

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND  
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

ITA Nos. and Assessment Year	APPELLANT	RESPONDENT
1285 /Bang/2016 2011-12	M/s. Deepak Cables India Ltd., #07, N S Iyengar Street, Seshadripuram, Bangalore – 560 020. <b>PAN : AACCD 6466 C</b>	The Additional Commissioner of Income-Tax, Range – 11, Bangalore.
1286/Bang/2016 2012-13	-do-	The Deputy Commissioner of Income-Tax, Circle – 1(1)(1), Bangalore.

Assessee by	:	Shri. Suresh Muthukrishnan, CA
Revenue by	:	Dr. P. V. Pradeep Kumar, Addl. CIT

Date of hearing	:	21.03.2019
Date of Pronouncement	:	04.06.2019

**ORDER**

*Per Jason P. Boaz, A.M.*

These two appeals by the assessee are directed against the common order of CIT(A)-2, Bangalore, dated 28/11/2016 for Assessment Years 2011-12 and 2012-13. Since the issues involved in both these appeals are identical and the background facts common, these appeals were heard together and we deem it appropriate to dispose of these appeals by way of this common order for the sake of convenience.

2. Briefly stated, the facts relevant for disposal of these appeals are as under:-

2.1 The assessee company is engaged in the business of manufacturing and supplying of ACSR conductors for transmission lines and turnkey erection of power transmission power lines. **For Assessment Year 2011-12**, the assessee filed its original return of income on 30.09.2011 declaring income of Rs.57,07,59,831/-, which was later revised to Rs.77,70,52,980/- vide return filed on 23.02.2012. Similarly, for **Assessment Year 2012-13**, the assessee had filed its original return of income on 28.09.2012 declaring income of Rs.28,92,22,000/- which was later revised to Rs.66 29 86,760/- vide return filed on 30.03.2013. The assessee's case for both these Assessment Years was selected for scrutiny. The assessments were concluded under section 143(3) of the Income Tax Act, 1962 (in short 'the Act') vide order dated 30.01.2014 for Assessment Year 2011-12, where in the assessee's income was determined at Rs.81,58,61,394/- and for Assessment Year 2012-13 under section 143(3) of the Act vide order dated 13.02.2015 wherein the assessee's income was determined at Rs 71 31,44,382/-; consequent to certain additions / disallowances made by the Assessing Officer (AO).

2.2 Aggrieved by the orders of assessment dated 30.01.2014 for Assessment Year 2011-12 and dated 13.02.2015 for Assessment Year 2012-13, the assessee preferred appeals before the CIT(A)-2, Bangalore, who vide a common order dated 28.01.2016 disposed off the appeals allowing the assessee partial relief.

3. The assessee, being aggrieved by the common order of CIT(A)-2, Bangalore, dated 28.01.2016 for Assessment Years 2011-12 and 2012-13, has preferred these appeals before the Tribunal; wherein it has raised the following grounds:

**Assessment Year 2011-12**

1. *The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The learned CIT[A] is not justified in upholding the disallowance of Rs. 76,13,553/- made u/s. 14A rws Rule 8D of the Act without appreciating that the provisions of sec. 14A of the Act were inapplicable to the facts of the appellant's case and therefore, the impugned disallowance made deserves to be deleted.*
3. *The learned CIT[A] is not justified in upholding a part of the disallowance made to the extent of the fresh advances made during the year to certain parties in terms of section 36[1 ][iii] rws 37 of the Act under the facts and in the circumstances of the appellant's case.*
4. *The learned CIT[A] is not justified in upholding the addition of Rs.14,18,157/- u/s 41[1] of the Act under the facts and in the circumstances of the appellant's case.*
5. *Without prejudice to the right to seek waiver with the Hon'ble CCI the appellant denies itself liable to be charged to interest u/s 234- of the Act, which under the facts and in the circumstances of the appella t's case and the levy deserves to be cancelled.*
6. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

**Assessment Year 2012-13**

1. *The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The learned CIT[A] is not justified in upholding the disallowance of Rs. 93,06,690/- made u/s. 14A rws Rule 8D of the Act without appreciating that the provisions of sec. 14A of the Act*

*were inapplicable to the facts of the appellant's case and therefore, the impugned disallowance made deserves to be deleted.*

3. *The learned CIT[A] is not justified in upholding a part of the disallowance made to the extent of the fresh advances made during the year to certain parties in terms of section 36[1][iii] rws 37 of the Act under the facts and in the circumstances of the appellant's case.*

4. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s 234-B of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.*

5. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

3.2 We have heard the rival contentions of the learned AR for the assessee and the learned DR for Revenue; perused the material on record; including the judicial pronouncements cited and proceed to dispose off these two appeals hereunder:

4. **Ground Nos. 1 and 6 (Assessment Year 2011-12)**  
**Ground Nos. 1 and 5 (Assessment Year 2012-13)**

4.1 Ground Nos. 1 and 6 for Assessment Year 2011-12 (supra) and ground Nos.1 and 5 for Assessment Year 2012-13 (supra), being general in nature and not urged are dismissed as infructuous.

5. **Ground No.4 for Assessment Year 2011-12** is raised with reference to the addition of Rs.14,18,157/- under section 41(1) of the Act. However, in the

course of hearing before us, the learned AR for the assessee submitted that this ground is not being pressed and we, therefore, dismiss this ground as not pressed.

6. **Ground No. 4 (Assessment Year 2011-12)** } **Charging of Interest under**  
**Ground No. 5 (Assessment Year 2012-13)** } **section 234B of the Act.**

6.1 In this ground (supra), the assessee denies himself liable to be charged interest u/s 234B of the Act. The charging of interest is consequential and mandatory and the AO has no discretion in the matter. This proposition has been upheld by the Hon'ble Apex Court in the case of Anjum H. Ghaswala (252 ITR 1) (SC) and we, therefore, uphold the action of the AO in charging the assessee the aforesaid interest u/s 234B of the Act. The AO is, however, directed to re-compute the interest chargeable u/s 234B of the Act, if any, while giving effect of this order.

7. **Ground No.2** - **Disallowance u/s 14A r.w.r.8D**  
**(Assessment Years**  
**2011-12 and 2012-13)**

7.1 In respect of these grounds; the learned AR for the assessee submitted that the assessee had sufficient interest free funds at its disposal and therefore no disallowance ought to have been made under section 14A of the Act, with regard to Rule 8d(2)(ii) & (iii) of the Income Tax Rules, 1962 (in short 'the Rules'). It was further submitted that the issue raised in this ground is squarely covered by the order of a Co-ordinate Bench of this Tribunal in the assessee's own case for Assessment Year 2010-11 in ITA No.493 and 669/Bang/2014 dated 05.05.2017; where a similar disallowance was deleted. According to the learned AR, the facts of this issue in the appeals before us were similar to the facts considered by the Co-ordinate Bench in its order in the assessee's own case for Assessment Year 2010-11 (supra). It was contended that the assessee

had interest free funds; far in excess of the aggregate value of investments made in subsidiaries and interest free loans given, and therefore, the ratio of the decision of the earlier Assessment Year 2010-11 (supra) would be applicable and consequently no disallowance u/R 8D(2)(ii) of the Rules was warranted. It was also argued that the disallowance u/Rule 8D(2)(iii), if any, ought to be restricted to the extent of exempt dividend income received on investments made, in terms of the decision of the Hon'ble Madras High Court in the case of Reddington (India) Ltd., reported in (2017) 77 taxmann.com 257 (Madras). The learned AR submitted that in view of the above reasons; the disallowance under section 14A of the Act r.w.r. 8D should be deleted.

7.2 Per contra, the learned DR vehemently placed reliance on the decision of the Hon'ble Apex Court in the case of Maxopp Investment Ltd., in 91 taxmann.com 154 (SC) and contended that the disallowance made by the AO needs to be upheld since, even in the case of the assessee, there was mixed funds and it cannot be conclusively established that the assessee has not used interest bearing funds for making investment.

7.3.1 In Rejoinder, the learned AR submitted that the case on hand was factually distinguishable from the facts of Maxopp Investment Ltd., (supra), relied upon by the learned DR and drew the attention of the Bench to para 40 of the said decision, which reads as under:-

*“40. We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable.....”*

7.3.2 The learned AR thus submitted even in the case of State Bank of Patiala, which was decided by the Hon'ble Apex Court along with the case of Maxopp Investment Ltd., (supra), the disallowance by the AO was restricted to the extent of exempt income earned. He submitted that the decision of the Hon'ble Apex Court in the case of Maxopp Investment Ltd., (supra) has laid down the proposition that there was no need to consider the dominant purpose for making the investment while computing the disallowance under section 14A of the Act r.w.r. 8D of the Rules.

7.4.1 We have considered the rival contentions and perused the material on record. We find that a Co-ordinate Bench of this Tribunal in the assessee's own case for Assessment Year 2010-11 in its order ITA Nos.493 and 669/Bang/2014 dated 05.05.2017, on this issue at para 6.1 thereof has held as under:

*“ The AR submitted that the assessee had Rs.142.33 crores of opening cash and cash equivalents as the first day of the ay ie on 01.04.2010 , substantial of such sum came from cash-flow generated from / used in the financial activities, particularly from the proceeds of issue of shares, during the period ended 31.03.2009. Thus, he submitted that the assessee had sufficient non-interest bearing funds at its command to meet the impugned investments in subsidiary, for the work- in- progress and the loan and advances given to associated concerns. Apart from that, he relied on the following judgments / decisions.*

*1) Madras High Court decision in Redington (India) Ltd v. Addl. CIT [ICA No.520 of 2016, dt.23.12.2016, wherein it is held that where there is no exempt income in relevant year, there cannot be a disallowance of expenditure u/s.14A to any assumed income.*

*ii) The decision of Gujarat High Court in the case of CIT v. Raghuvir Synthetics Ltd (2013) 36 taxmann.com 275, wherein the High Court held that where huge funds were available without any interest liability with assessee and there was no evidence to hold that borrowed money was utilized for purposes*

*of advance to its sister concerns, no disallowance of interest was warranted.*

*We heard the rival submissions. We hold that section 14A is applicable even where the motive in acquiring the shares was to obtain controlling interest in the companies. The question in this case is whether interest bearing borrowings was utilized to acquire shares in the company and in making the advances etc. The assessee's share capital as on 31.3.2010 was at Rs.9.16 crores (Last year (Ly)Rs.9.16 crores) . Its Reserves & surplus as on 31.3.2010 was at Rs.469.71 crores (Ly Rs.429.2416 crores). Thus, it has Rs.478.87 crores of non- interest bearing funds. The impugned investments in the subsidiary during the year was at Rs14.00 crores, the increase in the closing work- in- progress was at Rs. 10,08,07,321 and the loan and advances given to associated concerns was at Rs.17.96 crores. Thus, the total of them was at Rs 42.04crores only, which is much lesser than the interest free funds available with the assessee. Further, its Loan funds , both secured and unsecured, as on 31.3.2010 was at Rs.192.65 (Ly Rs.313.60 crores). Thus, there is a reduction in its interest bearing loan by Rs.120.95 crores during the year. On such facts, the interest disallowance made by Assessing Officer on such issues are unwarranted and hence corresponding Revenue's appeal grounds are dismissed. The next issue is whether the interest disallowance made u/s. 14A rwr 8D2(iii)is justified . In this regard, we have already noted that he assessee made investments in its subsidiary, during the year, at Rs. 14 crore and hence it must have incurred certain indirect expenses as explained by the CIT(A) in his order. It is an undisputed fact that during the year the assessee has taken a decision to make an investment in the subsidiary. Therefore, the expenditure incurred for taking such decision would fall within the category of expenditure incurred for earning the exempt income as per Section 14A. Except the investment in subsidiary, there is no other investment. Therefore, for the purpose of computing the disallowance as per Rule 8D(2)(iii), the amount of average investment would be Rs.7 crores and hence the disallowance made at 0.5% of the average amount of the current year investment of Rs.7 crores would be restricted to Rs.3,50,000/- only. To this extent, the disallowance is justified. Thus the corresponding assessee's ground fails.”*

7.4.2 Respectfully following the decision of the Co-ordinate Bench of this Tribunal in the assessee's own case for Assessment Year 2010-11 (supra), we hold that the disallowance made under section 14A of the Act in terms of Rule 8D(2)(ii) of the Rules needs to be deleted for the Assessment Years 2011-12 and 2012-13 that are before us.

7.4.3 With regard to the disallowance to be made under section 14A of the Act r.w.Rule 8D(2)(iii) of the Rules, admittedly, the assessee has not earned any exempt dividend income during both the Assessment Years 2011-12 and 2012-13 which are before us. The Hon'ble Madras High Court in the case of Redington (India) Ltd., Vs. Addl. CIT (2017) 77 taxmann.com257 (Madras) at para5 of its judgment has held that the provisions of section 14A r.w.Rule 8D of the Rules are attracted / relatable to the earning of actual income and not notional or anticipated income and therefore where there is no exempt income earned in a year, there cannot be a disallowance of expenditure in relation to an assumed income. Respectfully following the aforesaid decision of the Hon'ble Madras High Court in the case of Redington (India) Ltd., we delete the disallowances made by the AO under section 14A r.w.Rule 8D(2)(iii) of the Rules since the assessee has not earned any exempt income during these two Assessment Years 2011-12 and 2012-13. Consequently, the grounds raised by the assessee are allowed.

**8. Ground No.3 for Assessment Years 2011-12 and 2012-13 – Disallowance under section 36(1)(iii) of the Act**

8.1 In this ground for Assessment Years 2011-12 and 2012-13 (supra), the assessee assails the orders of the CIT(A) in partly upholding the disallowances made to the extent of fresh advances made during the year to certain parties in terms of section 36(1)(iii) of the Act. In this regard, it was submitted by the learned AR that the assessee has sufficient interest free funds and hence no

disallowance was called for. According to the learned AR, the CIT(A) held that advances given by the assessee to M/s. Brindavan Hydro Power Pvt. Ltd., M/s. Surya Transmissions Ltd., and M/s. Shaw Brothers Merchant Pvt. Ltd., to the extent of old balances are covered by the order of the CIT(A) for Assessment Year 2010-11 and allowed the same as for business expenditure. However, in respect of the remaining advances to the aforesaid three parties and the advance to M/s. Adhunik Power Transmission Ltd., the CIT(A) held that there was no business purpose for advancing these loans, which were given during the period relevant to the Assessment Year 2012-13. The learned AR contends that in any case no disallowance was warranted as the assessee has sufficient own non-interest bearing funds.

8.2 Per contra, the learned DR supported the orders of the CIT(A). It was contended that since the assessee has not been able to show that the advances to Adhunik Power Transmissions Ltd., and advances to the other aforesaid three companies during the years under consideration was for business purposes, therefore, the CIT(A) has rightly held that the assessee is not entitled to claim deduction for interest expenditure to the extent of these advances.

8.3.1 We have considered the rival contentions and perused the material on record. The Co-ordinate Bench of this Tribunal in its order in the assessee's own case in ITA No.493 and 669/Bang/2014 for Assessment Year 2010-11 (supra) has upheld the order of CIT(A) in deleting the disallowances made by the AO under section 36(1)(iii) of the Act on the ground that since the assessee was having sufficient interest free funds, the advances to sister concerns was out of non-interest bearing funds. The aforesaid view of the Co-ordinate Bench for Assessment Year 2010-11 has been adopted by the CIT(A) for the 2 Assessment Years viz., 2011-12 and 2012-13 as well, but the CIT(A) has upheld / restricted the disallowance under section 36(1)(iii) of the Act to fresh advances given to existing entities and in respect of advances given during the

year to new entities. We are informed by the parties that Revenue has not filed any appeal against the said reliefs granted by the CIT(A).

8.3.2 Further, from the copy of Audited financial statements for the Financial Year ending 31.03.2012 relevant to Assessment Year 2012-13 (copies placed at pages 154 to 227 of paper book), we find that the position of non-interest bearing funds of the assessee for Assessment Years 2011-12 and 2012-13, as well as the extent of advances made on which disallowances are made as under:

	<b>31.03.2011</b> <b>(Rs.)</b>	<b>31.03.2012</b> <b>(Rs.)</b>
Share Capital	91,69,23,000/-	91,69,23,000/-
Reserves & Surplus	4,15,75,24,203/-	4,55,32,58,958/-
<b>Total Interest Free Funds</b>	<b>5,07,44,47,203/-</b>	<b>5,47,01,81,958/-</b>
Interest Free Loans to Related Parties	25,48,30,171/-	39,33,17,901/-

8.3.3 As can be seen from the above details, the assessee has interest free funds of Rs.5,07,44,47,203/- as on 31.03.2011 and the extent of interest free advances made to related / associated enterprises is Rs.25,48,30,171/-. The CIT(A) has deleted the interest disallowances on old advances given, which are covered by the decision of the Co-ordinate Bench of this Tribunal for Assessment Year 2010-11 (supra). We find that the very same related /associate enterprises are present for Assessment Year 2011-12 and therefore following the decision of the Co-ordinate Bench of the Tribunal in the assessee's own case for Assessment Year 2010-11 (supra), the entire interest disallowance made to the extent sustained by the CIT(A) is deleted for Assessment Year 2011-12.

8.3.4 For Assessment Year 2012-13, it is seen that there is a fresh advance made by the assessee to M/s. Adhunik Power Transmissions Ltd. In respect of

the interest on the said advance, the CIT(A) has confirmed the disallowance as also in respect of fresh advances to old associated enterprises. We find that the extent of own interest free funds available to the assessee as on 31.03.2012 is Rs.547,01,81,958/-, which is far in excess of the advances given to the associated enterprises of Rs.39,33,17,901/-. The Hon'ble Apex Court in the case of Reliance Industries Ltd., reported in 410 ITR 466 (SC) has held that no interest disallowance can be made if the interest free funds available to the assessee exceed the advances made for non-business purposes. Following the aforesaid decision of the Hon'ble Apex Court (supra), the interest disallowance under section 36(1)(iii) of the Act to the extent sustained by the CIT(A) is hereby deleted. Consequently, ground No.3 of the assessee's appeals for Assessment Years 2011-12 and 2012-13 is allowed

9. In the result, the assessee's appeals for Assessment Years 2011-12 and 2012-13 are partly allowed.

*Pronounced in the open court on 4<sup>th</sup> June, 2019.*

Sd/-  
**(N. V. VASUDEVAN)**  
**VICE PRESIDENT**

Sd/-  
**(JASON P. BOAZ)**  
**Accountant Member**

Bangalore.  
Dated: 4<sup>th</sup> June, 2019.  
/NS/\*

Copy to:

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|-------------------------|---------------|
| 1. Appellants           | 2. Respondent |
| 3. CIT                  | 4. CIT(A)     |
| 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.