

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5980/Del./2015
(ASSESSMENT YEAR : 2012-13)**

ACIT, Circle 9 (1), vs. M/s. Feedback Infra Pvt. Ltd.,
New Delhi. 311, 3rd Floor, Vardhman Plaza,
Pocket – 7, Plot No.6, Sector 12,
Dwarka, New Delhi-110 070.

(PAN : AAACF0066G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Gaurav Jain, Advocate
REVENUE BY : Shri Arun Kumar Yadav, Senior DR

Date of Hearing : 31.08.2017

Date of Order : 18.09.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Assistant Commissioner of Income-tax, Circle 9 (1), New Delhi (hereinafter referred to as 'the Revenue'), by filing the present appeal sought to set aside the impugned order dated 13.08.2015 passed by the Commissioner of Income-tax (Appeals)-3, New Delhi, for the Assessment Years 2012-13 on the grounds inter alia that :-

“On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.62,58,956/- made by the A.O on account of disallowance u/s 14A r.w.r 80 of the I.T. Rules.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : During scrutiny proceedings, Assessing Officer noticed that the assessee company has shown investment in equity shares to the tune of Rs.10,54,72,000/- and Rs.26,52,86,250/- as on 01.04.2011 and 31.03.2012 respectively. AO while examining the investment in view of the provisions contained under section 14A of the Income-tax Act, 1961 (for short ‘the Act’) observed that the investment is more than the investment made by the assessee company during the last year. AO called upon the assessee company to explain as to why disallowance u/s 14A of the Act should not be made as per Rule 8D of the Income-tax Rules, 1962 (for short ‘the Rules’) qua investment shown in the balance sheet. AO being dis-satisfied with the explanation furnished by the assessee company proceeded to compute the disallowance u/s 14A of the Act read with Rule 8D of the Rules as under :-

11. In view of the above, it is held that the case of the assessee is a fit case for computing the disallowance u/s 14A in accordance with Rule 8D. The computation of disallowance is as under:

<p><i>i) The amount of expenditure directly relating to income which does not form part of total income.</i></p>		<p><i>Nil</i></p>
<p><i>ii) In a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :-</i> <i>Ax B/C</i> <i>Where:</i> <i>A- Amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;</i> <i>B- The average of value of investment, income from which does not or shall not form part of the total income as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;</i> <i>C- The average of total assets as appearing in the</i></p>	<p style="text-align: right;"><i>4,46,06,661/-</i></p> <p style="text-align: center;"><u><i>100372000+260186250</i></u></p> <p style="text-align: center;"><i>2</i></p> <p style="text-align: center;"><i>= 180279125/-</i></p> <p style="text-align: center;"><u><i>1107840069+1894141952</i></u></p>	<p style="text-align: center;"><i>53,57,560/-</i></p>

<i>balance sheet of the assessee, on the first day and the last day of the previous year.</i>	2 = 1500991011	
<i>iii) An amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.</i>	<i>Average investments: Rs.18,02,79,125/- = 0.5% of Rs. 18,02,79,125/- = Rs. 9,01,396/-</i>	9,01,396/-
	<i>Disallowance(i+ii+iii)=</i>	<i>Rs. 62,58,956</i>

3. AO thereby made disallowance to the tune of Rs.62,58,956/- u/s 14A read with Rule 8D.

4. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has deleted the disallowance of Rs.62,58,956/- by allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of challenging the impugned order passed by Id. CIT (A).

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Ld. DR for the Revenue challenging the impugned order contended inter alia that the AO has worked out the disallowance under Rule 8D as per accounts rendered by the assessee having been duly explained at the second last page of the assessment order; that section 114 of the Evidence Act, 1872 raises presumption in favour of the Revenue that there was non-satisfaction of the AO and relied upon the order of the AO.

7. However, on the other hand, the ld. AR for the assessee to repel the arguments addressed by ld. DR contended inter alia that the AO proceeded to invoke the provisions contained u/s 14A read with Rule 8D without recording his dis-satisfaction; that the assessee company has not earned any exempt income during the year under assessment forming part of the total income and as such, section 14A read with Rule 8D is not attracted; that the decision of the ITAT, Special Bench, New Delhi in case of M/s. Cheminvest Ltd. vs. ITO – 317 ITR 86, relied upon by the AO, has since been overruled and that the ld. AR further relied upon the case of *Holcim India Pvt. Ltd. – ITA No.486/3024 & ITA No.299/2014*.

8. Undisputedly, the AO, without recording dis-satisfaction, as the working out made by the assessee that no expenses have been incurred nor earned any dividend income, proceeded to invoke the

provisions contained u/s 14A read with Rule 8D in a mechanical manner which is not permissible.

9. Hon'ble Delhi High Court in judgment cited as *Maxopp Investment Ltd.* (supra) while deciding the identical issue held as under :-

“Section 14A even prior to the introduction of sub-sections (2) and (3) would require the Assessing Officer to first reject the claim of the assessee with regard to the extent of such expenditure and such rejection must be for disclosed cogent reasons. It is then that the question of determination of such expenditure by the Assessing Officer would arise. The requirement of adopting a specific method of determining such expenditure has been introduced by virtue of sub-section (2) of section 14A . Prior to that, the assessee was free to adopt any reasonable and acceptable method. So, even for the pre-rule 80 period, whenever the issue of section 14A arises before an Assessing Officer, he has, first of all, to ascertain the correctness of the claim of the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income under the Act. Even where the assessee claims that no expenditure has been incurred in' relation to income which does not form part of the total income, the Assessing Officer will have to verify the correctness of such claim. In case, the Assessing Officer is satisfied with the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, the Assessing Officer is to accept the claim of the assessee in so far as the quantum of disallowance under section 14A is concerned. In such eventuality, the Assessing Officer cannot embark upon a determination of the amount of expenditure for the purposes of section 14A(1). In case, the Assessing Officer is not, on the basis of the objective criteria and after giving the assessee a reasonable opportunity, satisfied with the correctness of the claim of the assessee, he shall have to reject the claim and state the reasons for doing so. Having done so, the Assessing Officer will have to determine the amount of expenditure incurred in relation to income which does not form part

of the total income under the Act. He is required to do so on the basis of a reasonable and acceptable method of apportionment.”

10. Hon’ble Apex Court in ***Godrej & Boyce Manufacturing Company Ltd. vs. DCIT – 394 ITR 449 (SC)*** thrashed the issue in controversy as to invoking of the provisions contained under Rule 8D of the Rules by observing 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.”

11. By following the law laid down by Hon’ble Apex Court in judgment cited as ***Godrej & Boyce Manufacturing Company Ltd.*** (supra) and Hon’ble High Court of Delhi in ***Maxopp Investment Ltd.*** (supra), we are of the considered view that the findings returned by AO that, *“disallowance u/s 14A is to be made even if no exempt income has resulted or earned by the assessee during*

the year under consideration” is no longer a good law in view of the judgment rendered by Hon’ble Delhi High Court in *Holcim India Pvt. Ltd.* (supra) and Hon’ble Supreme Court in *Godrej & Boyce Manufacturing Company Ltd.* (supra) wherein it is categorically held that where the assessee has not earned any dividend income forming part of the total income during the year under assessment, section 14A read with Rule 8D is not attracted. AO proceeded to invoke section 14A read with Rule 8D without recording his dis-satisfaction. So, in these circumstances, the Id. CIT (A) by considering all these facts rightly deleted the addition. So, finding no illegality or perversity in the order of the Id. CIT (A), we hereby dismiss the appeal filed by the Revenue.

Order pronounced in open court on this 18th day of September, 2017.

**Sd/-
(B.P. JAIN)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 18th day of September, 2017
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-3, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**