

**THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI**

**Before Sh. N. K. Saini, AM and Sh. K. N. Chary, JM**

**ITA No. 1182/Del/2016 : Asstt. Year : 2012-13**

Dy. Commissioner of Income Tax, Circle-21(2), New Delhi	Vs	M/s RDS Projects Ltd., 427, Somdutt Chambers-II, 9, Bhikaji Cama Palace, New Delhi-110066
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACR4761J</b>		

**Assessee by : None**

**Revenue by : Sh. S. P. Gupta, Sr. DR**

<b>Date of Hearing : 14.09.2017</b>	<b>Date of Pronouncement : 26.09.2017</b>
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**ORDER**

**Per N. K. Saini, AM:**

This is an appeal by the department against the order dated 14.12.2015 of Id. CIT(A)-7, New Delhi.

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

*“1. On the facts and circumstances of the case, the Id.CIT(A) has erred in restricting the addition of Rs.38,94,340/- to Rs.7,000/- made by Assessing Officer by applying Rule 8D without appreciating the directions laid down in CBDT's Circular No. 5/2014 dated 11-02-2014 wherein it has been mentioned that disallowance u/s.14A of the Income Tax Act, 1961 is to be made even if there is no exempt income during the year.”*

3. Facts of the case in brief are that the assessee filed the return of income on 30.09.2012 declaring an income of Rs.16,68,78,960/- 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. During the course of assessment proceedings, the AO asked the assessee to file details regarding the investments made in various companies and explain the position with regard to the disallowance u/s 14A of the Act r.w.r. 8D of the Income Tax Rules, 1962. In response, the assessee submitted that investment of Rs.12,71,33,000/- had been made in share capital of different companies out of the shareholders funds i.e. share capital + reserve and surplus + profit and loss A/c + share premium A/c + deferred tax liability totaling to Rs.89.67 crores and that no investments in the above shares had been made out of loan or borrowed funds. It was also stated that there was no income from dividend except Rs.7,000/- received from State Bank of Travancore. The AO however, did not find merit in the submissions of the assessee and made the disallowance of Rs.38,94,340/- by observing as under:

*“The assessee's submissions have been considered but are not acceptable due to the following reasons:-*

1. *No separate books of account have been kept for investments.*
2. *The funds are mixed and the funds invested in investments do not have character of surplus funds.*
3. *The funds, which have been used by the assessee for its business as well as investments, are mixed and inseparable.*
4. *The assessee has not shown that the above amount is invested from surplus funds, no nexus has been filed by the assessee in this regard.*

*In the view of the above, assessee submissions are not acceptable and disallowance u/s 14A of I.T.Act, read with Rule 8D is computed as under-*

<i>S. No.</i>	<i>Disallowance</i>	<i>Amount (Rs.)</i>
1.	<i>The amount of expenditure directly relating to income which does not form part of total income.</i>	0
2.	<p><i>In case where 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 -<math>A \times B/C</math></i></p> <p><i>Where</i>  <i>A = Amount of expenditure by way of interest incurred on OD only, included in clause (1) incurred during the previous year</i>  <i>B = the average value of investment, income from which does not or shall not form part of total income appearing in the balance sheet of the assessee, on the last day and the last day of the previous year</i>  <i>C = The average value of the total assets as</i></p>	<p><i>A = 5,22,03,622</i>  <i>B = 16,24,33,000</i>  <i>C = 2,751,170,153</i></p> <p><i>Hence, Disallowance = 30,82,175</i></p>

	<i>appearing in the balance sheet of the assessee on the first day and the last day of the previous year.</i>	
3.	<i>An amount equal to ½ % of the average 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>½ % of average investment Rs. 8,12,165</i>
	<i>Total Disallowance (Rs. 3082175+ Rs. 812165) i.e.</i>	<i>Rs. 38,94,340</i>

*Hence total disallowance u/s 14A of I.T.Act, 1961 of Rs. 38.94.340A is made to the income of the assessee.*

***Disallowance u/s 14A of the I.T. Act, of Rs. 38,94,340/-”***

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who sustained the disallowance of Rs.7,000/- by observing in paras 3.2 & 3.3 of the impugned order as under:

*“3.2. I have carefully considered the submission of the appellant and the order passed by the AO. The AO has invoked the provisions of section 14A and computed disallowance at Rs.38,94,340/- as per Rule 8D of the I.T. Rules, 1962 as the appellant has investment in shares. It is noted that the appellant had earned dividend income of Rs.7,000/- from shares of State Bank of Travancore. Disallowance is however worked out at Rs.38,94,340/- which is far in excess of the exempt income. The AO has not given any reasons as to the basis of the expenditure disallowed relatable to earning of the exempt income. It is held in a number of decisions by Hon'ble High Court and Tribunals that the AO cannot straight away proceed to apply Rule 8D without examining the merits of the appellant's*

*claim in respect of expenditure disallowed or not incurred to attract the mischief of disallowance u/s 14A of the Act (Maxopp Investment Ltd. vs. CIT 347 ITR 272 (Del), CIT vs. Walfort Share and Stock Brokers P. Ltd. 326 ITR 1, CIT vs. Hero Cycles Ltd. 323 ITR 518, CIT vs. Consolidated Photo and Finvest Ltd. 211 Taxman 184). The disallowance made by the AO therefore, is not in order.*

*3.3. As stated above, the disallowance computed by the AO is far in excess of the exempt income disclosed by the appellant i.e. Rs.7,000/-. The Hon'ble Delhi High Court in the case of Joint Investment (P) Ltd. vs. CIT 2015/(3) TMI 155 has held that disallowance u/s 14A cannot exceed the exempt income. Respectfully following the decisions cited above, the disallowance u/s 14A is restricted to Rs.7,000/- i.e. the amount of exempt income earned by the appellant during the year. The ground of appeal is ruled partly in favour of the appellant.”*

5. Now the department is in appeal. The ld. DR strongly supported the order of the AO and reiterated the observations made in the assessment order dated 07.07.2014. Nobody was present on behalf of the assessee.

6. After considering the submissions of ld. DR and the material on record, it is noticed that the ld. CIT(A) by following the judgment of the Honøble Jurisdictional High Court in the case of Joint Investment (P) Ltd. Vs CIT (supra) sustained the disallowance to Rs.7,000/-. We, therefore, do

not see any valid ground to interfere with the findings of the ld. CIT(A). Accordingly, we do not see any merit in this appeal of the department.

7. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 26/09/2017)

Sd/-  
**(K. N. Chary)**  
**JUDICIAL MEMBER**

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

**Dated: 26/09/2017**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**