

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA Nos. 1034, 1035/Del/2014
Assessment Years: 2006-07, 2007-08

DCIT, Circle-14(1) New Delhi	vs.	PTC India Ltd. 2 nd Floor, NBCC Tower, 15 Bhikaji Cama Place New Delhi – 110 066 PAN AABCP7947F
(Appellant)		(Respondent)

Revenue by : Shri Amrit Lal, Sr. DR
Assessee by : Shri Salil Kapoor &
Ms. Annya Kapoor, Adv.

Date of Hearing : 16.05.2016
Date of pronouncement : 18.5.2016

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

These appeals have been filed by the revenue against the order of the Commissioner of Income-Tax (Appeals)-XXIV, New Delhi

in appeal No. 216, 215/13-14 for asstt. year 2006-07 to 2007-08 respectively both dated 26.11.2013.

2. Grounds raised by the revenue in ITA No. 1034/Del/2014 for the asstt. year 2006-07 read as under :-

1. *"On the facts & in the circumstances of the case, the Ld. CIT(A) has erred in restricting the disallowance of Rs. 89,30,000/- made by the AO u/s 14A to Rs. 1,46,397/-.*

1.1 *On the facts & in the circumstances of the case, the Ld. CIT(A) has erred in restricting the disallowance of Rs. 1,46,397/- ignoring the fact that Rule 8D could not applied since the same was not applicable in the assessment year in question."*

3. We have heard the arguments of both the sides and carefully perused the relevant material placed on record. Ld. Sr. DR submitted that the Ld. CIT(A) has erred in restricting the disallowance of Rs. 89,30,000/- made by the AO u/s 14A of the Income Tax Act 1961 (for short the Act) to Rs. 1,46,397/-. Ld. DR vehemently contended that as per facts and circumstances of the case Ld. CIT(A) has erred in restricting the disallowance ignoring the fact that Rule 8D of the IT Rules 1962 could not be applied since the same was not applicable in the assessment year in question.

4. Replying to the above the Ld. Counsel for the assessee submitted copy of the assessment orders for asstt. year 2006-07 and 2007-08 and submitted that the assessee made suo moto disallowance and on the basis of ratio of dividend income to total income which was 0.13% in asstt. year 2006-07 and 0.18% in asstt. year 2007-08 which is on logical basis for a public sector Govt. undertaking company. Ld. Counsel vehemently contended that the AO has not controverted this ratio of the logical proportion adopted by the assessee for making suo moto disallowance. Therefore the Ld. CIT(A) was right in restricting the addition to the suo moto disallowance of the assessee. Ld. Counsel also pointed out that in the relevant assessment year 2006-07 and 2007-08 Rule 8D of the Income Tax Rules 1962 is not applicable. Therefore the basic terms and provision of the AO on which disallowance was made was not valid and sustainable.

5. On careful consideration of our submissions from the relevant operative part of the assessment order we observe that the AO invoked provisions of Rule 8D of Income Tax Rules, 1962 for making

and estimating disallowance. Therefore the basis of disallowance was not correct and bad in law as Rule 8D applies from asstt. year 2008-09 onwards. Furthermore, from the relevant operative part of the impugned order of the CIT(A) we observe that the Ld . CIT(A) granted relief to the assessee with following observations and conclusions :-

"Now adverting to the case of the appellant company, it is seen that during the relevant assessment year the investment in the mutual funds (with growth option) has gone to Rs. 191,33,20,101/- as on 31.03.2006 in comparison to the investments of Rs. 1,97,97,88,755/- as on 31.03.2005 . Thus there was an decrease in the investments of Rs. 6,64,68,654. During the relevant assessment year, the appellant has claimed to have made investments in mutual funds from its own internal sources and no interest bearing fund was used by the appellant for investments. It is also seen that during the relevant assessment year, the appellant has claimed to have recd Rs. 1,42 crores as interest on FORs and incurred Rs. 1.31 crores as expenses on interest. Therefore, there was a gain in interest income after netting of the interest expenditure from the interest income. Moreover, the interest expenditure has been incurred on the amounts of deposits from customers which was taken by the appellant company during the normal course of its business and the same was not incurred for the purposes of investments. No material has been brought on record by the Assessing Officer to show that the interest expenditure was incurred for the purposes of investments. Further, during the course of assessment proceedings, the appellant had claimed before the Assessing Officer of incurring expenditure of Rs. 1,46,397/- for the purposes of earning exempt income. No material has been brought on the record by

the Assessing Officer to show that the aforesaid claim of expenditure to be disallowed suo moto by the appellant was either wrong or inadequate. The Assessing Officer has merely mentioned that the computation is not based upon any rational. It is worthwhile to mention here that though section 14A of the I. T. Act was introduced by the Finance Act, 2001 w.r.e. from 01.04.1962 but no rule/method was prescribed for computing the disallowance. The Central Board of Direct Taxes (CBDT) vide Notification No. 45/2008, dated March 24th, 2008 prescribed the method for determining the expenditure to be disallowed under section 14A in relation to income not forming part of the total income by inserting Rule-8D in the Income-tax Rules. Thus during the relevant assessment year 2006-07, there was no rule prescribed for making the disallowance u/s 14A of the I.T.Act. As discussed above, Rule 80 of the I.T.Rules is applicable from 01.04.2008 and it has no retrospective application as held by the Hon'ble High Court of Mumbai in the case of Godrej Boyce & Co. Pvt Ltd. (supra). It is further observed that the Assessing Officer has disallowed an amount of Rs. 89,30,000/- u/s 14A based on a formula which is not a widely acceptable formula and highly debatable. Therefore, the aforesaid addition of Rs 89,30,000/- made by the Assessing Officer cannot be sustained and directed to be restricted to Rs. 1,46,397/- on which can reasonably be attributable as expenditure incurred for the purposes of earning exempt income."

6. In view of above, we inclined to hold that no material has been brought on record by the AO to show that the interest expenditure was incurred for the purpose of investment earning exempt income. At the same time, we also observed that the Ld. DR could not controvert this factual position that there is no expenditure on

interest and there is some interest income shown by the assessee in both the years. As we have already noted that Rule 8D of Income Tax Rules is not applicable for asstt. year 2006-07 and 2007-08 which was wrongly applied by the AO for estimating this amount. The AO has not controverted the ratio adopted by assessee in making suo moto disallowance i.e ratio of dividend income to total income. Therefore, we decline to accept basis adopted by the AO for making disallowances.

7. Per contra, At the same time we are in full agreement with the conclusion of the Ld. CIT(A) wherein he restricted the disallowance u/s 14A of the Act to the ratio of the dividend income to total income of the assessee during the relevant financial period. Hence we are unable to see any valid reason to interfere with the conclusion of the first appellate authority on this issue and thus we uphold the same. It is also relevant to mention here that the facts and circumstances of asstt. year 2006-07 and 2007-08 and quite similar therefore, our conclusion based on the facts and asstt. year 2006-07 would apply *mutatis mutandis* to asstt. year 2007-08 also.

Accordingly sole ground of the revenue in both the appeals being *devoid* of merits is dismissed.

8. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 18th May, 2016.

sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated 18th May, 2016
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Copy of order forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By Order

Asstt Registrar, ITAT