

## **Para 1 Recent rulings on section 14A r.w.r. 8D**

Para 1.1 If Interest free funds are more than the investment in tax free securities then no disallowance of Interest under section 14A of the act.

### **In Favour:-**

i) **CIT vs. HDFC Bank Ltd (Bombay High Court) ITA No.330/2012**

**No s. 14A disallowance of interest paid on borrowings if assessee's own funds and non-interest bearing funds exceeds investment in tax-free securities**

In principle, if there are funds available, both interest-free and over draft and/or loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company if the interest-free funds were sufficient to meet the investment. On facts, the assessee's own funds and other non-interest bearing funds were more than the investment in the tax free securities. Consequently, the **ITAT** rightly held that there was no basis for deeming that the assessee had used borrowed funds for investment in tax free securities (**Reliance Utilities and Power Ltd** 313 ITR 340 (Bom), **East India Pharmaceutical Works** 224 ITR 627 (SC) & **Woolcombers** 134 ITR 219 (Cal) followed)

ii) **CIT v. Torrent power Ltd. [2014] 44 Taxmann.com 441 (Gujarat)**

Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income (Interest - Non-user of borrowed funds) - Assessment year 2006-07 - For relevant year, assessee filed its return declaring exempt income being interest on bonds, exempted under section 10(15) and dividend income exempt under section 10(23D) - Assessing Officer having invoked provisions of section 14A, disallowed one per cent of interest expenses incurred for earning exempt income - Tribunal deleted said disallowance - Whether in view of fact that assessee had sufficient funds for making investments and it had not used borrowed funds for such purpose, impugned order passed by Tribunal deleting disallowance was to be upheld - Held, yes [Para 7] [In favour of assessee]

iii) **CIT v. Gujarat State Fertilizers & chemicals Ltd. [2013] 36 taxmann.com 230 (Gujarat)**

Section 14A, read with section 115JB of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income [Dividends] - Assessment year 2004-05 - Whether, where assessee's own funds were more than investment made to earn exempted dividend income, and there was nothing to indicate that borrowed funds were utilized for purpose of investment in shares for earning such dividend, disallowance of 10 per cent of dividend income was not permissible - Held, yes

iv) **CIT vs. Gujarat Narmada Valley Fertilizers Co. Ltd. [2014] 42 taxmann.com 270 (Gujarat)**

Where assessee-company received dividend on UTI and shares and investment in same was made in earlier years and interest free funds available with assessee were much larger as compared to investment, disallowance of assessee's claim for interest expenditure by applying section 14A was wrong.

Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to exempt income [Interest] - Assessment years 2001-02 and 2002-03 - Assessee-company received dividend on UTI and shares - Assessing Officer applying provisions of section 14A disallowed interest expenditure claimed by assessee - Investment in UTI and shares was made by assessee in earlier years - During year interest free funds available with assessee were much larger as compared to investment in UTI and shares - Whether Assessing Officer was wrong in disallowing interest expenditure under section 14A - Held, yes [Para 9][In favour of assessee]

v) **CIT vs. Amod Stamping (P.) Ltd. [2014] 45 taxmann.com 427 (Gujarat)**

Where assessee had sufficient profit and interest free funds to be invested in mutual fund from where exempted income was generated and nothing had been charged by bank except STT, disallowance under section 14A was to be restricted to amount of STT

Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to exempt income (Interest free funds) - Assessment year 2006-07 - Assessing Officer made disallowance of Rs. 13.89 lakhs under section 14A towards interest and other expenses incurred by assessee in relation to earning of exempt income from mutual fund investments in banks - Commissioner (Appeals) having noticed that assessee was having sufficient profit and interest free funds in comparison to investments and no interest had been charged by bank except security transaction tax of Rs. 64,909, restricted disallowance to Rs. 64,909 - Whether Commissioner (Appeals) was justified in his action - Held, yes [Para 4.1] [In favour of assessee]

vi) **CIT vs. Hitachi Home and Life Solutions (I) Ltd. [2014] 41 taxmann.com 540 (Gujarat)**

Where assessee's interest free funds exceeded investment made for earning exempted dividend income, disallowance under section 14A was not justified

Section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income [Interest] - Assessment year 1999-2000 - Whether, where assessee's interest free funds far exceeded investments made for earning exempted dividend income, and Assessing Officer had also failed to establish nexus between borrowed funds and investments made, no disallowance could be made under section 14A - Held, yes [Para 8] [In favour of assessee]

**vii) CIT vs. Suzlon Energy Ltd. [2013] 33 taxmann.com 151 (Gujarat)**

Where assessee had sufficient interest free funds to meet investment in Indian subsidiaries yielding tax free dividend, interest paid on borrowed funds could not be disallowed under section 14A

Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income [Dividends] - Whether where investment was made by assessee in foreign subsidiaries, disallowance of interest expenditure under section 14A was not justified since dividend income from foreign subsidiaries, is taxable in India - Held, yes - Whether where assessee had own interest free funds many times over the investment made in Indian subsidiaries and further, there was no direct nexus between interest bearing borrowed funds and such investment, no disallowance of interest expenditure could be made under section 14A - Held, yes [Para 3.1] [In favour of assessee]

**viii) CIT vs. UTI bank Ltd. [2013] 32 taxmann.com 370 (Gujarat)**

If there are sufficient interest free funds to meet tax free investments, they are presumed to be made from interest free funds and not loaned funds and no disallowance can be made under section 14A

Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to income not chargeable to tax [Dividends] - Assessment year 2003-04 - Whether, where assessee had sufficient interest free funds to meet its tax free investments yielding exempt income, it could be presumed that such investments were made from interest free funds and not loaned funds and, thus no disallowance under section 14A being warranted - Held, yes [Para 4] [In favour of assessee].

**ix) DCIT vs. Gujarat Narmada valley Fertilizers Ltd. [2015] 53 Taxmann.com 519 (Ahmedabad-Trib.)**

Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income (Units of UTI) - Assessment years 2001-02 and 2002-03 - Whether where interest free funds available with assessee were far in excess of investments made in units of UTI and shares of domestic companies, impugned disallowance made under section 14A was to be deleted - Held, yes [Para 16] [In favour of assessee]

**x) HDFC Bank Ltd vs. DCIT (Bombay High Court) (Writ Petition No.1753 of 2016)**

**S. 14A/ Rule 8D: Severe stricture passed against the ITAT for taking the view that the presumption laid down in HDFC Bank 366 ITR 505 (Bom) and Reliance Utilities 313 ITR 340 (Bom) that investments in tax-free securities must be deemed to have come out of own funds and ITAT's order reversed on the ground that it is "Judicial Indiscipline" leading to complete chaos and anarchy in the administration of law**

The impugned order of the Tribunal seems to question the decision of this Court in HDFC Bank Ltd. (supra) to the extent it relied upon the decision of this Court in Reliance Utilities and Power Ltd. (supra). This is by observing that the decision in Reliance Utilities and Power Ltd.(supra) it must be appreciated was rendered in the context of Section 36(1)(iii) of the Act and its parameters are different from that of Section 14A of the Act. This Court in its order in HDFC Bank Ltd.(supra) consciously applied the principle of presumption as laid down in Reliance Utilities and Power Ltd. (supra) and in fact quoted the relevant paragraph to emphasize that the same principle / test of presumption would apply to decide whether or not interest expenditure could be disallowed under Section 14A of the Act in respect of the income arising out of tax free securities. It is not the office of Tribunal to disregard a binding decision of this court. This is particularly so when the decision in Reliance Utilities and Power Ltd. (supra) has been consciously applied by this Court while rendering a decision in the context of Section 14A of the Act

**Against of:-**

- i) Ferani Hotels Pvt. Ltd.vs. ACIT (ITAT Mumbai) ITA No.857/Mum/2013  
S. 14A Rule 8D: No presumption can be drawn that investment in tax-free securities has come from own funds.

Para 1.2 If there is no exempt income earned during the year then no disallowance can be made under section 14A

**In favour: -**

- i) CIT vs. Holcim India P. Ltd. (Delhi) ITA No. 299/2014 & 486/2014
- ii) CIT vs. Shivam Motors P Ltd ITA No. 88 of 2014 (Allahabad)
- iii) CIT vs. Corrtch Energy Pvt. Ltd [2014] 223 Taxmann 130 (Guj)
- iv) CIT vs. Delite Enterprises (Bom HC)
- v) CIT vs. Lakhani Marketing [2014] 49 taxmann.com 257 (Punjab & Haryana)
- vi) CIT vs. Winsome Textiles Industries Ltd 319 ITR 204 (P&H)
- vii) Alliance Infrastructure Projects Pvt. Ltd. vs. DCIT (ITAT Bng) ITA No. 220/2013 & ITA No. 1043/2013
- viii) ACIT vs. M. Baskaran (ITAT Chennai) ITA No. 1717/Mds/2013

**Following is overruled: -**

- i) Cheminvest Ltd vs, ITO 121 ITD 318 (Ahd) (SB)
- ii) Circular No.5/2014 dated 11.2.2014
- iii) Doubledot Finance Ltd. vs. DCIT [2014] 49 taxmann.com 291 (Mumbai - Trib.)

Para 3.2 No sec.14A/Rule 8D disallowance if primary object of investment is to hold controlling stake in group concern and not to earn tax-free income.

**i) Garware Wall Ropes Ltd. vs. ACIT [2014] 46 taxmann.com 18 (Mumbai - Trib.)**

No S. 14A/ Rule 8D disallowance if primary object of investment is to hold controlling stake in group concern and not to earn tax-free income

ii) **EIH Associated Hotels Ltd. vs. DCIT (ITAT Chennai) ITA No. 1503/Mds/2012**

S. 14A & Rule 8D: Investments in subsidiaries to be excluded while computing disallowance

iii) **CIT vs. Oriental Structural Engineers Pvt Ltd. (Delhi) [2013] 35 taxmann.com 210 (Delhi)**

S. 14A & Rule 8D: Expenditure on acquiring shares out of “**commercial expediency**” & to earn taxable income cannot be disallowed

The assessee borrowed funds and invested Rs 6 crore in shares of subsidiary companies. It claimed that the said subsidiaries were Special Purpose Vehicles (SPVs) formed out of “commercial expediency” in order to obtain contracts from the NHAI and that the SPVs so formed engaged the assessee as contractor to execute the works awarded to them (i.e. SPVs) by the NHAI. It was pointed that the turnover from the execution of the contracts was shown in the P&L A/c. It was claimed that the interest attributable to the investments made by the assessee in the SPVs could not be disallowed u/s 14A read with Rule 8D because it could not be termed as expense /interest incurred for earning exempted income. The CIT(A) and Tribunal (order attached) upheld that assessee’s claim and held that as the investments in the shares were made out of “commercial expediency” the expenditure incurred for that purpose could not be disallowed u/s 14A and Rule 8D. On appeal by the department to the High Court, dismiss the appeal.

iv) **JM Financial Ltd. vs. ACIT (ITAT Mumbai) ITA No. 4521/Mum/ 2012**

No s. 14A/ Rule 8D disallowance for investment in shares of subsidiaries & Joint Ventures

In AY 2009-10, the assessee has specifically raised a point before the AO that 97.82% of the investment is in subsidiary companies and joint venture companies and, therefore, no expenditure was incurred for maintaining the portfolio on these investments or for holding the same. The assessee has also pointed out that these investments are long term investment and no decision is required in making the investment or disinvestment on regular basis because these investments are strategic in nature in the subsidiary companies on long term basis and, therefore, no direct or indirect expenditure is incurred. The department has not disputed this fact that out of the total investment about 98% of the investments are in subsidiary companies of the assessee and, therefore, the purpose of investment is not for earning the dividend income but having control and business purpose and consideration. Therefore, prima facie the assessee has made out a case to show that no expenditure has been incurred for maintaining these long term investment in subsidiary companies. The AO has not brought out any contrary fact or material to show that the assessee has incurred any expenditure for maintaining these investments or portfolio of these investments. In *Godrej & Boyce Mfg. Co* it was held that s. 14A(2) does not ifso facto empower the AO to apply the method prescribed by Rule 8D straightaway without considering whether the claim made by the assessee is correct. Also, in **Garware Wall Ropes** it was held that a disallowance u/s 14A cannot be made if the primary object of investment is holding controlling stake in the group concern and not earning any income out of investment. Similarly, in **Oriental Structural Engineers** (approved by the Delhi High Court) it has been

held that s. 14A disallowance cannot be made for investment in subsidiaries and SPVs out of commercial expediency.

**v) Interglobe Enterprise Ltd. Vs. DCIT (ITAT Delhi) I.T.A. No.1362 & 1032/Del/2013**

The assessee had made significant investments in the shares of subsidiary companies which are definitely not for the purpose of earning exempt income. Strategic investment has to be excluded for the purpose of arriving at disallowance under Rule 8D(iii). The disallowance under Rule 8D(iii) has to be computed by excluding the value of strategic investments. No disallowance under Rule 8D(i) and 8D(ii) is also warranted.

**For any further query, contact can be made at:-**

**[divyangshah86@gmail.com](mailto:divyangshah86@gmail.com)**

**Mob.No.9879292511**