

## Indiabulls Financial Services Ltd. Vs DCIT Circle 11(1)

**Court:** DELHI HIGH COURT

**Date of Decision:** Nov. 21, 2016

**Acts Referred:** Income Tax Act, 1961 - Section 14A, Section 260A

**Citation:** (2016) 235 DLT 567

**Hon'ble Judges:** Mr. S. Ravindra Bhat and Mr. Najmi Waziri, JJ.

**Bench:** Division Bench

**Advocate:** Mr. G.C. Srivastava and Mr. Daksh S. Bhardwaj, Advocates, for the Appellant; Mr. Ruchir Bhatia and Mr. Puneet Rai, Advocates, for the Respondent

**Final Decision:** Dismissed

### Judgement

ITA 470/2016 & CM No. 26633/2016

S. Ravindra Bhat, J. (Oral)â€”The issue in this appeal under Section 260A of the Income Tax Act, 1961 (in short the "Act") is the Revenue's

action in disallowing Rs. 3,87,10,146/- under Section 14A of the Act. The assessee urges that without recording his dissatisfaction as a prelude to

the exercise conducted by him under the said provisions, further disallowance was not possible.

2. The facts are that the assessee had reported Tax Exempt Income to the tune of Rs. 105.24 crores, during Assessment Year ("AY") 2009-10.

The assessee had offered disallowance of Rs. 25,19,380/- as expenses attributable to that exempt income. The Assessing Officer ("AO") after

carrying out an elaborate analysis of the provisions as well as Rule 8D and also after discussing the relevant case law concluded that Rs.

3,87,10,146/- had to be disallowed and he proceeded to do so.

3. The Commissioner of Income Tax (Appeals) [CIT(A)] by independent reasoning and analysis of Section 14A and Rule 8D was of the opinion

that the preliminary stage of recording satisfaction with respect to the amount offered by the assessee as disallowance i.e. expenses attributable to

the earning of exempt income, had not been carried out in which the AO would have been clothed with jurisdiction to enter into the next stage and

calculate the disallowance in terms of Rule 8D.

4. The Income Tax Appellate Tribunal (in short the "Tribunal") reversed the CIT(A)'s opinion and held that in the circumstances of the case the

opinion expressed by the AO was sufficient and justified the disallowance ultimately made.

5. It is urged by the assessee that the ITAT has fallen into error in as much as it premised its conclusion and the working out of the disallowance

based upon Rule 8D(iii) carried out by the AO in the first instance in this case. It is urged that ITAT ignored the fact that there had to be good and

cogent reason, in the AO's opinion to persuade him to reject the amount offered as expenses i.e. Rs. 25,19,380/-. In this case the learned counsel

relied upon the decision of this Court in Commissioner of Income Tax-I v. Consolidated Photo & Finvest Ltd. (2012) 25 Taxman.com 371

(Delhi). In the present instance the AO carried out an elaborate analysis of Section 14A as well as the applicable case law and thereafter

proceeded to state as follows:

.... Further the case laws relied upon by the assessee have also been thoroughly examined and it is found that all the decisions have somehow

unanimously have laid down certain ratios to be followed by the Assessing Officer before invoking the provision of section 14A of IT Act. These

common ratios are as under:-

1. The assessing officer has to draw dissatisfaction in regard to the correctness of the claim of the assessee in respect of the expenditure which the

assessee claims to have incurred in relation to income which does not form part of the total income.

2. The satisfaction of the assessing officer must be arrived at on an objective basis.

3. If the assessing officer wants to disallow an expenditure under a particular provision then the onus would be on the assessing officer to prove

that conditions for disallowance are satisfied.....

.....The investment made, being a conscious decision and having deployment of funds clearly brings into picture expenditure by way of cost of

funds, "Invested." Composite fund having cost needs to be spread so as to apportion appropriate cost of funds invested in the activity leading to

carrying of exempt income.

In view of above, the provisions of sub sections (2) of section 14 A and Rule 8D of IT Rules are in operation and therefore will strictly be adhered

to by the assessee.

The language of subsection (1) of section 14A clearly provides that no deduction shall be allowed "in respect of expenditure incurred by the

assessee in relation to income which does not form part of the total income under this Act". On going through the simple and plain language, it is

abundantly clear that the relation has to be seen between the exempt income and the expenditure incurred in relation to it and not vice versa. What

offered and then proceed to work out the methodology enacted.

substantial question of law arises. The appeal is dismissed.