

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC', NEW DELHI**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 3734/Del/2016 : Asstt. Year : 2012-13**

East West Medical Centre Pvt. Ltd., 38, Golf Links, New Delhi-110003	Vs	Income Tax Office, Ward-8(1), New Delhi-110002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACE0339H</b>		

**Assessee by : Sh. M. K. Juneja, CA  
Revenue by : Ms. Bedobani, Sr. DR**

<b>Date of Hearing : 06.02.2017</b>	<b>Date of Pronouncement : 31.03.2017</b>
-------------------------------------	---

**ORDER**

This is an appeal by the assessee against the order dated 18.04.2016 of Id. CIT(A)-III, New Delhi.

2. The only effective ground raised in this appeal reads as under:

*“That the Learned Commissioner of Income Tax (Appeal) has erred in fact & in law while confirming disallowance of Rs.4,17,739/- applying section 14A of the Income Tax Act, 1961 and Rule 8D of the Income Tax Rules.”*

3. Facts of the case in brief are that the assessee filed the return of income on 25.09.2012 declaring an income of Rs.44,310/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Later on, the case was selected for scrutiny. The AO made a

disallowance of Rs.4,17,739/- u/s 14A of the Act read with Rules 8D of the Income Tax Rules, 1962 by observing in para 4 of the assessment order as under:

*"The assessee has earned income which is exempt u/s 10(34) from tax amounting to Rs.7,79,313/- as dividend. The assessee was asked to give the details of expenses incurred in relation to exempt income with respect to provision of section 14A read with rule 8D and to show cause why disallowances of expenses shall not be made u/s. 14A of the IT Act, 1961.*

*The assessee, vide its reply dated 09.02.2015 has stated as under:-*

*"In this regard the assessee submits that it has not incurred any expenditure for earning of exempt income being dividend on mutual fund and shares.*

*Detailed submission has been made in para 12 of letter dated 20.01.2015, whereby the assessee company which had not made any disallowance while submitting the return, has revised the computation by disallowing expenses in relation to earning of exempt income amounting to Rs.23,997/- and has also explained the basis and reason for arriving the disallowance. Keeping in view the quantum of transactions in investment, etc as per the revised computation the refund due has been reduced from Rs.5,72,044/- to Rs.5,64,629/-. The Revised computation has also been submitted as per para 12 of letter dated 28.01.2015."*

*Submission of the assessee has been carefully considered. Knowing and accepting that the provisions of section 14A are applicable to its case the assessee has itself disallowed an amount of Rs.23,997/- being Salary Rs.23,997/- (5% of Rs.3,30,000/-) and other small*

*expenses Rs.7,497/- (2% Rs.3,74,846/-) in revised computation of Income as per para 12 of letter dtd. 28.01.2015.*

*The assessee has disallowed only small direct expense, being salary, Printing & stationery, conveyance / telephone, attributable to the income not includible in total income of the assessee. The assessee has not offered any indirect expense attributable to such income for disallowance. The assessee has debited total expenses of Rs.1,33,86,042/- to its profit & loss account. This includes Vehicle Running & Maintenance, Computer Expenses, legal & professional charges, Rates & Taxes, Printing & Stationary, payments to Auditors, Miscellaneous Expenses, balance return off etc. The assessee cannot deny that nothing out of these expenses is attributable to the exempt income. The assessee has not given proper calculation to workout the expenses, out of these expenses, attributable to the exempt income which is not includable in total income of the assessee received during the year.*

*In view of the above, I find it just to calculate the disallowance under section 14A as per the method given in Rule 8D of the I.T. Rules. The disallowance is calculated as under:*

<i>Disallowance u/r 8D(2)(i)</i>	<i>Rs.23,997/-</i>
<i>Disallowance u/r 8D(2)(ii)</i>	<i>Rs.Nil</i>
<i>Disallowance u/r 8D(2)(iii)</i>	<i>Rs.3,93,742/-</i>
<i>Investment as on 31.03.2011</i>	<i>Rs.7,62,36,333/-</i>
<i>Investment as on 31.03.2012</i>	<i>Rs.8,12,60,426/-</i>
<i>Total</i>	<i>Rs.15,74,96,759/-</i>
<i>Average investment</i>	<i>Rs.7,87,48,379/-</i>
<i>5% of average investment</i>	<i>Rs.3,93,742/-</i>
<i>Disallowance u/s 14A r.w. rule 8D</i>	<i>Rs.4,17,739/-</i>

*Thus an amount of Rs.4,17,739/- is disallowed under section 14A of the Income Tax Act, out of the expenses claimed by the assessee being attributable to the income which is not includable in total income of the assessee.”*

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the assessee had not incurred any expenditure for earning of the exempt income and that the element of disallowance, if any, can be only against the expenses incurred. It was submitted that the assessee had only one person in the finance and accounts department who was paid salary of Rs.3,30,000/- and besides that the assessee has spent Rs.1,52,835/- on conveyance, Rs.1,32,789/- of telephone expenses and Rs.89,222/- on printing & stationery. Therefore, the disallowance should not exceed 5% of salary and 2% of the other expenses which worked out to Rs.23,997/-. It was further submitted that the assessee revised computation by disallowing expenses in relation to the earning of exempt income and had explained the basis alongwith the reasons for arriving at the disallowance of Rs.23,997/-. Therefore, the disallowance made by the AO was not justified. The Id. CIT(A) however did not find merit in the submissions of the assessee by observing that there could not have been a concept of free lunch and making or selling the investment could not be in

the nature of any passive activity involving no input. He was of the view that the assessee had incurred various indirect expenses for earning the exempt income and such expenses had been debited in the profit and loss account. He sustained the disallowance on account of administrative expenses amounting to Rs.4,17,739/- made by the AO under Rule 8D(iii) of the Income Tax Rules, 1962 r.w.s. 14A of the Act.

5. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee vide para 12 of letter dated 28.01.2015 had submitted that the disallowance of Rs.23,997/- to be made, the assessee also explained the basis and reasons for arriving the said disallowance by keeping in view the quantum of transactions in investment etc. It was stated that the Id. CIT(A) sustained the disallowance made by the AO but he had not considered and commented on the plea of the assessee who had furnished revised computation of income for the disallowance u/s 14A of the Act amounting to Rs.23,997/-. Therefore, the disallowance sustained by the Id. CIT(A) was not justified.

6. In his rival submissions the ld. DR supported the orders of the authorities below.

7. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it appears that the assessee vide letter dated 30.01.2015 furnished the computation of income and a disallowance made u/s 14A of the Act. The said revised computation was furnished during the course of assessment proceedings. It appears that the authorities below had not considered the said submissions of the assessee in right perspective and the ld. CIT(A) had also not commented on the same. We, therefore, deem it appropriate to set aside this issue back to the file of the AO to be decided afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 31/03/2017)

Sd/-  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 31/03/2017**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**