IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' NEW DELHI)
BEFORE SHRI U.B.S. BEDI, JUDICIAL MEMBER
AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

I.T.A. No.1362 & 1032/Del/2013
Assessment year : 2008-09 & 2009-10

Interglobe Enterprises Ltd., Block B, DLF Corporate Park, DLF City, Phase-III,Gurgaon.	V.	DCIT, Circle-11 (1), New Delhi.

AND

I.T.A. No.1580/Del/2013
Assessment year : 2009-10

DCIT, Circle-11 (1), New Delhi.	V.	Interglobe Enterprises Ltd., Block-B, DLF Corporate Park, DLF City, Gurgaon.
(Appellant)		(Respondent)

Assessee by : Shri Ajay Vohra Advocate &
Shri Shaily Gupta, C.A.
Department by : Shri Satpal Singh, Sr. DR

ORDER

PER TS KAPOOR, AM:

This is a group of three appeals consisting of two filed by the assessee for assessment year 2008-09 & 2009-10 and one filed by revenue for assessment year 2009-10. The only issue argued in these appeals is disallowance by Assessing Officer on account of provisions of section 14A read with Rule 8D. The other grounds of appeal as contained in ground No.2 to 4 in assessment year 2008-09 and ground No. 2 in assessment year 2009-10 are dismissed as not pressed. The Assessing Officer in assessment year 2008-09 made a total disallowance of ₹.46,05,172/- consisting of following amounts:-

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i) Under Rule 8D(i).	₹. 165
ii) Under Rule 8D(ii)	₹. 88,450/-
iii) Under Rule 8D(iii).	₹.45,16,557/-
Total	₹.46,05,172/-

Though the assessment order reflects disallowance under Rule 8D)(ii) as nil but it seems to be due to an inadvertent mistake. In fact the total addition made by Assessing Officer at ₹.46,05,172/- reconciles only if ₹.88,450/- is taken as disallowance under rule 8D(ii).

2. In the assessment year 2009-10 this disallowance u/s 14A was made for an amount of ₹.75,37,219/- comprising of the following amounts:-

i) Under Rule 8D(i)	Nil
ii) Under Rule 8D(ii).	₹.6,86,658/-
iii) Under Rule 8D(iii).	₹.68,50,561/-
Total	₹.75,37,219/-

3. Aggrieved with the assessment order, the assessee filed appeal before Ld CIT(A). The Ld CIT(A) after going through the submissions filed by assessee did not agree with the arguments of Ld AR and upheld the addition of ₹.46,05,172/- inadvertently mentioned at ₹. 4,51,65,575/-. It appears from the order of Ld CIT(A) that he had confirmed the disallowance only with respect to addition under rule 8D(iii) as he did not make any finding with respect to addition under rule 8D(ii). However, we find that before Ld CIT(A) the assessee had taken up whole addition of ₹.46,05,172/-. Before us also the assessee has taken vide ground No.1 the issue of whole addition of ₹.46,05,172/- In assessment year 2009-10, the Ld CIT(A) upheld the disallowance

under rule 8D(iii) whereas he partly allowed the relief for disallowance under Rule 8D(ii). For the part relief given by Ld CIT(A), the revenue is in appeal before us for whole of the addition and for upholding the disallowance under Rule 8D(iii), the assessee is in appeal before us.

4. At the outset, the Ld AR invited our attention to the unintended mistakes in Ld CIT(A)'s order and further on merits the Ld AR submitted that there was no expenditure incurred to earn the exempted income. He further submitted that interest expense was incurred for vehicle loans. The Ld AR submitted that the assessee was a cash rich company and it had made investments of its surplus funds in the units of mutual funds in debt oriented schemes wherein no specific expertise is required and where a fixed income in the form of dividend is distributed by mutual funds. It was submitted that the assessee had deployed its surplus funds in tax efficient schemes of mutual funds and since the mutual funds were not equity oriented no expertise was required and therefore no expenses were incurred for earning exempt income. In this respect our attention was invited to paper book page 219 wherein the break of investment in mutual funds was placed. Regarding other investments in equity shares our attention was invited to paper book page 204A for assessment year 2008-09 and it was submitted that out of a total investment of ₹.143.58 crores as on 31st March, 2008 an amount of ₹.101.74 crores was invested in the subsidiary companies which were for the purpose of business interest of the assessee. It was submitted that fresh strategic investments were made during the year out of fresh capital and internal accruals and in this respect cash flow statement placed at paper book page 200 was referred. It was further submitted that no fresh loans were raised during the year under consideration and the fresh interest bearing loans were raised only as vehicle loans and in

this respect our attention was invited to paper book page 203 relating to assessment year 2008-09.

5. Regarding other investments in the form of unquoted shares, the Ld AR submitted that in fact in the year under consideration instead of further purchase there were certain sales in this regard. Similarly in respect of equity shares of quoted shares it was submitted that no new investment was made and the increase in value as on 31.3.2008 had occurred only due to lower provisions for diminution in value. As regards assessment year 2009-10 the Ld AR took us to page 24 of paper book for assessment year 2009-10 and submitted that investments in subsidiary companies was of same value as in the earlier year and the decrease in value had occurred due to more provision for diminution in value. Similarly in respect of other unquoted shares our attention was invited to the comparable figures with the earlier year with the proposition that investment during this period had in fact decreased by a small amount. Regarding investment in equity shares, it was submitted that it was of same value and the decrease in value was only on account of higher provisioning for diminution in value. As regards investments in units of mutual funds, the Ld AR submitted that investments during this year and considerably reduced and that too remained in debt oriented schemes of mutual funds wherein no expertise is required and in this respect our attention was invited to paper book page 38 wherein the fact of investment in short term money fund investments was mentioned. In view of the above submissions, it was submitted that a part of investment was for strategic purposes and there too no interest bearing funds were utilized as the assessee company was a rich company and with regard to other investments in mutual funds, it was submitted that the same were for debt oriented schemes, and therefore disallowance u/s 14A

was not warranted. Reliance in this respect was placed on the case laws as relied upon before Ld CIT(A) as mentioned at paper book page 8 & 17. Without prejudice to the above, it was submitted that addition was excessive and in any case it cannot exceed the dividend income and in this respect reliance was placed in the case law of Sahara India Financial Corporation in I.T.A. No.3199/Del/2013 wherein the Delhi Tribunal had held that disallowance u/s 14A cannot exceed exempt income.

6. Ld DR, on the other hand, relied upon the order of Assessing Officer and detailed findings of Ld CIT(A) in respect of upholding of addition were relied.

7. We have heard the rival submissions of both the parties and have gone through the material available on record. First, we take up the appeal for assessment year 2008-09. In this year, the assessee had three type of investments one relating to investment in subsidiary companies the amount of which is ₹.101.74 crores. The second category relates to long term unquoted shares the amount of which is ₹.31.53 crores. The third category is of equity shares the value of which is ₹.14.88 lakhs and the last category is investment in units of mutual funds amounting to ₹.10.15 crores. These facts and figures are verifiable from paper book page 204A. As regards the first category of shares in the form of investment into subsidiary companies we find that investment into this category of shares had increased from ₹.78.17 lakhs to ₹.101.74 crores which is due to increase in investment in preference shares and other equity shares. During this period, the interest bearing funds had decreased from ₹.1.49 crores to ₹.87,30 lakhs as is apparent from paper book page 203 and further most of the interest bearing loans are for vehicle loans as mentioned in paper book

page 203. During this year under consideration, the assessee has earned a cash profit of ₹.11 crores. The cash flow statement at paper book page 200 reflects cash from operating activities including cash profits of ₹.49.28 crores. The assessee has also raised an amount of ₹.50.80 crores by issue of fresh preference shares as is apparent from paper book page 200. In view of the above facts and figures it is apparent that assessee had utilized interest free funds for making fresh investments and that too into its subsidiaries which is not for the purpose of earning exempt income and which are for strategic purposes only.

8. In view of the above facts, we hold that no disallowance of interest is required to be made under rule 8D(i) & 8D (ii) as no direct or indirect interest expenditure has incurred for making investments.

9. As regards disallowance under Rule 8D(iii) we find that assessee had invested in four debt oriented schemes of DSP Merile Lynch, reliance Liquid Plus, Reliance Monthly Interval Mutual Funds and SBI Liquid Plus Funds. We find that these are not really investments and these are in fact parking of surplus funds in a more tax efficient manner. However, since these gives rise to exempt income in the form of dividend section 14A read with Rule 8D is applicable as held by Hon'ble Delhi High Court in the case of Maxopp In vestments. The Hon'ble Delhi High Court had held as under:-

> *"24. We do not agree with the submission of the learned counsel appearing on behalf of the assessees that a narrow meaning ought to be ascribed to the expression "in relation to" appearing in section 14A of the said act. The context does not suggest that a narrow meaning ought to be given*

to the said expression. It is pertinent to note that the provision was inserted by virtue of the Finance Act, 2001 with retrospective effect from 01/04/1962. In other words, it was the intention of Parliament that it should appear in the statute book, from its inception, that expenditure incurred in connection with income which does not form part of total income ought not to be allowed as a deduction. The factum of making the said provision retrospective makes it clear that Parliament wanted that it should be understood by all that from the very beginning, such expenditure was not allowable as a deduction. Of course, by introducing the proviso it made it clear that there was no intention to reopen finalized assessments prior to the assessment year beginning on 01/04/2001. Furthermore, as observed by the Supreme Court in Walfort (supra), the basic principle of taxation is to tax the net income, i.e., gross income minus the expenditure and on the same analogy the exemption is also in respect of net income. In other words, where the gross income would not form part of total income, it's associated or related expenditure would also not be permitted to be debited against other taxable income.

25. We are of the view that the expression "in relation to" appearing in Section 14 A of the said act cannot be ascribed a narrow or constricted meaning. If we were to accept the submission made on behalf of the assessees then sub-section (1) would have to be read as follows:-

"For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee with the main object of earning income which does not form part of the total income under this Act."

That is certainly not the purport of the said provision. The expression "in relation to" does not have any embedded object. It simply means "in connection with" or "pertaining to". If the expenditure in question has a relation or connection with or pertains to exempt income, it cannot be allowed as a deduction even if it otherwise qualifies under the other provisions of the said Act. In Walfort (supra), the Supreme Court made it very clear that the permissible deductions enumerated in sections 15 to 59 are now to be allowed only with reference to income which is brought under one of the heads of income and is chargeable to tax. The Supreme Court further clarified that if an income like dividend income is not part of the total income, the expenditure/deduction related to such income, though of the nature specified in sections 15 to 59, cannot be allowed against other income which is includable in the total income for the purpose of chargeability to tax.

Similarly the Hon'ble Bombay high Court in the case of Godrej & Boyce Manufacturing Co. Ltd. observed as under:-

"In order to determine the quantum of the disallowance there must be a proximate relationship between the expenditure and the income which does not form part of total income. Once such

> *a proximate relationship exists the disallowance has to be affected., All expenditure incurred in the earning of income which does not form part of total income has to be disallowance subject to compliance with the test adopted by Supreme Court in Walfort and it would not be permissible to restrict the provision of section 14A by an artificial method of interpretation."*

However, we find that the calculation of disallowance under Rule 8D(iii) made by the Assessing Officer and upheld by Ld CIT(A) is not correct In view of the fact that Assessing Officer had included the value of total investments for calculation of disallowance whereas in our opinion the value of those investments should have been included which were made for the purpose of earning exempt income. The assessee had made significant investments in the shares of subsidiary companies which are definitely not for the purpose of earning exempt income. The Hon'ble Tribunal in I.T.A. No.3349/Del/2011 in the case of Promain Ltd., after relying upon a Kolkatta judgment of Tribunal in I.T.A. No.1331 has held that strategic investment has to be excluded for the purpose of arriving at disallowance under Rule 8D(iii). The Tribunal had relied upon the findings of Kolkatta Tribunal in the case of Rei Agro Ltd. v. DCIT in I.T.A. No./ 1331/Del/2011 dated 29.7.2011. The relevant portion of Tribunal findings as contained in the Kolkatta Tribunal are reproduced below:-

> *"(iii) Further in Rule 8D(2)(ii), the words used in numerator B are "the average value of the investment, income from which does not form or shall not form part of the total income as appearing in the balance sheet as on the first day and in the last day of the previous year". The Assessing Officer was wrong in taking into consideration the investment of ₹.103 crores made during the*

year which has not earned any dividend or exempt income. It is only the average of the value of the investment from which the income has been earned which is not falling within the part of the total income that is to be considered. Thus,. It is not the total investment at all beginning of the year and at the end of the year, which is to be considered but it is the average of the value of investments which has given rise to the income which does not form part of the total income which is to be considered. The term "average of the value of investment" is used to take care of cases where there is the issue of dividend striping.

iv) Under Rule 8D(2)(iii), what is disallowable is an amount equal to ½ percentage of the average value of investment the income from which does not or shall not form part of the total income/. Thus, under sub clause (iii), what is disallowed is ½ percentage of the numerator B in Rule 8D(2)Iii). This has to be calculated on the same lines as mentioned earlier in respect of Numerator B in the Rule 8D(2)(ii). Thus, not all investments become the subject matter of consideration when computing disallowance u/s 14A read with Rule 8D. The disallowance u/s 14A read with Rule 8D is to be in relation to the income which does not form part of the total income and this can be done only by taking into consideration the investment which has given rise to this income which does not form part of the total income. (A.Y.) (I.T.A. No.1331/Kol/2011 dated 29.7.2011."

Following the above judicial precedents, we held that value of strategic investments should be excluded for the purpose of disallowance under Rule 8D)iii) facts, we direct the Assessing Officer to calculate the disallowance under Rule8D(iii) by excluding the value of strategic

investments in the calculation of disallowance. As regards disallowance under Rule 8D(i) and 8D(ii) we have already held that no disallowance is warranted.

10. In the result, the appeals filed by the assessee are partly allowed for statistical purposes whereas the appeal filed by the revenue is dismissed.

11. Order pronounced in the open court on 4th day of April, 2014.

Sd/- Sd/-

(U.B.S. BEDI) (T.S. KAPOOR)
JUDICIAL MEMBER ACCOUNTANT MEMBER

Dt. 04.04.2014.
HMS

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi).

Date of hearing 3.4.2014

Date of Dictation 3.4.2014

Date of Typing 3.4.2014

Date of order signed by
both the Members &
pronouncement.

Date of order uploaded on net
& sent to the Bench concerned.

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