

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI

BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
SHRI C.M. GARG : JUDICIAL MEMBER

ITA no. 2326/Del/2014

Asstt. Yrs: 2010-11

Hema Engineering Industries Ltd., C/o M/s Wahi & Co., K-1, Kailash Colony, New Delhi. PAN: AAACH 0118 F (Appellant)	Vs. DCIT, Circle 12(1), New Delhi. (Respondent)
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Appellant by	:	Shri Anil Kumar Malhotra CA
Respondent by	:	Shri A. K. Saroha CIT(DR)

Date of hearing	:	26/07/2016.
Date of order	:	29/07/2016.

ORDER

PER S.V. MEHROTRA, A.M:

This is assessee's appeal against the order dated 20.02.2014 passed by the ld. CIT(A)-XV, New Delhi, relating to A.Y. 2010-11.

2. Sole effective ground raised by the assessee in its appeal is as under:

*"Disallowance u/s 14A read with rule 80
The Hon'ble CIT(A) has directed Ld. DCIT to recompute the disallowance u/s 14A without accepting the contention that the assessee had sufficient funds available viz General Reserve/ Own Funds to make investments than using the borrowed funds as assumed*

by the Ld. DCIT. Also the assessee offered calculations u/s 14A read with rule 80 where the assessee netted the interest paid against interest received on funds given to parties other than interest on FOR, the disallowance u/s 14A stood at Rs. 41,64,746/- which was also turned down and directed the Ld. A.O. to recompute the disallowance accordingly.

The disallowance by the CIT(A) is arbitrary, unjustified and prayed to be either restored to NIL or be maintained at Rs. 41,64,746/- as submitted by the assessee”.

3. Brief facts of the case are that the assessee company, in the relevant assessment year, was engaged in the business of manufacture of auto parts for two wheelers and to some extent of four wheelers and other engineering items at its various manufacturing units. It had filed its return of income declaring income of Rs. 53,430/- and Rs. 5,46,28,808/- under the provisions of section 115JB. The AO noticed that the assessee had shown tax free income of Rs. 3,93,701/- being dividend income from SBI mutual fund. However, assessee had not offered to tax any disallowance on account of expenses incurred in order to earn tax free income. After considering the assessee's reply the AO determined the disallowance under Rule 8D at Rs. 77,22,196/- as per the computation given in the assessment order.

4. Ld. CIT(A) partly allowed the assessee's appeal and restored the matter to AO for recomputing the disallowance under Rule 8D, inter alia, observing as under:

“On careful consideration, I am of the view that since the interest income IS already included in "taxable income", therefore, the scheme of Rule 8D would automatically, by disallowing expenses against exempt income, will have the effect of leaving the balance expenses (including interest expenses) as allowable against taxable income (including interest income) and hence therefore, there is no ground for netting off of interest income against interest expenses. Accordingly, this plea of appellant is dismissed. However, regarding (b), since interest on term loans is specifically for business purposes including for acquisition of fixed assets, the same cannot be taken for apportionment against the exempt income under Rule 80D.

The Id. A.O. is therefore directed to re-compute disallowance under Rule 80 to that extent. The appellant gets partial relief accordingly”.

5. Ld. counsel for the assessee submitted that disallowance cannot exceed the exempt income returned by the assessee. In this regard he relied on the decision of the Tribunal in the case of DCM Ltd. Vs. DCIT (ITA no. 4467 & 5176/Del/2012 dated 1.9.2015, wherein in para 24 the Tribunal has noticed as under:

“24. The Hon’ble Delhi High Court in the case of Joint Investment Pvt. Ltd. Vs. CIT, vide its order dated 25-2-2015, has held that disallowance under section 14A cannot exceed the amount of exempt income. The Delhi High Court in the case of Holcim India Pvt. Ltd., reported in (2014) 272 CTR 282(Del), has held that there can be no disallowance under section 14A in the absence of any exempt income. The rationales behind these judgments are that the amount of disallowance should not exceed the exempt income.

6. Ld. CIT(DR) submitted that before Hon'ble Delhi High Court in the case of Joint Investment Pvt. Ltd. (supra), relied upon by ld. counsel, there was no question of law on this count. He submitted that the decision of Hon'ble Jurisdictional High Court is binding only if it decides on a particular question of law and not otherwise. He submitted that there cannot be any ceiling for income but ceiling can be only for expenditure.

7. We have considered the rival submissions and have perused the record of the case. We find that in the case of Joint Investment Pvt. Ltd. (supra), in para 3 the Hon'ble Delhi High Court has observed as under:

“The assessee’s grievance was that the entire tax exempt income (Rs. 48,90,000) was lower than the disallowance. It, therefore, appealed to the commissioner (Appeals) but met with no success. Its further appeal to the Tribunal likewise met the same fate.”

8. Further, in para 9 the Hon'ble High Court has observed as under:

“In the present case, the assessing officer has not firstly disclosed why appellant/assessee's claim for attributing Rs. 2,97,440 as a disallowance under section '14A had to be rejected. Taikisha (supra) says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assessee's claim or explanation. The second aspect is there appears to have been no scrutiny of the accounts by the assessing officer-van aspect which is completely unnoticed by the Commissioner (Appeals) and the Tribunal. The third, and in the opinion of this Court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is Rs. 48,90,000, the

disallowance ultimately directed works out to nearly 110 per cent of that sum, i.e., Rs. 52,56,197. By no stretch of imagination can section 14A or rule 80 be interpreted so as to mean that the entire tax exempt income is to be disallowed, The window for disallowance is indicated in section 14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case.

9. Respectfully following the decision of Hon'ble Delhi High Court, we direct the disallowance to be restricted to the extent of dividend income viz. Rs. 3,93,701/-.

10. In the result, assessee's appeal is partly allowed.

Order pronouncement in open court on 29/07/2016.

Sd/-
(C.M. GARG)
JUDICIAL MEMBER
Dated: 29/07/2016.

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.