

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. 5443/Del/2014	
	A.Y. : 2010-11	
DCIT-12(1), NEW DELHI	VS.	M/S GAGAN INFRAENERGY LIMITED, 28, NAJAFGARH ROAD, NEW DELHI - 110 015 (PAN: AABCN6118L)
(APPELLANT)		(RESPONDENT)

Department by : Sh. Arun Kumar Yadva, Sr. DR

Assessee by : Sh. Upvam Gupta,

ORDER

PER H.S. SIDHU, JM:

The Revenue has filed the present appeal against the impugned order dated 31/7/2014 passed by the Ld. Commissioner of Income Tax (Appeals)-XV, New Delhi on the following grounds:-

1. Whether the Ld. CIT(A) has erred in holding that the action of the AO of invoking of provisions of Rule 8D of the I.T. Rules 1962 was without any cogent ground and thereby in deleting addition of

Rs. 76,62,074/- without appreciating that the AO has categorically recorded his satisfaction as required u/s. 14A(2) of the I.T. Act, 1961 to invoke the Rule 8D of the I.T. Rules, 1962, in para 3.2 at page 2 of the assessment order.

2. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.

2. The brief facts of the case are that the assessee filed return of income declaring NIL income on 30.9.2010 and Rs.2,94,51,024/- under the provisions of section 115JB of the Income Tax Act, 1961 (hereinafter referred as the Act). The case of the assessee was selected for scrutiny and notice u/s. 143(2) of the Act was issued on 30.8.2011. Again notice u/s. 143(2) of the Act alongwith questionnaire under section 142(1) of the Act was issued on 22.6.2012. In response to the notices, the A.R. of the assessee appeared from time to time and filed the requisite details in the assessment proceedings. The assessee company is engaged in the business of finance and investment, coal mining. The AR of the assessee has produced the books of account before the AO. Thereafter, the AO observed that the assessee had made investments in quoted shares of Rs.1,11,37,92,755 (as on

31.03.2010), for the purpose of earning dividend income. It was also observed that the assessee had earned dividend income of Rs.6,31,67,390, during the year. The AO also observed that the assessee had made disallowance under Section 14A of Rs.17,20,346, however, he asked the assessee to explain the basis of estimation of such expense. In response, vide letter dated 20.03.2013, the assessee submitted that no direct expense was incurred for earning of the dividend income, however, the assessee itself had already made disallowance of Rs.17,20,346, which was computed as per Rule 8D, as shown in the computation of taxable income of the assessee. The AO examined the same and in his view, the assessee should have taken an average of actual investment without excluding the provisions. Secondly, the AO observed that the assessee had disallowed interest of Rs.8,64,759/-, out of the total interest paid of Rs.5,89,39,291. However, he was of the view that the basis of the same was not clear and as the interest expenses pertain to deposits taken by the assessee, which were invested in shares and mutual funds, the amount of interest expenses attributable to earning of dividend income should have been higher. The AO was also not agreed with the plea of the assessee that no expenses in respect of management and investment affairs of the appellant were incurred. Based on this, the

AO applied the provisions of Rule 8D and thereby made disallowance of Rs.8,55,587 under sub-clause (i), Rs.64,89,681 under sub-clause (ii) and Rs.20,37,152 under sub-clause (iii) aggregating to Rs.93,82,420. In view of this, after giving allowance for the disallowance made by the assessee of Rs.17,20,346/-, additional disallowance of Rs. 76,62,074/- was made vide order dated 26.3.2013 passed u/s. 143(3) of the Act.

3. Aggrieved with the aforesaid assessment order, assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order dated 31.7.2014 has allowed the appeal of the assessee.

4. Now the Revenue is aggrieved against the impugned order and filed the present appeal before the Tribunal.

5. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal.

6. On the contrary, Ld. Counsel of the assessee relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned order, which does not need any interference.

7. We have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A). We find that the Assessee had furnished detailed explanation to the AO

during the proceedings. The AO however, was not satisfied with the same, primarily on the ground that the basis for the disallowance of interest expenses of Rs. 8,64,759/- was not clear and he held that the entire expenditure was directly related to investment. AO has also not accepted the plea of the assessee that no other expenses for management and investment has been incurred. We further find that the AO has taken altogether different grounds for rejecting the claim of the assessee whereas in the letter dated 20.3.2013, the assessee had furnished detailed explanation. We further note that the AO has not examined the plea of the assessee that its opening investments as on 31.3.2009 were duly explained and its own funds were 2½ times more than the investments as on that date. Further the assessee case for AY 2009-10 had undergo scrutiny assessment under section 143(3), in which the AO had not made disallowance under section 14A. Therefore, the same explains that brought forward investments were not made out of borrowed funds in respect of which the assessee may have made interest payment during the current year. So far as the current investments are concerned, on the strength of the bank statements, the assessee identified certain borrowings which had gone for making investments in shares and the assessee had made disallowance in respect thereof. Accordingly, we find no error in the explanation

given by the assessee to the AO that the disallowance made by it towards earning of exempt income amounting to Rs.17,20,246 was on cogent ground. We are of view that the AO has rejected the claim of the assessee on frivolous grounds without examining the bank statements furnished by the assessee in support of the current investments and the basis given for making disallowance under Section 14A vide its letter dated 20.03.2013. The basis for making disallowance of interest expenses of Rs.8,64,759 was clearly given, which related to the borrowing made in the current year for making fresh investments. This claim was not rejected by the AO. So far as the administrative expenses are concerned, the assessee had pleaded that no expenses were incurred for investment purposes and since specific expenses could not be identified, it followed up a thumb rule of disallowing expenses in respect of common expenses in the ratio of receipt from exempt income to the total receipt. No fault was identified by the AO therein, and no specific adverse evidence was in the possession of the AO suggesting that any particular expense over and above this amount was incurred for earning exempt income. The provisions of Section 14A(2) empower the AO to resort to the prescribed provision under Rule 8D for making disallowance under

Section 14A where, having regard to the account of the assessee, the AO is not satisfied with the claim of the assessee. We further note that the Hon'ble Mumbai High Court in the case of CIT Vs Godrej & Boyce Mfg Co Ltd vs. DCIT, Mumbai and the Hon'ble Delhi High Court in the case of Maxopp Investment (supra) have held that such a lack of satisfaction should be on cogent grounds. Such provisions entailed in Section 14A are in the nature of safeguards with the intention to provide natural justice to the taxpayers before invoking the prescribed method which is only presumptive in nature. We find that in the instant case, even though the AO has given due opportunity to the assessee to explain its claim that only an amount of Rs.17,20,346 was in the nature of expenses incurred for earning tax exempt income, however, he was not judicious in examining the claim and dismissed the same as such without any cogent reasoning or any sound basis. The assessee had given detailed explanation in respect of interest expenses and in the absence of identifying any specific expenses incurred for earning the exempt income, had disallowed relevant administrative expenses proportionately on turnover basis. No fault could be pointed out by the AO in it. In view of the above, we find that the Ld. CIT(A) has rightly held that the action of the AO of invoking the provisions of Rule 8D without on any cogent ground was unwarranted and not sustainable.

Accordingly, the addition made on this ground was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, hence, we uphold the impugned order on the issue in dispute and reject the grounds raised by the Revenue.

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

Order pronounced in the Open Court on 09/10/2017.

Sd/-

**[L.P. SAHU]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 09/10/2017

"SRBHATNAGAR"

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches