

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

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

**ITA No. 1805/DEL/2009
[Assessment Year: 2006-07]**

M/s Ranbaxy Holding Company
55, Hanuman Road
Connaught Place, New Delhi

Vs.

The Addl. .C.I.T.
Range - 15
New Delhi

PAN : AAKCS 7686 P

**ITA No. 2969/DEL/2009
[Assessment Year: 2006-07]**

The Addl. .C.I.T.
Range - 15
New Delhi

Vs

M/s Ranbaxy Holding Company
55, Hanuman Road
Connaught Place, New Delhi

PAN : AAKCS 7686 P

[Appellant]

[Respondent]

Date of Hearing : 01.04.2019

Date of Pronouncement : 03.04.2019

Assessee by : Shri Tarandeep Singh, Adv

Revenue by : Shri Surender Pal, Sr. DR

ORDER**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

The above two cross appeals by the assessee and revenue are preferred against the order of the Commissioner of Income Tax [Appeals] - 28, New Delhi dated 12.03.2009 pertaining to assessment year 2006-07.

2. The solitary grievance of the assessee is that the CIT(A) erred in upholding the disallowance of Rs 1.97 crores on account of Administrative and Personnel expenses determined by the Assessing Officer on notional basis, by applying provisions of section 14A of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'. r.w.r. 8D of the Rules, 1962.

3. The solitary grievance of the Revenue is that the CIT(A) erred in deleting the addition made on account of disallowance of interest u/s 14A of the Act to the extent of Rs. 7.30 crores.

4. Since the underlying facts in issues in both these appeals are common and were heard together, they are being disposed off by this common order for the sake of convenience and brevity.

5. The representatives of both the sides were heard at length and the case records carefully perused.

6. Facts on record reveal that the appellant company was mainly involved in the business of non-banking finances. During the year under consideration, the appellant company has shown income from dividends amounting to Rs. 86.88 crores and claimed it to be exempt u/s 10(34) of the Act. The assessee has suo moto allocated expenses for earning this dividend income to the tune of Rs. 55.59 crores u/s 14A of the Act. The assessee has furnished working of disallowance u/s 14A of the Act and as per the working, the assessee has allocated 55.37 crores on account of interest expenses and Rs. 21.89 lakhs on account of administrative expenses on estimated basis to earn dividend income.

7. The Assessing Officer was not satisfied with the working of the disallowance made by the assessee. The Assessing Officer was of the opinion that the provisions of section 14A(2) and 14A(3) of the Act squarely apply on the facts of the case. Drawing support from Rule 8D of the Rules, the Assessing Officer computed the disallowance at Rs. 62,68,08,055/-.

8. At the very outset, we have to state that Rule 8D of the Rules is applicable from A.Y 2008-09 as held by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd 402 ITR 640. The Hon'ble Supreme Court, in this decision, has observed as under:

"34) Having clarified the aforesaid position, the first and foremost issue that falls for consideration is as to whether the dominant purpose test, which is pressed into service by the assessee would apply while interpreting [Section 14A](#) of the Act or we have to go by the theory of apportionment. We are of the opinion that the dominant purpose for which the **investment** into shares is made by an assessee may not be relevant. No doubt, the assessee like Maxopp Investment Limited may have made the **investment** in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact

remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind Section 14A of the Act in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in [Section 14A](#) of the Act. This is so held in Walfort Share and Stock Brokers P Ltd., relevant passage whereof is already reproduced above, for the sake of continuity of discussion, we would like to quote the following few lines therefrom."

9. In the light of the aforementioned findings of the Hon'ble Supreme Court we will now see as to how the assessee has computed the disallowance.

10. The summary of disallowance u/s 14A of the Act can be understood from the following:

PARTICULARS	AMOUNT [Rs.]
A. - Out of Interest	55,37,89,473/-
B - Out of Personnel, Office & Administrative Expenses	21,89,526/-
Total Disallowance	55,59,78,999/-

11. Disallowance of interest can be understood from the following chart:

Date	Particulars	DR.	CR.	Balance	Days	Interest
1-Apr-05	Investments as on 01-04-05	9,918,759,207		9,918,759,207	0	
11-Apr-05	Capital as on 01-04-05		22,500,000	9,796,259,207	0	.
11-Apr-05	Reserves & Surplus as on 01-04-05		3,518,837,260	6,277,421,947	0	.
1-Apr-05	/.Advance (intt. Free Fund)		152,439,000	6,124,982,947	0	-
1-Apr-05	Security Deposit (intt Free fund)		1,050,000	6,123,932,947	3	4,026,696
4-Apr-05	Ranbaxy Shares	200,000,000		6,323,932,947	2	2,772,135
36-Apr-05	Ranbaxy Shares	360,000,000		6,683,932,947	2	2,929,943
38-Apr-05	Ranbaxy Shares	130,000,000		6,813,932,947	3	4,480,394
11-Apr-05	Ranbaxy Shares	20,000,000		6,833,932,947	1	1,497,848
12-Apr-05	Ranbaxy Shares	60,000,000		6,893,932,947	1	1,510,999
13-Apr-05	Ranbaxy Shares	60,000,000		6,953,932,947	2	3,048,299
15-Apr-05	Ranbaxy Shares	180,000,000		7,133,932,947	4	6,254,407
19-Apr-05	Ranbaxy Shares	40,000,000		7,173,932,947	14	22,013,164
03-May-05	Ranbaxy Shares	10,000,000		7,183,932,947	2	3,149,121
05-May-05	Ranbaxy Shares	10,000,000		7,193,932,947	4	6,307,010
09-May-05	Ranbaxy Shares	30,000,000		7,223,932,947	1	1,583,328
10-May-05	Ranbaxy Shares	30,000,000		7,253,932,947	1	1,589,903
11-May-05	Ranbaxy Shares	150,000,000		7,403,932,947	1	1,622,780
12-May-05	Ranbaxy Shares	65,000,000		7,468,932,947	4	6,548,106
16-May-05	Ranbaxy Shares	10,000,000		7,478,932,947	1	1,639,218
17-May-05	Ranbaxy Shares	10,000,000		7,488,932,947	1	1,641,410
18-May-05	Ranbaxy Shares	5,000,000		7,493,932,947	1	1,642,506
19-May-05	Ranbaxy Shares	5,000,000		7,498,932,947	5	8,218,009
24-May-05	Ranbaxy Shares	5,000,000		7,503,932,947	2	3,289,395
26-May-05	Ranbaxy Shares	50,000,000		7,553,932,947	1	1,655,657
27-May-05	Ranbaxy Shares	60,000,000		7,613,932,947	3	5,006,422
30-May-05	Ranbaxy Shares	10,000,000		7,623,932,947	18	30,077,982
17-Jun-05	Fortis Finvest Shares		2,500,000	7,621,432,947	17	28,397,668
04-Jul-05	Fortis Finvest Shares		2,497,500	7,618,935,447	1	1,669,904
05-Jul-05	Dividend - Ranbaxy		613,276,956	7,005,658,491	10	15,354,868
15-Jul-05	Ranbaxy Shares		1,370,627	7,004,287,864	52	79,829,692

05-Sep-05	RHCPL Shares	1,366,000	7,005,653,864	2	3,070,972	-
07-Sep-05	RHCPL Shares	51,250	7,005,705,114	0		-
07-Sep-05	RHCPL Shares	60,000	7,005,765,114	0		-
07-Sep-05	RHCPL Shares	2,237,500	7,008,002,614	30	46,080,017	
07-Oct-05	Madhubani & Suraj Overseas	149,800	7,007,852,814	33	50,686,935	
09-Nov-05	NCRP of MHPL & SHPL Sold	66,000,000	6,941,852,814	0		
09-Nov-05	Eq. Shares of Forits Healthcare	127,061,400	6,814,791,414	0		
09-Nov-05	Eq. Shares of FHCHL.-sold	5,747,000	6,809,044,414	0		
09-Nov-05	Eq. Shares of FHCHL.-sold	5,747,000	6,803,297,414	2	2,982,267	
11-Nov-05	Shares of Mount Shivalik	335,759	6,802,961,655	3	4,473,180	
14-Nov-05	Dividend - Ranbaxy	255,532,385	6,547,429,270	9	12,915,477	
23-Nov-05	H.E.T.L./ U.P. Hotel Ltd. Share	56,489	6,547,372,781	0		
23-NOV-05	JKC, JKS, PCL, MLL Shares	60,905	6,547,311,877	1	1,435,027	
24-Nov-05	Perfect Circle Ltd. Shares	4,642	6,547,307,235	5	7,175,131	
29-Nov-05	Perfect Circle Ltd. Shares	50,392	6,547,256,842	2	2,870,030	
01-Dec-05	Reliance Inds.	1,717,342	6,545,539,500	0		
01-Dec-05	Perfect Circle Ltd./M.S.I.L.	105,882	6,545,433,618	6	8,607,694	
07-Dec-05	Perfect Circle Ltd. Shares	24,188	6,545,409,430	12	17,215,323	
19-Dec-05	Perfect Circle Ltd. Shares	29,671	6,545,379,759	2	2,869,208	
21-Dec-05	OHPL Shares	2,500,000	6,547,879,759	5	7,175,759	
26-Dec-05	OHPL Shares Sold	980,000	6,546,899,759	1	1,434,937	
27-Dec-05	OHPL Shares	52,500,000	6,59,399,759	7	10,125,106	
03-Jan-06	Perfect Circle Ltd. Shares Sold	145,665	6,599,254,094	66	95,463,183	
10-Mar-06	Eq. Share of IHPL sold	17,890,000	6,581,364,094	10	14,424,908	
20-Mar-06	Eq. Share of IHPL sold	75,300,000	6,506,064,094	0		
20-Mar-06	Eq. Share of OBTPPL sold	30,000,000	6,476,064,094	2	2,838,823	
22-Mar-06	Eq. Share of OBTPPL sold Balance	2,500,000	6,473,564,094	10	14,188,634	
01-Apr-06	CF		6,473,564,094	265	552,780,172	

12. As can be seen from the above mentioned chart, the assessee has considered the investments as at the beginning of the A.Y and thereafter, deducted the interest free available funds with it and then computed the interest on day to day basis. We find that such practice has been followed by the assessee in earlier A.Ys also and the same has been accepted by the revenue authorities in the preceding A.Ys.

13. Though the Assessing Officer has accepted the methodology of calculation of disallowance of interest but he has considered the net worth of investment as deductible amount from the total investment. It is a settled proposition of law that if the assessee has interest free funds available with it, then, it can be safely presumed that investments have been made out of interest free funds available. We, therefore, do not find any merit in the computation of disallowance of interest made by the Assessing Officer. Firstly, the approach of adopting net worth cannot be accepted as interest free available funds available with the assessee should be given set off against the investments and then only the proportionate interest needs to be disallowed as per the computation of disallowance made by the assessee mentioned elsewhere. Secondly, as mentioned elsewhere, Rule 8D of the Rules is not applicable for the year under consideration and, therefore, no weightage can be given to the methodology given u/r 8D of the Rules for the year under consideration.

14. Moreover, similar methodology has been accepted by the revenue in earlier A.Ys and following the Rule of Consistency, as enunciated by the Hon'ble Supreme Court in the case of Radha Soami Satsang 193 ITR 321, the Assessing Officer ought to have followed the findings in the earlier A.Ys.

15. Considering the facts of the disallowance of interest, we do not find any error or infirmity in the findings of the CIT(A).

16. The appeal filed by the revenue is dismissed.

17. Now coming to the appeal of the assessee, as mentioned elsewhere, the assessee has suo moto disallowed 21.89 lakhs in respect of administrative expenses. The disallowance has been computed as under:

S.NO	Particulars	Amount (Rs.)	
1	Personnel Expenses		6,674,251
2	Office & Administration Expenses		6,065,673
3	Depreciation		1,594,528
4	Debenture Issue Expenses		5,093,577
5	Other Financial Expenses		2,175,311
			22,203,338
Less:	Expenses Suo Moto Added back in the Statement of Taxable Income		
	- Subscription	25000	
		44,498	
	-Wealth Tax - Out of Salary Leave Encashment Gratuity	129,744	308,074
			21,895,284
	Disallowance @ 10% of Rs.21095264/-		2,189,526

18. The Assessing Officer has computed the disallowance as per Rule 8D of the Rules, which we have already held to be not applicable for the year under consideration. All that has to be considered is whether the disallowance made by the assessee is reasonable qua the facts of the case. In our considered opinion and after considering the computation as mentioned elsewhere, the suo moto disallowance @ 10% is reasonable and cannot be faulted with. We, accordingly, set aside the findings of the CIT(A) and direct the Assessing Officer to accept the suo moto disallowance of Rs. 21,89,526/-.

19. In the result the appeal of the assessee is allowed.

20. To sum up, in the result, the appeal filed by the assessee is allowed whereas the appeal filed by the department is dismissed.

The order is pronounced in the open court on 03.04.2019.

**Sd/-
[K.N. CHARY]
JUDICIAL MEMBER**

**Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 03rd April, 2019.

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	