

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'C', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 6840/Del./2014
Assessment Year: 2011-12**

D.C.I.T., Circle 2(1), New Delhi. (Appellant)	vs.	M/s. Indiabulls Financial Services Ltd., M-62 & 63, First Floor, Connaught Place, New Delhi. PAN - AAACI8670Q (Respondent)
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Appellant by	Shri Navin Chandra, CIT/DR
Respondent by	Sh. Gautam Jain & Piyush Kamal, Adv.

Date of Hearing	06.09.2017
Date of Pronouncement	08.09.2017

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the Revenue against the order dated 30.09.2014 of Id. CIT(A)-XV, New Delhi for the assessment year 2011-12. The sole ground raised in appeal by Revenue read as under :

“On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.3,83,45,809/- made by the AO on account of disallowance made u/s. 14A r.w. Rule 8D of the I.T. Act, 1961.”

2. We have heard both the parties and perused the material available on record.

3. The ld. DR, reiterating the observations made by the AO in the assessment order, submitted that the ld. CIT(A) was not justified in deleting the addition made by AO u/s. 14A after resorting to the method prescribed under Rule 8D of the IT Act.

4. On the other hand, the ld. AR of the assessee relied on the order of the first appellate authority and also filed a written synopsis, inter alia, contending that the issue involved in this appeal already stood decided in favour of the assessee by the ITAT in the case of assessee itself for A.Y. 2010-11 in ITA No. 5526/Del./2014 vide order dated 28.07.2017. It was also submitted that the issue is also covered in favour of the assessee by another decision of ITAT in the case of assessee's group concern, DCIT vs. M/s. Indiabulls Insurance Advisors Ltd. (ITA No. 2646/Del./2015- A.Y. 2008-09). Copies of these orders are placed on record.

5. Having considered the rival submissions in the light of material available on record, we find that the issue involved in this appeal is squarely covered by the decision dated 28.07.2017 (supra) of Co-ordinate Bench in the case of assessee itself for A.Y. 2010-11, whereby the Tribunal on the similar facts and circumstances and considering the identical arguments of the

parties and the case laws relied upon, dismissed the appeal of the Revenue observing as under :

2. The facts in brief of the case are that the assessee, a public limited company, was engaged in the business of financial services such as consumer loans, housing loans, personal loans and vehicle loans. The assessee filed its return of income for the year under consideration on 14.10.2010 declaring income of Rs. 394,07,05,497/- which was subsequently revised on 30.3.2012 where total income remained the same. In the course of scrutiny proceedings, the AO observed that the assessee had received tax free dividend income of Rs.14,14,60,400/-. In view of this, the Id. AO asked the appellant to explain as to why the provisions of section 14A read with Rule 8D of the Income-tax Rules, 1962 (for short 'the Rules') should not be applied in its case and asked the appellant to file working of disallowance under Rule 8D of the Rules. In response to this, the assessee vide letter dated 8.2.2013 submitted that it had already disallowed an amount of Rs. 27,72,963/- in respect of expenses incurred to earn the dividend income, which comprised of salary cost of employees engaged in the activities of the coordination with the mutual fund (Rs.13,86,481/-) and other administrative expenses towards rental value of their work station space, their telephone cost, their conveyance cost, depreciation, etc. (Rs.13,86,481/-) which was estimated to be equivalent to the aforesaid salary cost. The assessee contended that the working of administrative costs made by it had scientific basis, which should be accepted by the AO. The assessee also gave detailed working of the cash flow from the borrowed funds and also from company's own surplus fund and had emphasized that since the company had significant surplus funds available, it did not require borrowed funds for making investments in the shares. The AO examined the plea of the appellant on different grounds and was of the view that the disallowance should still be made as per the provisions of section 14A read with Rule 8D of the Rules. However, while applying the provisions of Rule 8D, the AO did not make any disallowance under Rule 8D(2)(i) and (ii), as in her view there were no direct expenses attributable to the earning of dividend income and no interest cost was incurred for making investment in shares/mutual funds, as the assessee had adequate surplus funds for making the investments in shares/mutual funds. However, she held that, 'keeping in view the quantum of tax-free dividend income received, the third limb of Rule 8D is clearly attracted. Accordingly, disallowance under Rule 8D(2)(iii) was made at Rs. 5,51,62,646/-. The Id. CIT(A), after considering the submission of the assessee deleted the disallowance u/s 14A of the Income-tax Act, 1961 (for short "the Act"). Aggrieved, the Revenue is in appeal before the Tribunal.

3. Before us, at the outset, the Id. Authorised Representative of the assessee submitted that in absence of satisfaction u/s 14A(2) of the Act read with Rule 8D of the Income Tax Rules '1962 disallowance is untenable. Reliance was placed on the following judgments:

- *Godrej & Boyce Manufacturing Company Ltd. v. DCIT 81 taxmann.com 111 (SC)*
- *Pr. CIT v. U.K. Paints 392 ITR 552 (Del)*

- *CIT v. Taikisha Engineering India Ltd. 370 ITR 338 (Del)*
- *Joint Investments (P) Ltd. v. CIT 372 ITR 694 (Del)*

4. On the other hand, ld. DR relied on the order of assessment

5. We have heard the rival submissions and perused the material on record. The CIT(A) deleted the disallowance by holding as under:

“6.5 I find that before applying the provisions of Rule 8D, the Ld. AO did not give credence to the appellant's working of disallowance only on the ground that the disallowance of administrative expense was not satisfactory qua the amount of exempt income earned. However, this is a general and unsubstantiated statement without any force nor supported by any evidence, whatsoever. I find that, the AO was, however, satisfied with the plea of the appellant that no interest bearing funds were used for making such investments and hence no disallowance under Rule 8D(2)(ii) was made. Thus, on examination of the facts, the AO reached to the conclusion that the appellant did not incur any direct expenses attributable to earning of tax-exempt income. Similarly, keeping in view the available surplus and reserves, she was of the view that the surplus and reserves were much more than the borrowed funds and that the same were applied for making investment in shares/Mutual funds, yielding dividend income and accordingly, did not make any disallowance under Rule 8D(2)(ii). The observation that the amount of disallowance administrative expenses compared to quantum of exempt-income was relatively smaller and hence provision of Rule 8D(2)(iii) were applicable, being subjective, is not a credible proposition and cannot be held as a cogent basis to reject the claim of the appellant, keeping in view the ratio of the decision of the Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. vs. CIT 64 DTR 122 (Del) (HC) and Hon'ble Mumbai High Court in the case of Godrej Boyce Manufacturing Company Ltd. vs. DCIT 328 ITR 81 (Bom.). In my view, in itself, Administrative expenses computed under Rule 8D(2)(iii) do not imply that such amounts denote the actual amount of administrative expenses. The presumptive method comes into operation only when the appellant's claim is rejected on cogent grounds. The Assessing Officer could not identify any administrative expenses exceeding the amount of Rs.27,72,963/- disallowed by the appellant itself, and hence, she could not have rejected the claim of the appellant summarily and applied the provision of Rule 8D(iii) as such.”

6. The aforesaid findings are in conformity with judgment of Hon'ble Delhi High Court in the case of Pr. CIT v. U.K. Paints, 392 ITR 552, whereby it has been held as under:

“14A(2). That apart, significantly, the question of applying the statutorily prescribed method would arise only and only if the Assessing Officer expresses an opinion rejecting the assessee's methodology and the figure offered at the time of assessment. This is material because the jurisdiction to go into the method prescribed in the Rules arise only if the amounts the assessee offers does not have any realistic correlation with the tax exempt income. For instance, in a given case, if a tax exempt income is to the tune of Rs. 5 crores and the assessee is able to satisfy that expenditure relatable to that income or the reasonable nexus to such income is Rs. 25lakhs, there has to be

strong reasons why the said amount of Rs. 25 lakhs are to be rejected. In other words, the opinion of the Assessing Officer in the later part (of section 14A(2)) is to be based upon an appraisal of objective material relating to the assessee's voluntary disallowance of amount/ amounts. Not only that, if in the course of assessment, the Assessing Officer enquires from the assessee about the amounts spent, which are to be disallowed, and the assessee in fact discloses a larger amount (than the one given in the return), it is still incumbent upon the Assessing Officer to enquire into such larger amounts and determine whether it has nexus with expenditure relatable to exempt income to attract section 14A(1). Sans this procedure, section 14A would be reduced to mere formality which it appears to have become in the circumstances of the case. Consequently, we are of the opinion that there is no infirmity in the reasoning and conclusion of the Income-tax Appellate Tribunal. The appeal is accordingly dismissed."

7. In the case of Joint Investments Pvt. Ltd. vs. CIT 372 ITR 694 (Del), it has been also held as under:

"9. In the present case, the AO has not firstly disclosed why the appellant/assessee's claim for attributing Rs. 2,97,440/- as a disallowance under Section 14A had to be rejected. Taikisha Engg. India Ltd. (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 AO - an aspect which is completely unnoticed by the CIT (A) and the ITAT. 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% of that sum, i.e. Rs. 52,56,197/-. By no stretch of imagination can Section 14A or Rule 8D 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."

8. The Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Company Ltd. v. DCIT 81 taxmann.com 111 has held by a judgment as under:

37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable." [Underlined by us]

9. Having regard to the above judicial binding precedents, we find that the ratio-discendi emerging is that it is incumbent upon the AO to record a satisfaction that having regard to accounts of assessee as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. In the instant case, assessee had made claim that expenses attributable to exempt income is Rs. 27,72,963/-; there is no satisfaction of the AO that having regard to the accounts of the assessee the aforesaid claim of Rs. 27,72,963/- is not acceptable. The AO has not been able to point out that any defect in the claim of the appellant on any cogent ground. On the contrary Rule 8D has been invoked only on the account of quantum of tax free dividend income which is not a valid satisfaction. In view thereof, we find no reason for interference in the order of the learned CIT(A) and consequently uphold the order deleting the disallowance of Rs. 5,23,89,683- made under section 14A of the Act. We, therefore, accordingly, dismiss the grounds of the Revenue.”

This issue has also been decided by the Tribunal in favour of assessee in its other group concern, M/s. Indiabulls Insurance Advisors (supra) after relying on various decisions of higher Courts. Therefore, respectfully following the decisions of Co-ordinate Bench in the aforesaid cases, we find no justification to interfere with the order of the Id. CIT(A). Accordingly, the appeal of the Revenue has no merits and is liable to fail.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 08.09.2017.

Sd/-
(H.S. Sidhu)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 08.09.2017

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