

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI R. P. TOLANI, JUDICIAL MEMBER
AND
SHRI J. S. REDDY, ACCOUNTANT MEMBER**

**I.T.A. No. 364/Del/2012
Assessment Years: 2008-09**

ACIT
Circle 4 (1), Room No.407,
C.R. Building, I.P. Estate
New Delhi.

Vs.

M/s J.V. Strips Ltd.
Z-222, Loha Mandi,
Naraina,
New Delhi-110028

PAN: AAACJ2278G

(APPELLANT)

(RESPONDENT)

Revenue by: Ms. Shumana Sen, DR.
Assessee by: Shri. Akhilesh Kumar, Adv.

ORDER

PER J. S. REDDY, AM:

This is an appeal filed by the revenue directed against the order of Id.
CIT (A)-VII, New Delhi, dated 17.11.2011 for the A.Y. 2008-09.

Facts in brief

2. The assessee is a company and is engaged in the business of manufacturing and sale of C.R. Steel Strips. It filed its return of income on 26.08.2008 declaring total income of Rs.53,11,170/-. The AO passed an

order u/s 143(3) on 8.12.2010, assessing the total income at Rs.80,04,978/-, disallowing inter alia and amount of Rs.20,88,791/- u/s 14A of the IT Act 1961 (“hereafter referred to as the Act”) r.w. Rule 8D of the IT Rules 1962 and an amount of Rs.52,200/- u/s 35D of the Act.

3. The assessee carried the matter in appeal. The first appellate authority granted relief.

4. Aggrieved the revenue is in appeal on the following grounds:

- “1. On the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in deleting addition u/s 14A of the Income Tax Act amounting to Rs.20,88,791/-.*
- 2. Ld. CIT (A) erred in concluding the assessment order does not indicate any satisfaction of the assessing officer regarding correctness of the claim of the assessee, despite the fact that the satisfaction of the assessing officer is clearly evident from paragraphs 3.1 and 3.2 of the assessment order.*
- 3. The Ld. CIT (A) erred in deleting addition on account of disallowance of deduction u/s 35D of the Act in respect of increase in share capital merely on the ground of consistency that it was being allowed in assessment year 2005-06 and 2006-07.*
- 4. The appellant craves leave to add, to alter, or amend any grounds of the appeal raised above at the time of the hearing.”*

5. We have heard Ms. Shumana Sen the Id. DR on behalf of the revenue and Mr. Akhilesh Kumar, the Id. Advocate on behalf of the assessee.

6. On a careful consideration of the facts and circumstances of the case and a perusal of the papers on record, and the orders of the authorities below as well as case laws cited. We hold as follows:

The first issue for adjudication is whether the Id. CIT (A) was right in deleting a disallowance made u/s 14A of the IT Act r.w. Rule 8D of the IT Rules.

7. The AO made the disallowance by observing as follows:

“a) Separate bank accounts were not maintained in respect of investments and other activities. Instead the funds have been used from the common bank account of the company. That is there is no feature distinguishing the funds used for investing in shares/ mutual funds. The assessee’s contention cannot be accepted as there is common pool of funds and it cannot be ascertained whether investments were made out of internal accruals or from borrowed funds. Further, the need for borrowing funds would not have arisen if the investments were not made. In other words, had the company not made investments, the total borrowings of the company would have been lower leading to reduction in interest costs.

b) Apart from the above, the assessee has not attributed any administrative expenses towards earning of exempt income. The fact that there are certain expenses for earning exempt income

cannot be denied. These expenses consist of time devoted by directors in deciding on the investment, cost of legal/financial/administrative advice obtained, cost of portfolio management etc.

Therefore, I am satisfied that administrative expenses should be attributable towards earning of dividend.”

Thereafter he applied Rule 8D and made the disallowance.

8. The first appellate authority deleted the addition by observing as follows:

- a) *The assessee was able to prove that borrowed funds have not been used for making investments. The assessee had interest free funds of over Rs.20 crore against investment of only Rs.3.39 crores.*
- b) *The assessee is not carrying out any regular activity of investment. Thus no administrative expenditure was incurred.*
- c) *The assessment order does not indicate any satisfaction recorded by the AO on the issue regarding correctness of the claim of the assessee.*
- d) *The onus was on the AO to establish that the assessee has incurred expenditure in relation to earning of income, which does not form part of the assessee's total income.*
- e) *Reliance was placed on certain case laws by the ld. CIT (A), which we would refer in due course.*

8. The Id. DR submitted that the CIT (A) was wrong in holding that the AO has not recorded his satisfaction before making a disallowance u/s 14A. She pointed out the assessee was making investments from a common pool of funds, and that separate bank a/c were not maintained and that in those circumstances Rule 8D was rightly applied. The Id. counsel for the assessee argues that the investments were made in the A.Y. 2005-06 and 2006-07 and that in the current A.Y. only an amount of Rs.4 lakh was invested. The quantum of interest free funds, in the earlier A.Ys. as well as in the current A.Y. were given. It was also pointed out that the interest bearing funds were tide up for specific business purpose and that during the year there is a decrease from the quantum of borrowed funds. Reliance was placed on a number of case laws.

9. On considering the facts of the case, we find that 99% of the investment held by the assessee during the year, were made in the previous A.Ys.. In the A.Y. 2005-06, the assessee had invested 1.6 crores in mutual funds / shares. It had interest free funds of 4.1 crore in that years. Latter in the A.Y. 2006-07 the assessee invested 1.78 crore in mutual funds / shares and in that year it had interest free funds of 4.04 crore.

10. During the year only an amount of 4 lakh was invested out of the total investment of 3.39 crores. In the earlier years the assessment of the assessee

were completed u/s 143(3) and the AO did not make any disallowance u/s 14A. The term loan taken by the assessee was for specific purposes and it cannot be alleged without proof that the term loan granted by the bank for specific purposes, were diverted for purposes other than for which it was granted. In fact during the year there is a decrease in the borrowed funds from, Rs.23.45 crore to Rs.22.35 crores. Thus we have to uphold the finding of the Id. CIT (A) that the borrowed funds had not been utilized for the purpose of making investment in shares/mutual funds. The factual finding of the Id. CIT (A) that the assessee had interest free funds of Rs.25.13 crore at the end of the year, as against investment of 3.39 crore, is also not disputed by the Id. DR. In fact the Id. CIT (A) has considered the additional evidence filed by the assessee, by admitted the same and called for remand report from the AO and on consideration of this remand report has given these factual findings. The revenue has not disputed the admission of additional evidence.

11. Under these facts and circumstances, we rely upon the decision of the jurisdictional High Court in the case of Maxopp Investment Ltd. Vs. CIT 203 Taxman 364 and uphold the order of the Id. CIT (A) on this issue.

12. Coming to the issue of disallowance of proportionate administrative expenses, we find that the assessee has demonstrated that there is no regular

activity carried out by the assessee for making investment. When there is no activity of investment worth noting, no administrative expenditure can be apportioned. Under these circumstances, in a considered opinion, the first appellate authority has rightly relied on the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Hero Cycles 323 ITR 518 (P& H) and granted relief to the assessee. We uphold the same.

13. In the result ground no. 1 & 2 of the revenue is dismissed.

14. Ground no. 3 is on the disallowance of deduction claimed u/s 35D. The ld. CIT (A). At Para 4.1 page 24 of his order observed that similar claim was allowed by the AO in the A.Ys. 2005-06 & 2006-07 and on the principle of consistency the claim cannot be disallowed this year. Allowability of claim of amortization have to be considered in the first year of the claim. In the case of Janak Dehydration Pvt. Ltd. Vs. ACIT (2010) 134 TTJ (Ahd.), it has been laid down that the condition precedent for allowing deduction u/s 80IB has to be examined the initial year only. The principles laid down in this case applies to the issue on hand. Once a claim for amortization is examined in the initial year and allowed, it cannot be disallowed in this latter years of amortization.

15. In view of the above discussion, we find no infirmity in the order of the first appellate authority. In the result this ground of the revenue is dismissed.

16. In the result this appeal of the revenue is dismissed.

Order pronounced in the open Court on 05/07/2013.

Sd/-

**(R. P. TOLANI)
JUDICIAL MEMBER**

Dated: 05/07/2013

AK VERMA

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(J. S. REDDY)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR