amounting to Rs. 10.61 crores has been paid and advancing the same at a slightly higher rate of interest to the corporate entities, including its group companies. The appellant has categorically established the complete flow of funds from its borrowings at a lower rate of interest and their destination to different corporate entities at a slightly higher rate of interest. The details have been furnished on the basis of appellant's bank account with the Punjab National Bank through which all these funds have travelled. Therefore, the appellant has clearly established the nexus of interest expenses with its main activity of financing .and there was

not a single amount of interest bearing borrowings-which could be related to the investments which yielded tax-free dividend income. On the other hand, the AO has not established any nexus of the interest bearing borrowings and consequent interest expenses with the investments resulting into tax-free dividend income. Similar issue has arisen in the appellant's own case in the AY 2006-07, wherein although Rule 8D was not into existence, but no such attributability of interest expenditure relating to tax free dividend income was found at the level of Hon'ble ITAT. The Hon'ble ITAT has given categorical finding in the appellant's case as under.

“Nothing stopped the AO from determining the expenditure incurred in relation to the exempt income earned by the assessee. But for doing so, a reasonable basis had to be adopted. And the most reasonable basis, rather, the first reasonable basis for such determination can be none else than the nexus between the expenditure incurred and the exempt income earned. Now, evidently, the AO did not establish any such nexus between the expenditure incurred and the exempt income earned by the assessee company. Even the CIT(A), though he restricted the disallowance from Rs.47,33,200/- to Rs.16,54,531/- did not establish any such nexus and it was merely observed that this amount related to the investment activity of the assessee company, without clarifying as to how it was found to be so.”

In appellant's own case for Assessment Year 2009-10 also, no such finding was given by the AO, although Rule 8D was applied by the AO. There was no disallowance under Rule 8D(2)(ii) of the I.T.Rules

during the preceding year. Therefore, in view of the various decisions as quoted by the appellant in its written submissions and the decision of Hon'ble ITAT in appellant's own case, no disallowance under Rule 8D(2)(ii) of the IT Rules is called for.

10.2. Ld. DR on the contrary placed reliance upon the decision of authorities below.

11. We have perused the submissions advanced by both the sides in the light of the records placed before us.

12. For assessment year 2010-11 this Tribunal in assessee's own case has set aside the issue to the assessing officer to compute the disallowance under rule 8D (2) (iii) at the rate of 0.5% of investments which actually have resulted in the exempt dividend income and rather than 0.5% of the average total investment. Following the rule of consistency we are also inclined to set aside this issue back to the file of Ld. AO for recomputing the disallowance under rule 8D (2) (iii) for the year under consideration with a similar direction to consider 0.5% of the investments which actually have resulted in the exempt dividend income.

13. Accordingly Ground No. 1 raised by assessee stands allowed for statistical purposes.

14. As far as ground No. 1.1 to 1.4 is concerned no arguments have been advanced by assessee in regard to the same, and, therefore, ground nos. 1.1 to 1.4 stand rejected.

15. Ground No. 2 is in respect of levy of interest under section 234B and 234D of the act which is consequential in nature which does not call for any adjudication at the stage.

16. In the result cross objection filed by assessee stands allowed partly.

17. In the result, the appeal filed by the Revenue is dismissed and the Cross Objection filed by assessee stands partly allowed.

Order pronounced in the open court on 22nd November, 2017.

Sd/-

(R.S. SYAL)
Vice President

Sd/-

(BEENA A PILLAI)
Judicial Member

Dated: 22nd November, 2017.

*gmv

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By Order

Asst. Registrar
ITAT, Delhi Benches, New Delhi