

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 4018/DEL/2018 [A.Y 2014-15]

The A.C.I.T.
Circle -4 (1)
New Delhi

Vs.

M/s Bajaj Resources Ltd
33, 2nd Floor, Pratap Nagar
Mayur Vihar, New Delhi

PAN : AAACD 8001 D

[Appellant]

[Respondent]

Date of Hearing : 22.09.2021
Date of Pronouncement : 24.09.2021

Assessee by : Shri Sandeep Jhanwar, C.A.
Revenue by : Shri Bhopal Singh, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against order of the
Commissioner of Income Tax [Appeals] - 1, Hyderabad dated
18.12.2017 pertaining to Assessment Year 2014-15.

2. The grievances of the Revenue read as under:

"Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) has erred in deleting the addition made on account of disallowance u/s 14A in accordance with Rule 8D of the I.T. Rules amounting to Rs. 6,85,74,900/-.

2. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) has erred in accepting the assessee's submission that no exempt income has been earned."

3. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules.

4. Briefly stated, the facts of the case are that the assessee company is engaged in the business of Ownership of FMCG product brands activities for development of brands and inter-corporate deposits. Return of income for the year under consideration was filed on 29.09.2014 admitting a total income of Rs 5,34,90,940/- under normal provisions and Rs 2,97,66,150/- under the provisions of sec 115JB of the Income-tax Act, 1961 [hereinafter referred to as 'The

Act']. The return was selected for scrutiny assessment and accordingly, notices were issued and duly served on the assessee.

5. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed exemption in respect of dividend income of Rs. 62,07,50,000/- and profit in LLP of Rs. 198 crores. The Assessing Officer found that no expenditure in relation to exempt income was disallowed by the assessee u/s 14A of the Act.

6. On perusal of the financial statements of the assessee, the Assessing Officer noticed that total non-current investments was Rs. 55,147.09 lakhs as on 31.03.2013 and Rs. 39,396.25 lakhs as on 31.03.2014 whereas reserves and surplus were to the extent of Rs. 27,923.94 lakhs as on 31.03.2013. The Assessing Officer also noticed that the assessee has claimed interest expenditure of Rs. 797.31 lakhs and administrative expenses in its P & L A/c.

7. Show cause notice was issued to the assessee asking it to explain as to why no disallowance of expenditure was made in relation to exempt income. In response to the show cause notice, the

assessee filed detailed reply contending that it has incurred no expenditure for earning exempt income claiming that the investments have been made in group companies as strategic investment.

8. It was strongly contended that the assessee has sufficient own interest free funds to make investments and, therefore, there is no question of investment made out of borrowed funds. It was further pointed out that though the assessee has incurred interest cost of Rs. 797.31 lakhs but has also earned interest income of Rs. 589.63 lakhs and further earned income of Rs. 136.09 lakhs as short term capital gain.

9. After considering the detailed submissions made by the assessee and after analysing the financial statements, the Assessing Officer, in his wisdom, observed as under:

"The main plank of the argument of the assessee in this regard is that none of the investments was made out of interest-bearing borrowed funds but from the capital, reserves/surplus and interest free borrowings and therefore, provisions of Sec.14A do not apply to the exempt income claimed by the assessee in the return of income. In support of its claim, the assessee has also submitted year-wise investments and the flow of the funds right

from F.Y.2007-08 along with the financials for the respective years. For instance, during the F.Y.2009-10, the assessee has made investment in golden shore investing Ltd., and the source of the investment was claimed to be available capital and reserves /surplus. It was also claimed that the amount of Rs.50.8 Crores borrowed from PNB during that year was specifically utilized for the purpose of distribution of dividend and not for making investment in Golden Shore Investing Ltd, This contention of the assessee is not well founded. On perusal of the ledger account of the loan and the dividend account, the dividend payout was on 02-01-2010 whereas the loan amount was transferred from PNB loan account on 13-01-2010. Similarly, during the F.Y.2012-13, the assessee has made sizeable investments and also borrowed funds in that year. The claim of the assessee in this year is also that the borrowed funds were utilized for making advances to the associate concern for which interest income has been earned. In this year also, the investments advances were made out of common pool of funds and therefore, it is not correct to say investments yielding exempt income were made only out of interest free funds."

10. After referring to some judicial decisions, the Assessing Officer concluded as under:

"In view of the above, various contentions raised by the assessee are not legally ten..' and proportionate interest expenditure in relation to exempt income is worked out as per the formula provided in clause (ii) of rule 8D as under:

- a) The expenditure in relation to income which does not form part of the total income as per Rule 8D(2)(ii) shall be the aggregate of following amounts, namely-

$A*B/C$ where;

- (i) 'A' amount of expenditure by way of interest: Rs. 7,97,31.000
- (ii) 'B' the average value of investment (excluding investment in foreign companies), income from which does not or shall not form part of the total income as appearing in the balance sheet of the assessee on the first day and the last day of the previous year : Rs. 44234.455 lakhs
- iii) 'C' the average of total assets as appearing in the balance sheet of the assessee on the first day and the last day of the previous year : Rs. 58171.195 lakhs

Disallowance u/s 14A r.w.r. 8D (ii) : $A*B/C$ = Rs. 6,06,28.900

11. In addition to the above, the Assessing Officer proceeded to make further addition u/r 8D(iii) of the Rules amounting to Rs. 79.46 lakhs and made total disallowance u/s 14A r.w.r 8D amounting to Rs. 6,85,74,900/-.

12. Assessment was strongly agitated before the Id. CIT(A). The contention made before the Assessing Officer were reiterated

13. The assessee once again explained the financial statements pointing out that the investments have been made out of sufficient own interest free funds and further, the exempt income has been earned only from investments made in Bajaj Hindustan Ltd and Bajaj Corp Ltd. and SKB Roop Commercials LLP and no exempt income has been earned from any other investment. It was brought to the notice of the Id. CIT(A) that all these investments have been made in earlier assessment years and no borrowed funds were utilised for making these investments.

14. After considering the facts and submissions, and after going through the financial statements of the assessee, the Id. CIT(A) held as under:

"5.5 The submissions of the appellant have been carefully considered. There is a strength in the argument of the appellant. The appellant has made investment in its own subsidiary companies. As submitted by the appellant, the investment is for expansion of the corporate group and comes under business expediency. Hence it is clear that the investments has been made

not to earn interest free income but for expansion of the business. In regard to the foreign investment, i.e., M/s. Golden Shore Investing Limited, the dividend income is taxable. Hence this is not come under purview of Section 14A. The loan taken by the appellant has been invested in the M/s. Golden Shore Investing Limited which is evident from the bank account of the appellant company. Investment has been made on the same day.

Coming to the issue of applicability of Section 14A, in this case does not arise as investment is for business expansion. There has not been any direct linkages between the loan taken and investments, exception in case of M/s. Golden Shore Investing Limited. Since this income from M/s. Golden Shore Investing Limited is taxable, hence loan taken for investment in the referred company cannot be generalised as 'Expenditure' for calculation of Section 14A.

The submissions of the appellant is comprehensive regarding why Section 14A should not be applicable. There is no doubt that investment has been made to enhance the business of the group company and lesser intention of getting interest free income. The Hon'ble High Court of Delhi in the case of Pr.CIT Vs. IL & FS Energy Development company Ltd., 250 Taxmann 174, held that no disallowance u/s.14A to be made in the AY under question, because no exempt income is earned. In view of this, the submissions of the appellant is accepted and the addition made by the Assessing Officer is deleted."

15. We have given thoughtful consideration to the orders of the authorities below. The contention of the assessee that the investments have been made out of own interest free funds can be understood from the following charts:

DETAILS OF LONG TERM INVESTMENTS MADE IN SISTER CONCERNS

Particulars	For the year ended (Rs. in lacs)				
	31-03-2010	31-03-2011	31-03-2012	31-03-2013	31-03-2014
Non. Current Investment					
Investment in Equity Instruments			-----		
Baijai Capital Venture Pvt Ltd	-	-	0.01	0.01	0.01
Bajaj Corp Ltd	500.00	500.00	500.00	382.00	382.00
Baijai Hindustan Ltd	-	-	29,500.00	29,500.00	29,500.00
Bajaj International Realty Pvt Ltd			5,012.50	5,012.5	5,012.5
Global World Power Project Pvt Ltd		500.00	500.00	500.00	500.00
Bajaj Infrastructure Development Company Ltd	-			-	750.2
Bajaj Power Ventures Pvt Ltd	-	-	499.88	8499.83	-
V Opol Construction Pvt Ltd	-	-		8419.94	-
Kartikeya Properties Pvt Ltd	2.00	-	-	-	-
Kashyap Properties Pvt Ltd	2.00	-	-	-	-
Advance towards share application money -Bajaj Power		5,500			
SKB Roop Commercial LLP	-	-	-	4.96	4.96
Total (A)	504	6,500	36,012.39	52,319.24	36,149.67
Investment in Foreign subsidiaries					
Global Power Projects	-	-	505.34	505.34	505.34
Golden Shore Investing Ltd	2,322.51	2,322.51	2,322.51	2,322.51	2,741.24
Total (B)	2,322.51	2,322.51	2,827.85	2,827.85	3,246.58
Total (A+B)	2,826.51	8,822.51	38,840.24	55,147.09	39,390.25

DETAILS OF NON INTEREST BEARING FUNDS

Particulars	For the year ended (Rs. in laes)				
	31-03-2010	31-03-2011	31-03-2012	31-03-2013	31-03-2014
Net owned funds					
Equity Share capital	99.31	99.31	99.31	99.31	99.31
Preference Share Capital	0.02	0.02	0.02	0.02	0.02
	99.33	99.33	99.33	99.33	99.33
Reserve and surplus					
Securities premium reserves	1,574.37	1,574.37	1,574.37	1,574.37	1,574.37
General Reserves	1,187.80	1,193.63	1,213.63	1,213.63	3,826.58
Surplus in statement of P&L	8,344.81	8,559.59	16,667.41	25,135.94	42,445.28
Industrial Subsidy	20.00	20.00	-		-
Total(i)	11,126.98	11,347.59	19,455.41	27,923.94	47,846.23
Other non interest bearing funds					
Zero percent optionally convertible Debentures (Directly invested into equity shares			29,500	29,500	
Total (ii)	-	-	29,500	29,500	-
Total (i + ii)	11,226.31	11,446.92	49,054.74	57,523.27	47,945.56

16. A perusal of the aforementioned charts would show that as on 31.03.2014, the total investments which earned exempt dividend income was Rs. 36,149.67 lakhs and total investment in foreign subsidiaries as on 31.03.2014 was Rs. 3,246.58 lakhs. There is no

dispute in so far as dividend earned from foreign subsidiaries is concerned. Such dividend income is taxable, therefore provisions of section 14A do not apply on such dividend income. A perusal of the details of non-interest bearing funds exhibited hereinabove would show that the assessee had total non-interest-bearing funds of Rs. 47,945.56 lakhs which is much higher than the total investment of Rs. 36, 149.67 lakhs.

17. Further, investments made in the company generating exempt dividend income can be understood from the following charts:

Investee Company	F Y of Investment	Source & Remarks (Balance Sheet and relevant schedules are enclosed as Annexure-2)
<i>M/s. Bajaj Corp Ltd</i>	<i>2007-08</i>	<p>Balance Sheet as on 31.03.2008 shows:</p> <p>1. <i>The assessee has Capital & Reserves / Surplus of Rs. 7228.85 lacs.</i></p> <p>2. <i>No borrowings are there in the Balance Sheet. The amount of Rs.22.78 lacs in unsecured loans represent sales tax deferment which cannot have any relevance with the investment made.</i></p>

		Thus the amount of Rs.500 lacs was invested out from capital and internal accrual.
M/s. Golden Shore Investing Ltd (Foreign Company)	2009-10	<p>Balance Sheet as on 31.03.2010 shows:</p> <ol style="list-style-type: none"> 1. The investment of Rs.2322.51 lacs has been made out of the opening & closing Capital & Reserves/surplus of Rs. 7866.09 lacs & RS.11226.30 lacs respectively. 2. The company borrowed Rs.50.38 crores from PNB during the year. However, the said loan was specifically utilised for the purpose of distribution of dividend as shown in the papers enclosed. 3. Further, in subsequent years, the loan was repaid but the investment subsisted. 4. It is also worth pointing out here that investment in Golden Shore Ltd is a foreign investment and since the income therefrom is taxable, the question of application of provisions of section 14A does not apply.
M/s. Global World Power Projects Pvt Ltd	2010-11	<p>Balance Sheet as on 31.03.2011 shows:</p> <ol style="list-style-type: none"> 1. The Capital & Reserves and surplus at the opening & closing of the year consisted of Rs.11226.31 lacs & Rs.11446.92 lacs respectively and investment of Rs.500 lacs has been made by utilising owned funds. 2. The assessee had opening unsecured loan from Punjab National Bank of Rs.50.38 crores which was specifically utilised for the purpose of payment of dividend. Evidences are enclosed to explain the same. Moreover, the loan has been repaid during the year of 2010-11 while the investments were made during the year and was existing at year end. This also shows that borrowings were not utilised for the purpose of making investments. 3. No borrowings are there in the Balance Sheet as on 31.03.2011 and the amount of Rs.24.34 lacs in unsecured loans represent sales tax deferment. This cannot be considered to have been investment in the equities of sister concerns. <p>Thus, investments of Rs.500 lacs were made out of capital & internal accruals.</p>

M/s. Bajaj Capital Ventures Pvt. Ltd	2011-12
M/s. Bajaj International Realty Pvt.Ltd	2011-12
M/s. Bajaj Power Ventures Pvt.Ltd	2011-12
M/s. Global Power Projects Singapore Pvt. Ltd	2011-12
M/s. Bajaj Power Ventures Pvt. Ltd	2012-13
M/s. SKB Roop Commercials LLP	2012-13
M/s. Opu Construction Pvt. Ltd	2012-13

1. Investment of Rs.29500 lacs in Bajaj Hindustan Ltd. was made out of the issue of zero % optionally convertible debentures issued for the said purpose. This does not bear any interest cost. A chart, Ledger Account & Bank statement are also attached to show one to one nexus in this regard.

2. For making other investments of Rs.0.01 lacs, Rs.5012.50 lacs, Rs.499.88 lacs & Rs.5.5.34 lacs respectively in the other companies, the assessee had sufficient Opening & Closing Capital and Reserves/ Surpluses of Rs.11446.92 lacs & Rs.19455.41 lacs respectively.

3. At the other end, no borrowing are there in the Balance Sheet. The amount of Rs.24.34 lacs in unsecured loans represent sales tax deferment. This cannot be considered to have been invested in the equities of sister concerns.

1. It is also worth pointing out here that investment in Golden Shoe Ltd is a foreign investment and since the income therefrom is taxable, the question of application of provisions of section 14A does not apply.

Thus, all the above investments, other than investment into M/s. Bajaj Hindustan Limited were made out from capital & internal accruals. Investment in M/s.Bajaj Hindustan Ltd., as stated above are made out of specific proceed of non- interest bearing debt.

Balance Sheet as on 31.03.2013 shows:

1. The assessee had opening investments of Rs.38,840.24 lacs and made and made further investments of Rs.16419.89 lacs and also disposed investments to the extent of Rs.118 lacs making the total investment as at 31.03.2013 at Rs.55147.09 lacs. Again this, the assessee was into possession of non interest Rs.57523.27 lacs restively including the non interest bearing debts which are sufficient to make these investments.

2. The borrowed funds of Rs.10499.32 lacs were utilised for the purpose of making advances to the associate concern from which interest income of Rs.399.21lacs has been earned as per the details enclosed. Further, more taxable income of Rs.80.40 lacs is earned from sale of current investments made by using these funds. A detailed submission and statement showing flow of funds in this regard was submitted during the course of assessment proceedings of A.Y. 2013-14 vide letter date 14.03.2016. The submissions of the assessee were accepted and in the assessment proceedings

		<p>and no disallowance u/s 14A chart is enclosed herewith for ready reference.</p> <p>Thus, all these investments were made out of interest free funds of the assessee</p>
M/s. Bajaj Infrastructure Development Company Ltd	2013-14	Balance Sheet as on 31.03.2014 shows:
M/s. Golden Shore Investing Ltd. (Foreign Company)	2013-14	<p>1. The company has opening & closing capital, reserves ad surplus & interest free borrowing of Rs.57523.47 lacs & Rs.47945.56 lacs respectively which are sufficient to make investments (accumulated) of Rs.55147.09 lacs & Rs.39396.25 lacs respectively.</p> <p>2. ,As stated above, all the interest bearing funds were borrowed for the purpose of advancing to sister concerns from which the assessee has earned interest income as detailed in the statement enclosed. Further, the company has also earned other taxable income by temporarily investing out of such borrowed funds.</p> <p>The assessee has repaid all interest bearing funds during this year under consideration but this investment was made during the year and is persisting as on 31.03.2014 clearly showing that it was made out of on interest bearing funds of the assessee.</p> <p>3. It is also worth pointing out here that investment in Golden Shore Ltd is a foreign investment and since the income therefrom is taxable, the question of application of provisions of section 14A does not apply.</p> <p>Thus, all these investments were made out of interest free funds of the assessee.</p>

18. The Hon'ble Supreme Court in the case of South Indian Bank Ltd Vs CIT in Civil Appeal No. 9606 of 2011 at Para 15 of its order has observed as under:

"15. The appellants argue that the investments made in bonds and shares should be considered to have been made out of interest free funds which were substantially more than the Page 8 of 22

investment made and therefore the interest paid by the assessee on its deposits and other borrowings, should not be considered to be expenditure incurred in relation to tax free income on bonds and shares and as a corollary, there should be no disallowance under Section 14A of the Act. On the other hand, the counsel for the revenue refers to the reasoning of the CIT(A) and of the High Court to project their case."

19. At para 20, the Hon'ble Supreme Court observed as under:

"20. Applying the same logic, the disallowance would be legally impermissible for the investment made by the assesseees in bonds/shares using interest free funds, under Section 14A of the Act. In other words, if investments in securities is made out of common funds and the assessee has available, non-interest-bearing funds larger than the investments made in tax- free securities then in such cases, disallowance under Section 14A cannot be made."

20. And at para 28 of the same order, the Hon'ble Apex Court observed as under:

"28. The above conclusion is reached because nexus has not been established between expenditure disallowed and earning of exempt income. The respondents as earlier noted, have failed to substantiate their argument that assessee was required to

maintain separate accounts. Their reliance on Honda Siel (Supra) to project such an obligation on the assessee, is already negated. The learned counsel for the revenue has failed to refer to any statutory provision which obligate the assessee to maintain separate accounts which might justify proportionate disallowance."

21. The Hon'ble Supreme Court answered the questions framed against the revenue and in favour of the assessee.

22. As mentioned elsewhere, the investments generating exempt dividend income were made in earlier A.Ys and we have the benefit of assessment order dated 14.03.2016 framed u/s 143(3) of the Act for A.Y 2013-14. We find that no disallowances were made by the Assessing Officer in his scrutiny assessment case.

23. We further find that the said assessment order was considered as erroneous and prejudicial to the interest of the revenue by the PCIT who, invoking the provisions of Section 263 of the Act, framed an order dated 30.03.2018. The said order was quashed by this Tribunal vide order dated 29.08.2018 in ITA No. 2838/DEL/2018.

24. Considering the facts of the case in totality in light of the financial statements exhibited elsewhere, and in light of the ratio laid down by the Hon'ble Supreme Court in the case of South Indian Bank Ltd [supra], in our considered opinion, there cannot be any disallowance of interest for earning exempt income and there is no reason to interfere with the findings of the Id. CIT(A).

25. In so far as the disallowance on account of administrative expenses is concerned, we find that there is no dispute that all the investments are made in the sister concern in which the assessee has deep business interests and under business expediency, it has invested various amounts in shares of group companies. In our considered opinion, these investments are strategic investments made for furtherance of business of its sister concern.

26. As mentioned elsewhere, apart from the investments in Bajaj Corp Ltd and Bajaj Hindustan, all other investments are unquoted investments and any appreciation in the value of shares at the time of sale would be taxable.

27. We find that the assessee has submitted details of each and every item of expenditure and has specifically pointed out that none of the same is incurred for the purpose of earning exempt income. It was brought to the notice of the Assessing Officer that the directors of the company are also employees of the sister concern, who do not draw any remuneration from the company and take care of entire investment work. No error or infirmity has been pointed out by the Assessing Officer who has simply computed the disallowances as per formula given in Rule 8D. In our considered view, such mechanical approach of the Assessing Officer has no legs to stand on. We, therefore, decline to interfere with the findings of the ld. CITA.

28. In the result, the appeal of the Revenue in ITA No. 4018/DEL/2018 is dismissed.

The order is pronounced in the open court on 24.09.2021.

Sd/-

[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 24th September, 2021

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	