

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Manish Borad, Accountant Member**

**I.T.A. No. 1832/KOL/2018
Assessment Year: 2014-2015**

Tega Industries Limited,.....Appellant
147, Block-G,
New Alipore,
Kolkata-700053
[PAN: AABCT2074M]

-Vs.-

Deputy Commissioner of Income Tax,.....Respondent
Circle-12(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:

Shri S.P. Chidambaram, Advocate, appeared on behalf of the assessee
Shri D.K. Sonowal, CIT (DR), appeared on behalf of the Revenue

Date of concluding the hearing : April 06, 2022

Date of pronouncing the order : May 9th, 2022

O R D E R

Per Manish Borad, Accountant Member:-

This appeal filed by the assessee is directed against the order of Id. Members, Dispute Resolution Panel-2, New Delhi dated 25.04.2018 passed under the directions of the Dispute Resolution Panel under section 144C(5) of the Income Tax Act, 1961.

2. The assessee has raised the following grounds of appeal:

"1.1 That on the facts and circumstances of the case, the Ld. TPO/Ld. DRP have erred by computing a charge payable by Tega Holdings Pte Limited, Singapore (Tega Singapore) for corporate guarantee received from the Appellant on loans taken from Axis Bank, Singapore, for acquisition of entities in Australia and Chile. In doing so, the Ld. TPO/Ld. DRP

failed to appreciate the fact that, the debt leveraged acquisition structure arising out of corporate guarantee provided by the Appellant has actually benefited the Appellant.

1.2 *On the facts and circumstances of the case, the Ld. TPO/Ld. DRP have erred in not appreciating that the corporate guarantee provided by the Appellant to Tega Singapore was in the nature of 'shareholder service', as no third party would be willing to pay for its own basic capital formation.*

1.3 *On the facts and circumstances of the case, the Ld. TPO/Ld. DRP have erred in not giving due cognizance to the order pronounced by the Hon'ble Kolkata Tribunal in the Appellant's own case for AY 2008-09, wherein it has been held that the transaction of corporate guarantee by the Appellant to its wholly owned subsidiary for the purposes of acquisition is in nature of shareholder activity thereby meriting no charge.*

1.4 *The Ld. TPO / Ld. AO / Ld. DRP ought to have appreciated that provision of corporate guarantee being in the nature of shareholder's activity, total income should have been reduced, in light of the CBDT Circular No. 14 (XL-35) dated 11.4.1955 which binds the Income-tax Authorities to grant legitimate tax reliefs to which the taxpayer is entitled, but has omitted to claim for one reason or another.*

1.5 **Without prejudice to above.** *consequent to the directions issued by the Hon'ble DRP with respect to the provision of the corporate guarantee, the returned income of the Appellant will reduce thereby resulting into refund which the Ld. AO failed to give effect to, in gross violation of the CBDT Circular No. 14 (XL-35) dated 11.4.1955.*

GROUND NO. 2: DISALLOWANCE UNDER SECTION 14A READ WITH RULE 8D

2.1. *On the facts and in the circumstances of the case and in law, the Ld. AO / Ld. DRP has grossly erred in determining the disallowance under section 14A of the Act read with Rule 8D without appreciating that Appellant has **suo moto** disallowed Rs. 2,76,296/-. In doing so, the Ld. AO / Ld. DRP failed to appreciate that invocation of rule 8D is not automatic and recording of satisfaction and establishing a direct nexus between the expenditure incurred and the exempt income u/s 10 is a **sine qua non**.*

2.2. **Without prejudice to the above,** *the Ld. AO / Ld. DRP failed to consider that the Appellant had sufficient owned funds to acquire investments producing exempt income and that presumption ought to be made that such investments were made from interest-free funds.*

2.3. **Without prejudice to the above,** *on the facts and in the circumstances of the case and in law, while computing disallowance under Rule 8D, the Ld. AO / Ld. DRP grossly erred in not -*

2.3.1 *Considering interest expenditure on net basis i.e. after setting off interest income*

2.3.2 *Excluding investments capable of earning exempt income as well as investments from which no exempt income has been earned during the year.*

2.4 **Without prejudice to the above,** *the Ld. AO / Ld. DRP has committed certain errors while determining disallowance under section 14A read with rule 8D.*

GROUND NO. 3: ADDITION OF DISALLOWANCE MADE UNDER SECTION 14A READ WITH RULE 8D WHILE DETERMINING BOOK PROFIT UNDER SECTION 115JB:

3.1 *On the facts and in the circumstances of the case and in law, the Ld. AO / Ld. DRP grossly erred in adding the amount of disallowance computed under section 14A read with rule 8D of the Act while determining book profit under section 115 JB without appreciating that for the purpose of section 115 JB, there cannot be an automatic disallowance of amount computed under section 14A in absence of specific expenditure incurred to earn such exempt income.*

3.2 *The Ld. AO has failed to acknowledge that section 115JB, being a self-sustained code, is operative only to the extent of the deeming fiction created therein. The Ld. AO ought to have appreciated that section 14A and section 115JB are mutually exclusive and there ought not to be any disallowance of amount disallowed under section 14A while computing the book profit under section 115JB.*

3.3 **Without prejudice to the above,** *on the facts and in the circumstances of the case and in law, the Ld. AO / Ld. DRP has grossly erred in determining the disallowance under section 14A of the Act read with Rule 8D without appreciating that Appellant has **suo moto** disallowed Rs. 2,76,296/-. In doing so, the Ld. AO / Ld. DRP failed to appreciate that invocation of rule 8D is not automatic and recording of satisfaction and establishing a direct nexus between the expenditure incurred and the exempt income u/s 10 is a **sina qua non**.*

3.4. Without prejudice to the above, *the Ld. AO / Ld. DRP failed to consider that the Appellant had sufficient owned funds to acquire investments producing exempt income and that presumption ought to be made that such investments were made from interest-free funds.*

3.5. Without prejudice to the above, *on the facts and in the circumstances of the case and in law, while computing disallowance under Rule 8D, the Ld. AO / Ld. DRP grossly erred in not -*

3.5.1. *Considering interest expenditure on net basis i.e. after setting off interest income;*

3.5.2. *Excluding investments capable of earning exempt income as well as investments from which no exempt income has been earned during the year.*

3.6. Without prejudice to the above, *the Ld. AO / Ld. DRP has committed certain errors while determining disallowance under section 14A read with rule 8D”.*

3. The assessee has raised the following additional ground of appeal:-

“That on the facts and circumstances of the case, the appellant craves before your Honour, consequent to the directions issued by the Hon’ble DRP with respect to the provision of the corporate guarantee, the returned income of the appellant will reduce thereby resulting into refund in light of CBDT Circular No. 14(XL-35) dated 11.04.1955”.

4. At the outset, ld. counsel for the assessee requested for not pressing Grounds No. 1.1 to 1.5 and additional ground of appeal raised on 22.08.2018. No objection was raised by the ld. D.R. Therefore, all these grounds are dismissed as not pressed.
5. The only issue remains is with regard to the Grounds No. 2 & 3, through which the assessee has raised the following two issues:-
- (1) No interest disallowance under section 14A of the Act should have been made;
 - (2) Ld. Assessing Officer erred in adding the disallowance under section 14A of the Act for determining the book profit under section 115JB of the Act.
6. Ld. Counsel for the assessee submitted that as per the audited financial statement, the assessee-company has sufficient capital and interest-free reserves & surplus to cover up the investment made in equity shares fetching exempt income. It was thus contended that interest disallowance of Rs.11.34 lakhs computed under Rule 8D(2)(ii) of the Act may be deleted.
7. Per contra, ld. D.R. supported the order of the lower authorities.
8. We have heard the rival contentions and perused the relevant material available on record. We find that the assessee is a Limited Company and earned exempt dividend income of Rs.1.95 crores during the year. Ld. Dispute Resolution Panel (DRP) confirmed the disallowance at Rs.53.37 lakhs, which comprised of the following:-

(i)	Direct expenditure relating to the exempt income	Rs.2.76 lakhs;
(ii)	Interest disallowance	Rs11.34 lakhs
(iii)	0.5% of average value of investment	Rs.39.26 lakhs

	TOTAL	Rs.53.37 lakhs
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Before us, short controversy is in regard to interest disallowance of Rs.11.34 lakhs. Hon'ble Bombay High Court in the case of CIT -vs.- Reliance Utilities & Power Limited (2009) 313 ITR 340 (Bom.) has held that *"if there were funds available both interest-free and Overdraft and/or loans taken, then the presumption would arise that investments would be out of interest-free funds generated or available with the Company, if the interest-free fund was sufficient to meet the investment and, therefore, no part of interest on the borrowings would be disallowed on the basis that, investments were out of interest bearing funds"*.

9. Examining the facts of the instant case in the light of above judgment, we find that in the audited balance-sheet placed at page 10 of the paper book dated 22.08.2014, shareholders funds comprising of share capital and Reserves & Surplus as on 31.03.2013 is Rs.386.60 crores (approx.) and as on 31.03.2014 is Rs.441.78 crores. The shareholders fund is interest-free fund. Now looking towards the investment fetching exempt income, the same are shown in Schedule 14 under the head "Non-Current Assets". As on 31.03.2013 it is Rs.161.76 crores and as on 31.03.2014 it is Rs.193.42 crores It is further brought to our notice that out of the non-current assets of Rs.193.42 crores as on 31.03.2014, a sum of Rs.168.62 crores is investment in unquoted shares of subsidiary companies. So the investment in other/ listed equity shares are to the tune of Rs.24.8 crores. As against this figure of Rs.24.8 crores of the investment, the assessee has interest-free fund of Rs.441.78 crores, which is more than sufficient to cover up the investments giving rise to exempt income. Therefore, the ratio laid down by the Hon'ble Bombay High Court in the case of *Reliance Utilities & Power Limited (supra)* is squarely applicable on the facts and circumstances of the case.

10. We are, therefore, inclined to hold that no interest disallowance of Rs.11.34 lakhs is called for as per Rule 8D(2)(ii) of the Act for computing the disallowance under section 14A of the Act. To this extent, the relevant grounds raised in Grounds No. 2.1 to 2.4 are allowed.

11. As regards the Ground No. 3, through which the assessee has contended that disallowance under section 14A ought not to have been considered for computing the book profit under section 115JB of the Act, we find merit in the assessee's contention. Special Bench of Delhi Tribunal in the case of ACIT -vs.- Vireet Investment Pvt. Limited (165 ITD 27) as well as the judgment of the Hon'ble Karnataka High Court in the case of Sobha Developers Ltd. -vs.- DCIT (ITA No. 203/2015 dated 04.01.2021), wherein it has been held that adjustment of disallowance under section 14A could not be made while computing book profit under section 115JB of the Act. Therefore, under the given facts and settled judicial precedence as referred above, we direct the Assessing Officer to compute the book profit without considering disallowance under section 14A of the Act. Thus Ground No. 3 raised by the assessee is allowed.

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

Order pronounced in the open Court on May 9th, 2022.

**Sd/-
(Rajpal Yadav)
Vice-President (KZ)**

**Sd/-
(Manish Borad)
Accountant Member**

Kolkata, the 9th day of May, 2022

*Copies to : (1) Tega Industries Limited,
147, Block-G,
New Alipore, Kolkata-700053*

*(2) Deputy Commissioner of Income Tax,
Circle-12(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

(3) *Ld. Members, Dispute Resolution Panel-2, New Delhi*

(4) *Joint Commissioner of Income Tax, Transfer Pricing, Range-3,
Kolkata,*

(5) *The Departmental Representative*

(6) *Guard File*

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By order

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

Laha/Sr. P.S.