S. 14A & Rule 8D: A comprehensive analysis

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Right from inception, the scope of section 14A of I.T. Act 1961 (the Act) has been a subject matter of litigation between the tax payers and the tax collectors. Divergent views had been expressed by various benches of the Tribunal on this subject. In order to resolve certain controversies, special benches of the Tribunal were constituted which resolved certain disputes between the parties. Subsequently, various High Courts have also expressed there views on this subject. Some observations have also been made by the Apex Court. In this Article, my endeavour would be to highlight the findings recorded by the tribunal and various courts and to reconcile the legal position as on today along my personal views.

Before adverting to these decisions, it would be appropriate to state briefly about the provisions of section 14A. This section was inserted in the Act by Finance Act, 2001 w.e.f. 1.4.1962. This section, as originally enacted, provides that in computing the total income of an assessee, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of total income under the Act. Subsequently, the proviso was added by Finance Act 2002 with retrospective effect from 11.5.2001. It provides that this section shall not empower the Assessing Officer (AO) either to reassess or pass an order enhancing the assessment or reducing the refund already made or otherwise increasing the liability of the assessee for any assessment year beginning on or before 1st day of April 2001. Sub sections 2 & 3 were inserted by Finance Act 2006 w.e.f. 1.4.2007. Sub section (2) empowers the AO to determine the amount of expenditure incurred in relation to such income which does not form part of total income in accordance with the method as may be prescribed. Such power is to be exercised if the AO, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of the expenditure mentioned in sub section (1). Sub section (3) provides that provisions of sub section (2) shall also apply where assessee claims that no expenditure had been incurred in relation to income not forming part of total income. By virtue of the powers conferred under sub section (2), Rule 8D was inserted by gazette notification dated 24.3.2008 which prescribes the method for computing the expenditure incurred in relation to the income not forming part of total income.

Now, I would advert to the various important decisions on this subject.

I.T.O -vs- Daga Capital Management (P) Ltd 117 ITD 169 (SB)

The controversy arising in the appeal was whether the expenditure by way of interest on monies borrowed for acquiring shares in the course of business of trading in shares could be disallowed by the AO u/s 14A of the Act. The AO found that assessee had received dividend income on the shares purchased out of borrowed funds. Since the dividend income did not form part of total income, the AO disallowed the deduction on account of

interest on borrowed fund u/s 14A. Some other appeals were also tagged in which assessees were investment companies. In those cases also, the AO disallowed the interest expenditure on monies borrowed u/s 14A on pro rata basis. After hearing the parties at length, the Tribunal recoded the following findings:

1. It was unanimously held that provisions of section 14A would override the provisions for computing the total income of an assessee. Thus, disallowance would be justified u/s 14A even if the expenditure incurred in relation to income forming part of total income is otherwise allowable u/s 36(1)(iii)/57(iii).

2. It was also unanimously held that provisions of sub sections (2) & (3) of section 14A are procedural provisions for computing the amount of expenditure incurred in relation to the income forming part of total income and therefore, would have retrospective effect. Rule 8D was also held to be retrospective in nature on the same reasoning.

3. It was also the unanimous view that in case where expenditure is incurred by the assessee as an investor in shares, the disallowance under section would be justified since the income arising in form of dividend would not form of total income.

4. It was held by majority view (para19) that first step is to trace the income exempt from taxation. Once income not forming part of total income is traced then, the provisions of sub sections (2) & (3) would become applicable and consequently, disallowance as per Rule 8D would be justified. Further, it was held that the expression "in relation to" in sub section (1) would encompass direct as well as indirect expenditure and therefore disallowance in respect of both the expenditure would be justified(para 23.7). It was also held in para 23.11 that onus is on the assessee to establish that expenditure was incurred in relation to taxable income. Lastly, it was held that section 14A is also applicable in the case of dealer in shares where exempted income in the form of dividend income is received by him (para 24).

5. On the other hand, minority view was that the expression '*in relation to*' in sub section(1) would mean dominant and immediate connection as held by the constitution bench of the Hon'ble Supreme Court (1971) 1SCC 85. Hence, there must be direct nexus between the expenditure incurred and the income forming part of total income for the purpose of disallowance. It was also held that computational provisions in sub sections (2) & (3) would apply only when such connection is established. Since section 14A is invoked by the AO, it was held that onus would be on the AO to establish such nexus/connection. Accordingly, it was opined that in the case of dealer in shares, the dominant object for acquiring borrowed fund is to earn taxable income i.e. profit on sale of shares and not to

earn dividend income which is merely incidental in the earning of taxable income. Hence no disallowance could be made in the case of dealer in shares.

Cheminvest Ltd-vs- Income Tax Officer 124 TTJ 577 (Del)(SB)

The only controversy before the special bench was whether disallowance u/s 14A could be made where no dividend is received in the year under consideration. In this case the assessee had borrowed monies for acquiring shares as a trader as well as as an investor but no dividend was received in the concerned year. The contention of assessee was that since no income forming part of total income was received, the question of making any disallowance did not arise. After hearing the parties, it was held **that if the expenditure is incurred in relation to income which does not form part of total income, it has to suffer disallowance irrespective of the fact whether any income is earned by the assessee or not. Section 14A does not envisage any such exception.-----When prior to introduction of Sec 14A, an expenditure both under sections 36 and 57 was allowable to an assessee without such requirement of earning or receipt of income, such condition cannot be imported when it comes for disallowance of the same expenditure u/s 14A. In coming to this conclusion, the bench relied on the decision of the Hon'ble Supreme Court in the case of CIT vs Rajendra Prasad Moody 115 ITR 519 SC.**

CIT-vs- Hero Cycles 323 ITR 158 (PH)

The question before the Hon'ble High Court was whether disallowance u/s 14A was justified on the facts of the case. In this case, the assessee was engaged in business of manufacturing of cycles and parts thereof. Apart from the business income, the assessee received dividend income not forming part of total income. The AO made disallowance u/s 14A(3) which was upheld by the CIT(A). However, the Tribunal found that the entire investment had been made by the assessee out of dividend proceeds, sale proceeds, debenture redemption etc. Further, cash flow statement showed that only non interest bearing funds had been utilized for making the investments. Bank statement also revealed that the amount of dividend, sale proceeds of shares, debenture redemption money had been deposited and out of this money, investments were made in acquiring shares/units. On these facts, it was held by the tribunal that no expenditure was incurred in relation to exempted income. Consequently, the disallowance was deleted by the tribunal.

On appeal before the High Court, it was contended that even when the assessee claimed that no expenditure had been incurred, the correctness of the claim can be gone into by the AO. Since the claim of the assessee was not found to be acceptable by the AO, disallowance was justified in view of Rule 8D r/w section 14A(2).

The Hon'ble Court rejected the said contention in view of the factual finding recorded by the tribunal. **It was held that in view of the finding that investment in shares was out of non interest bearing fund, the disallowance u/s 14A was unsustainable. The**

contention of the revenue that directly or indirectly some expenditure is always incurred which must be disallowed u/s 14A, cannot be accepted. Whether in a given case, any expenditure was incurred which is to be disallowed, is a question of fact. Disallowance u/s 14A requires finding of incurring of expenditure. Where it is found that that for earning exempted income, no expenditure was incurred, disallowance cannot be made. Accordingly, it was held that no question of law was involved and therefore, appeal of revenue was dismissed.

Wallfort Shares & Stock Brokers Ltd- vs- I.T.O. 310 ITR 421 (Bom)

In this case, the assessee purchased units of a mutual fund in response to a public advt. on which it earned tax free dividend income of Rs.1.82 cr. Within few days, it also sold the said units by way of redemption which resulted in loss of Rs.2.09 cr. While computing the total income, it claimed exemption in respect of dividend income u/s 10(33) and loss on sale of units was claimed as business loss to be set off against other income. The AO/ CIT(A) rejected the claim of assessee in respect of loss. However, the Tribunal accepted the claim. On further appeal, the revenue raised various contentions which inter alia included an alternate contention that loss on sale of units constituted expenditure in relation to income not forming part of total income and therefore, the same was disallowable u/s 14A. Rejecting the alternate contention, the Hon'ble High Court held as under:

> **57. The alternative argument of the Revenue is that the loss arising from the transaction in question is liable to be treated as an expenditure incurred for earning the tax free income and hence disallowable under s. 14A of the Art. There is no merit in this contention. Sec. 14A deals with the expenditure incurred for earning tax free income. Admittedly, no expenditure is incurred in purchasing the dividend bearing units. It is only because the units are sold at a loss immediately after receiving the dividend income, the Revenue wants to treat the loss as a deemed expenditure incurred for earning tax free dividend income. What s. 14A contemplates is the expenditure actually incurred for earning tax free income and not assumed expenditure or deemed expenditure. In these circumstances, the decision of the Tribunal in rejecting the alternate argument of the Revenue cannot be faulted.**

The above view has been **upheld**, on appeal, **by the Hon'ble Supreme Court** vide judgment dated 6.7.2010 (not yet reported) by holding at page 31 as under:

> **"For attracting Section 14A, there has to be a proximate cause for disallowance, which is its relationship with the tax exempt income. Pay-back or return of investment is not such proximate cause, hence, Section 14A is not applicable in the present case. Thus, in the absence of such proximate cause for disallowance, Section 14A cannot be invoked."**

There are certain other important observations which need to be noted. At page 28 it is observed:

> **"The basic principle of taxation is to tax the net income, i.e., gross income minus the expenditure. On the same analogy the exemption is also in respect of net income. Expenses allowed can only be in respect of earning of taxable income. This is the purport of Section 14A. In Section14A, the first phrase is "for the purposes of computing the total income under this Chapter" which makes it clear that various heads of income as prescribed under Chapter IV would fall within Section 14A. The next phrase is, "in relation to income which does not form part of total income under the Act". It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of Section 14A."**

At page 29, it was observed:

> **If an income like dividend income is not a part of the total income, the expenditure/ deduction though of the nature specified in Sections 15 to 59 but related to the income not forming part of total income could not be allowed against other income includible in the total income for the purpose of chargeability to tax. The theory of apportionment of expenditures between taxable and non-taxable has, in principle, been now widened under Section 14A.**

At page 30-31, it was observed:

> **"Every pay-out is not entitled to allowances for deduction. These allowances are admissible to qualified deductions. These deductions are for debits in the real sense. A pay-back does not constitute an "expenditure incurred" in terms of Section 14A. Even applying the principles of accountancy, a pay-back in the strict sense does not constitute an "expenditure" as it does not impact the Profit & Loss Account. Pay-back or return of investment will impact the balance-sheet whereas return on investment will impact the Profit & Loss Account. Cost of acquisition of an asset impacts the balance sheet. Return of investment brings down the cost. It will not increase the expenditure. Hence, expenditure, return of investment and cost of acquisition are distinct concepts. Therefore, one needs to read the words "expenditure incurred" in Section 14A in the context of the scheme of the Act and, if so read, it is clear that it disallows certain expenditure incurred to earn exempt income from being deducted from other income which is includible in the "total income" for the purpose of chargeability to tax."**

CIT-vs- Smt. Leena Ramchandran (ITA No. 1784 of 2009—order dated14.6.2010)

In this case, the question before the Hon'ble Kerala High Court was whether disallowance u/s 14A was justified. The assessee was engaged in the business of trading in goods. The facts of the case revealed that assessee started acquiring shares of a company "Homfit Leasing Ltd." right from assessment year 1992-93 in which said company was incorporated and continued to acquire shares every year till the year ending 31-3-2001. By the end of this year, the assessee had acquired 90% shares of that Company. In A.Y. 2001-02, it was found that assessee paid interest of Rs.17,44,310/- on monies borrowed for the purpose of acquiring such shares. It was also found that assessee hade received the dividend of Rs.3 lakhs only. The case of assessee was that the said Company was engaged in the business of leasing of goods and the assessee had sold such goods to the said Company. It was contended that acquisition of controlling interest in that Company was in the business interest of assessee and therefore no disallowance could be made. The AO was of the view that the provisions of section 14A were attracted since dividend income did not form part of total income. Accordingly, the entire interest paid by assessee was disallowed. The CIT (A) confirmed the assessment. On further appeal, the Tribunal, following the decision of the Apex court in the case of **S.A.Builders** Ltd 288 ITR 1, substantially allowed the claim of assessee by reducing the disallowance to Rs.2 lakhs.

On appeal by the revenue before the High Court, it was noted that except the dividend income, no other benefit was derived by the assessee from the Company for the business carried on by her. Further, it was noted that the entire borrowed funds were utilized for acquiring the shares of that Company. Hence, the entire amount of interest was disallowable u/s 14A. However, it is pertinent to note the observations of their lordships **"In our view, assessee would be entitled to deduction u/s 36(1)(iii) of the Act on borrowed funds utilized for the acquisition of shares only if shares are held as stock in trade which arises only if the assessee is engaged in trading in shares. So far as acquisition of shares in the form of investment and only benefit assessee derived is dividend income which is not assessable under the Act, the disallowance u/s 14A is squarely attracted and the assessing officer, in our view, rightly disallowed the claim."** With reference to the decision of the Apex court in the case of S.A.Builders, it was observed that "**apart from investment in shares of the company, there is nothing to indicate that assessee's business was fully linked with the business of leasing company or that assesse's business is solely dependent on the business of leasing company. ----Therefore, in our view, the principle of commercial expediency gone into by the Supreme Court does not apply to the facts of the case."** Accordingly, it was held that the tribunal was not justified in reducing the disallowance to Rs.2 lacs. The entire amount was held to be disallowable.

Similar view has been taken by the Hon'ble Kerala High Court in the case of CIT vs Popular Vehicles and Services Ltd 325 ITR 523(Ker). In this case, interest bearing borrowed fund was advanced to a concern in which it was a partner without charging any interest. The AO disallowed the interest expenditure since expenditure was not incurred for business purpose. The Tribunal allowed the claim by applying the decision of the

Apex Court in the case of S.A.Builder(supra). On appeal by the revenue, the court held- "**the share income from the partnership firm which is the only consideration for advancing the loan to the firm does not constitute income of the respondent u/s 10(2A) of the I.T. Act. Since the share income from the firm does not constitute the part of taxable income of the assessee, section 14A (1) applies which prohibits the deduction of any expenditure incurred in relation to income not includible in total income.**" In view of the same, the appeal of the revenue was allowed. It was also observed that remand for the purpose of considering eligibility for deduction based on commercial expediency, if at all exists, is not called for.

Godrej & Boyce Mfg Co Ltd –vs—DCIT (Unreported judgment of Hon'ble Bombay High Court in ITA 626 & WP 758 of 2010 dated 12th August 2010.

In this case, the assessee claimed exemption in respect of dividend income of 34.34 cr u/s 10(33). The AO issued show cause notice for disallowance of interest u/s 14A. The explanation of assessee was that-(i) 95% of shares were bonus shares for which no cost was incurred (ii) no investment in shares was made in the current year and no disallowance was made in earlier years (iii) there were sufficient interest free funds available in the form of share capital, reserves etc. which were more than investment in shares. Not satisfied with the said explanation, the AO made disallowance u/s 14A on pro rata basis. The CIT(A), following his orders for earlier years, accepted the appeal of assessee. On appeal by the revenue, the tribunal, following the decision of the Special Bench in the case of **I.T.O -vs- Daga Capital Management (P) Ltd** 117 ITD 169 (SB) restored the matter to the file of AO for reconsideration in the light of the provisions of sub sections (2) & (3) of section 14A. Aggrieved by the same, the assessee filed the appeal as well as Writ Petition challenging the constitutional validity of the provisions of sub sections (2) & (3) of section 14A and Rule 8D.

Findings of the High Court

1. The provisions of section 14A and Rule 8D are constitutionally valid.
2. The provisions of sub sections (2) & (3) of Sec 14A and Rule 8 are prospective, and not retrospective, in nature and therefore, would apply from assessment year 2007-08.

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3. The basic object of Section 14A is to disallow the direct and indirect expenditure incurred in relation to income which does not form part of the total income (page 21)
4. The insertion of Section 14A was curative and declaratory of the intent of the Parliament. The basic principle of taxation is that only net income, namely, gross income minus expenditure that is taxable. Expenses incurred can be allowed only to the extent that they are relatable to the earning of taxable income.(pages 22-23). The test which has been enunciated in Walfort for attracting the provisions of Section 14A is that "there has to be a proximate cause for disallowance which is

its relationship with the tax exempt income". Once the test of proximate cause, based on the relationship of the expenditure with tax exempt income is established, a disallowance would have to be effected under Section 14A (page 28).

5. What merits emphasis is that the jurisdiction of the Assessing Officer to determine the expenditure incurred in relation to such income which does not form part of the total income, in accordance with the prescribed method, arises if the Assessing Officer is not satisfied with 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 part of the total income. Moreover, the satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the assessee. Hence, Sub section (2) does not ipso facto enable the Assessing Officer to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income is correct. The Assessing Officer must, in the first instance, determine whether the claim of the assessee in that regard is correct and the determination must be made having regard to the accounts of the assessee. The satisfaction of the Assessing Officer must be arrived at on an objective basis. It is only when the Assessing Officer is not satisfied with the claim of the assessee, that the legislature directs him to follow the method that may be prescribed. In a situation where the accounts of the assessee furnish an objective basis for the Assessing Officer to arrive at a satisfaction in regard to the correctness of the claim of the assessee of the expenditure which has been incurred in relation to income which does not form part of the total income, there would be no warrant for taking recourse to the method prescribed by the rules. For, it is only in the event of the Assessing Officer not being so satisfied that recourse to the prescribed method is mandated by law(pages 31-32)

6. In the event that the Assessing Officer is not satisfied with the correctness of the claim made by the assessee, he must record reasons for his conclusion (page 79).

7. The effect of Section 14A is to widen the theory of the apportionment of expenditure (page 49).

8. The expression "expenditure incurred" in Section 14Arefers to expenditure on rent, taxes, salaries, interest etc. in respect of which allowances are provided for (page50).

9. Sub sections (2) and (3) of Section 14A are intended to enforce and implement the provisions of Sub section(1) (page50).

10. Even in the absence of sub-section (2) of Section 14A, the Assessing Officer would have to apportion the expenditure and to disallow the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. The Assessing Officer would have to follow a reasonable method of apportioning the expenditure consistent with what the circumstances of the case would warrant and having regard to all relevant facts and circumstances (page 51).

Legal position as on today

The decision of the Special Bench in the case of **Daga Capital Management (P) Ltd** (supra) is no more good law for the reasons

- (i) that the provisions of sub sections (2) & (3) of section 14A have been held to be prospective in nature and therefore, would be applicable from assessment year 2007-08 as held by Hon'ble Bombay High Court in **Godrej's** case;
- (ii) that provisions of section 14A cannot be applied unless there is proximate cause for disallowance as held by the Hon'ble Supreme Court in **Wallfort's** case (supra) and Hon'ble Bombay High Court in **Godrej's** case. Therefore, application of the provisions of sub sections (2) & (3) of section 14A and Rule 8D is not automatic in each and every case where there is income not forming part of total income.
- Sub sections (2) and (3) of Section 14A are intended to enforce and implement the provisions of Sub section (1).
- Hence first step would be to ascertain whether there is proximate connection between the expenditure incurred and the income not forming part of total income. If such proximity is established then AO would be justified in applying of the provisions of sub sections (2) and (3) of section 14A and Rule 8D.
- The expenditure incurred u/s 14A would include direct and indirect but relationship with exempted income must be proximate.
- If there is material to establish that there is direct nexus between the expenditure incurred and the income not forming part of total income then disallowance would be justified even where there is no receipt of exempted income u/s 10 in the year under consideration in view of the decision of Special Bench in the case of **Cheminvest Ltd** (supra).
- The basic principle of taxation is to tax the net income. On the same analogy, the exemption is also to be allowed on net basis i.e. gross receipts minus related expenses. Therefore, if any expenditure is directly related to exempted income, it can not be allowed to be set off against taxable profit. On the same analogy, in my opinion, if any expenditure is directly related to taxable income, it cannot be allowed to be set off against the exempted income merely because some

incidental benefit has arisen towards exempted income. Whether expenditure relates to taxable income or exempted income would depend on the facts of each case.

- There is distinction between return of investment and return from investment. The expenditure incurred is pay out while return of investment is pay back. The loss on sale of shares is pay back which cannot be equated with the expression 'expenditure incurred' and therefore cannot be disallowed merely because exempted income in the form of dividend income has arisen from investment made as held by the apex court in the case of **Wallfort** (supra).

- If sufficient material is on record to establish that investment in shares/units was made out of non interest bearing fund, no disallowance can be made out of interest debited to profit & loss account even if there is dividend income from such investments as held by the Hon'ble Punjab & Haryana High Court in the case of **Hero Cycles**(supra).

  Where the expenditure incurred cannot be related to either taxable income or exempted income, the provisions of section 14A would be attracted and therefore, AO would be justified in making disallowance in accordance with provisions of sub sections (2) & (3) r/w Rule 8D if the assessment year is 2008-09 or any subsequent year. In respect of years prior to assessment year 2007-08, disallowance is to be made in a reasonable manner.

- The theory of apportionment of expenditures between taxable and non-taxable has, in principle, been now widened under Section 14A.

- Before making any disallowance u/s 14A, the AO is required to record a satisfaction, having regard to the accounts of the assessee, that claim of assessee that expenditure incurred is not related to the income forming part of total income is incorrect. Such satisfaction must be arrived at on the objective basis. He is also required to record the reasons for arriving at such satisfaction.

- If the only benefit arising from investment in shares out of interest bearing fund is the dividend income exempt u/s 10(34), the related expenditure is to be disallowed. (Kerala High Court in **Leenachandran's** case).

- In the case of dealer in shares, prima facie, there exists proximate relationship between the expenditure incurred and the taxable income and therefore, expenditure has to be allowed in computing the taxable income as suggested by the Hon'ble Kerala High Court in the case of **Leenachandran** (supra). On the basis of net income theory, related expenditure is to be allowed as deduction in computing business income. However, in my opinion, this cannot be an absolute preposition in all circumstances. There may be cases where dealer in shares may also purchase units/shares out of interest bearing funds with a view to earn only the dividend income. In such case, there would be proximate cause for disallowance of interest to that extent.

- Whether a person has acquired units/shares out of interest bearing fund or non interest bearing fund would depend on the facts of each case. In the case of **Hero Honda** (supra), the assessee demonstrated from the bank account that investment in shares was made out of dividend receipts, sale proceeds of shares and debenture redemption amount. Disallowance out of interest debited to Profit and Loss account was held to be unjustified.

- In the case **Reliance Utilities & Power Ltd** (ITA No 1398 of 2008-order dated 9.1.2009 of Hon'ble Bombay High Court), the assessee made investment of Rs.389.60 crs in shares on which tax free dividend income was received. It was the case of the assessee that there were sufficient funds available in the form of share capital (180 crs), reserve & surplus(215crs) for making investment in shares. On the other hand, case of revenue was that share capital and reserves etc. had already been invested in acquiring in fixed assets. The Tribunal found force in the contention of assessee. On appeal, the Hon'ble high court observed that there was no evidence to show that share capital, reserves etc. were invested in fixed assets and therefore finding of fact recorded by tribunal was to be accepted. However, it is pertinent to note the observations of the Hon'ble court in para 10 "*If there be interest free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest free funds available*." The Hon'ble Supreme Court, in the case of **East India Pharmaceutical Works** 224 ITR 627, found merit in the contention of assessee's counsel that there were sufficient fund in the form of profits of the current year for making the payment for tax.

- Similar view has been taken by the Hon'ble Calcutta High Court in the case of **Britannia Industries** 280 ITR 525. However, the Hon'ble All. High Court in the case of **H.R.Sugar Factory** 187 ITR 363 and Delhi High Court in the case of **Orissa Cement Ltd** 258 ITR 365 have taken the contrary view. In my view, the view expressed by the Hon'ble Bombay and Calcutta High Courts is to be preferred since it is fortified by the observations of the Hon'ble Apex Court in the case of **East India Pharmaceutical Works** 224 ITR 627. The Hon'ble Delhi and Allahabad High Courts did not have the advantage of the said judgment of the apex court. Therefore, in view of these decisions, it can be demonstrated by the assessee that investment was made out of internal accruals in respect of assessment years prior to A.Y.2007-08 since the provisions of sub sections (2) & (3) of section 14A and Rule 8D are applicable w.e.f. A.Y. 2007-08. But it is to be noted that such presumption is rebuttable and the AO, after examining the material on record, can demonstrate that such presumption is not correct.

However, in respect of A.Yrs 2007-08 and onwards, the Tribunal/Court will have to decide this aspect of the issue on the facts of each case considering the expression "having regard to the accounts of the assessee" used by the legislature in sub section (2) of section 14A. It is to be noted that the Hon'ble Bombay High Court in **Godrej**'s case has commented upon as under:

> "In the decision of the Division Bench of this Court in **Reliance Utilitie**s (supra) the Division Bench has held that "if there be interest free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest free funds available". The decision of the Division Bench turned on a finding of fact by the Tribunal that there were sufficient interest free funds available in that case. The judgment in Reliance Utilities shows that there were interest free owned funds available and not merely reserves".

The above discussion shows that ultimately, this aspect of the issue will have to be decided on the facts of the each case.

Best possible efforts have been made by me but if something has been left inadvertently, the readers may adjust the legal position.