

No sec. 14A disallowance when assessee had sufficient interest-free funds to make investment

Summary – The High Court of Bombay in a recent case of Sharada Erectors (P.) Ltd., (the Assessee) held that Where interest-free funds available with an assessee were sufficient to meet its investment, it should be presumed that investments were made out of interest-free funds available and not out of borrowed funds; therefore, partial disallowance of interest paid on loan would not be justified

Facts

- The assessee was engaged in the construction business. It claimed interest expenditure of Rs. 2.33 crores on borrowed funds to determine its profits.
- During the course of assessment proceedings the Assessing Officer noticed that certain advances were made by the assessee to its sister concerns including concerns in which its directors were interested. The Assessing Officer out total interest paid by assessee, disallowed Rs. 54.92 lakhs in proportionate to interest free advances made by it to its sister concerns partly under section 14A and partly under section 36(1)(iii).
- On appeal, the Commissioner (Appeals) considering contention of the assessee that it had its own surplus funds to make interest-free advances to its sister concerns, restored the issue to the Assessing Officer for passing a fresh order.
- On cross appeals, the Tribunal allowed the appeal of the assessee.
- On appeal before the High Court:

Held

- The Tribunal in the impugned order rendered a finding of fact that the Respondent-assessee had its own sufficient funds available to make advances it had made to its sister concern. This on the basis that the assertions of respondent-assessee were not controverted before the Tribunal at the time of hearing nor in the remand report of the Assessing Officer. The Tribunal in its impugned order also placed reliance upon the decision of this court in *CIT v. Reliance Utilities & Power Ltd.* [\[2009\] 313 ITR 340/178 Taxman 135](#) to hold that where interest-free funds available with an assessee are sufficient to meet its investment then it shall be presumed that the investments have been made from interest-free funds available and not out of borrowed funds. Thus, holding that disallowance of partial interest paid on loan taken by the respondent-assessee, was not justified.
- The above factual determination by the impugned order of the Tribunal about availability of sufficient interest-free funds with the respondent-assessee to make advances to its sister concerns, is finding of fact. The same is being assailed without in any manner showing the same to be perverse. Hence, the question as framed does not give rise to any substantial question of law. Thus, not entertained.