

No disallowance if Co. had interest free funds for making interest free investments in its subsidiary co.

Summary – The High Court of Bombay in a recent case of Midday Multimedia Ltd., (the Assessee) held that where assessee-company having both interest bearing and interest free funds], had made interest free investments in its subsidiary companies, no disallowance was to be made under section 36(1)(iii)

Provisions of rule 8D which have been notified with effect from 24-3-2008 are not retrospective in nature

Facts

- The assessee had invested an amount in its subsidiary companies without charging any interest. At the same time, the assessee had borrowed funds on which it had paid interest.
- The Assessing Officer disallowed proportionate interest paid by assessee on the interest bearing funds while determining its income.
- On appeal, the Commissioner (Appeals) held that the funds which had been invested in the subsidiary companies without charging of interest was out of commercial expediency. Further, the order also recorded the fact that the assessee was possessed of its own interest free funds far in excess of amount invested in its subsidiary companies. He held that an holding company would have deep interest in its subsidiaries companies and, thus, allowed the appeal by the assessee.
- On appeal, the Tribunal also upheld the order of the Commissioner (Appeals).
- On revenue's appeal to the High Court:

Held

- It was an admitted position that the assessee as an holding company had made interest free investments in its subsidiary companies. Thus, the respondent-company as in case of any holding company would have interest in the success of its subsidiary companies. Thus, the amounts invested in the subsidiary companies were for the purposes of the business of the assessee. Further as having interest free funds in excess of the amounts invested in the subsidiary companies would not lead to disallowance of interest expenditure. Besides, where both interest free and interest bearing funds are available then a presumption would arise that the investment would have been made first by an assessee out of the interest free funds available. This presumption would apply in the present case also. Thus, no occasion to disallow proportionate interest paid on the amounts borrowed by the respondent in proportion to the investment in its subsidiary companies can arise. Accordingly, the issue stands concluded against the revenue.