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

Before : Shri Bhavnesh Saini, Judicial Member And
Shri L.P. Sahu, Accountant Member

ITA No. 4562/Del./2014
Assessment Year: 2011-12

Moonstar Securities Trading & Finance Co. Pvt. Ltd., Room No. 20, E Block, 4th Floor, International Trade Tower, Nehru Place, New Delhi (PAN- AAACM 8415A) **(Appellant)**	vs.	A.C.I.T., Central Circle 13 New Delhi. **(Respondent)**

ITA No. 4661/Del./2014
Assessment Year: 2011-12

A.C.I.T., Central Circle 13 New Delhi. **(Appellant)**	vs.	Moonstar Securities Trading & Finance Co. Pvt. Ltd., Room No. 20, E Block, 4th Floor, International Trade Tower, Nehru Place, New Delhi **(Respondent)**

Assessee by	Sh. Ashwani Kumar, Advocate & Sh. Aditya Kumar, C.A.
Revenue by	Ms. Renu Amitabh CIT-DR

Date of Hearing	28.09.2017
Date of Pronouncement	31.10.2017

ORDER

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

These are two cross appeals filed by the assessee and the Revenue against the order dated 05.06.2014 of ld. CIT(A)-I, New Delhi for the assessment year 2011-12 on the following grounds :

Grounds raised by assessee :

"That the order dated 05.06.2014 passed u/s. 250 of the Inc0me Tax Act, 1961 by the Learned Commissioner of Income-tax (Appeals) I, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the learned ACIT, Central Circle 13, New Delhi by restricting the addition of Rs.1,50,63,219/- under the provisions of section 14A of the Income Tax Act, 1961 read together with Rule 8D of the Income Tax Rules, 1962 on account of expenses incurred for earning exempt income."

Grounds raised by the Revenue:

"1. The order of Ld. CIT(A) is not correct in law and facts.

2. On the facts and circumstances of the case the Ld. CIT(A) has erred in law in restricting the disallowance u/s. 14 read with Rule 8D of Rs.1,50,62,219/- and allowing a relief to assessee of Rs.11,15,08,645/- out of total disallowance of Rs.12,65,71,862/- made by the AO.

3. On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs.12,65,71,862/- u/s. 14A r.w.r. 8D on account of expenses incurred for earning exempt income and also increase the book profits for the purposes of calculating of MAT u/s. 115JB."

2. As culled out from the above grounds of appeals and the attending facts of the case, we find that the primary issue involved for adjudication in both the appeals is with respect to partial sustenance and partial deletion of addition made u/s. 14A r.w.r. 8D. Therefore, both the appeals are being disposed of simultaneously.

3. The brief facts of the case are that the assessee filed its return of income on 01.09.2012 declaring nil income, which was processed u/s. 143(1). The case was selected for scrutiny. The assessee earned exempt income of

Rs.58,09,619/-. The AO asked for the details for application of section 14A of the Act. In response, the assessee submitted that the assessee has suo moto disallowed the expenditure of Rs.58,09,619/-. The AO, however, applying the provisions of section 14A read with Rule 8D, computed the expenses incurred in relation to exempt income at Rs.13,23,81,481/- and after adjusting the disallowance made by assessee itself of Rs.58,09,619/-, made an addition of Rs.12,65,71,862/- (Rs.13,23,21,481 – 58,09,619/-). The Assessing Officer further added the above disallowance to the book profit of assessee for the purpose of computation of MAT liability.

4. In appeal before the ld. CIT(A), the assessee made detailed submissions and the ld. CIT(A) after considering the submissions of the assessee restricted the addition to Rs.1,50,63,219/-. The ld. CIT(A), however, deleted the addition made for computation of MAT liability from the book profit holding as under :

> *"4.2. I have considered the assessment order and the submissions made. Minimum Alternate Tax (MAT) is leviable u/s 115JB on 'book profit' as computed in terms of the Companies Act, 1956 and as increased / decreased by the amounts specified in Explanation 1 to Section 115JB. There is no provision to travel beyond Section 115JB. Disallowances made under various provisions of the Act in the regular assessment cannot be imported into section 115JB. MAT is a contributory tax and credit is given for the same to be adjusted against and reduced from regular tax payable by the assessee in future. Thus, additions to income u/s 115JB made, of disallowances made under the regular provisions, has no legal basis. This is not justified in view of the strict provisions u/s 115JB. No addition to the book profit can be made on the basis of disallowance made in the regular assessment. I hold accordingly. The addition made u/s 115JB is deleted."*

5. Both the parties were not satisfied with the deletion and sustenance of additions, as noted above, hence, these cross appeals.

6. During the course of hearing, the ld. AR of the assessee submitted that once the assessee itself disallowed the expenditure suo moto u/s. 14A, it was incumbent upon the AO first to record its satisfaction on the incorrectness of the disallowance made by assessee and then to proceed further. Therefore, the application of Rule 8D and computation of disallowance u/s. 14A made by the AO is not legally tenable. It was submitted that in the identical situation, the similar disallowance was made by the AO in A.Yrs. 2008-09 to 2010-11, which stood by the Delhi Bench of ITAT in ITA Nos. 621 to 623/Del./2013 vide order dated 09.06.2017. Therefore, the issue is covered by the aforesaid decision of coordinate Bench. It was also submitted that the ld. CIT(A) after considering the provisions of section 115JB has rightly deleted the addition.

7. The ld. DR on the other hand, submitted that the ld. CIT(A) was not justified in deleting the additions made by AO u/s. 14A r.w.r. 8D and the AO had made disallowance after relying on the decision in the case of Cheminvest Ltd. vs. ITO 317 ITR 86. He further relied on the decisions in Indiabulls Financial Services Ltd. vs. DCIT, 76 Taxmann.com 28 and Nahar Spinning Mills Ltd. vs. CIT, 82 Taxmann.com 154 (P&H).

8. We have heard the rival submissions and have gone through the entire material available on record and we find that the issue involved in these appeals is squarely covered by the order dated 09.06.2017 of coordinate Bench in the case of assessee itself in ITA Nos. 621 to 623/Del./2013 vide order dated 09.06.2017 for the assessment years 2008-09 to 2010-11, wherein the coordinate Bench held as under :

> 11. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the present case the assessee has earned exempt income of Rs. 5128390/- and disallowed on its own Rs. 1925142/-. The ld Assessing Officer straightway asked the

assessee vide letter dated 09.08.2011 that vide Rule 8D shall not be applied in the case of the assessee. According the provisions of section 14A(2) the AO is duty bound to examine the claim of the assessee having regard to the accounts of the assessee should record his satisfaction about the correctness of the claim. In the present case we do not find any such satisfaction recorded by the ld Assessing Officer. Hon'ble Delhi High Court in case of CIT Vs. Taikisha Engineering India Ltd. 370 ITR 338 has held as under:-

> *"14. The view and the legal ratio expressed above is not being elucidated for the first time. The Delhi High Court in Maxopp Investment Ltd. v. CIT [2012] 347 ITR 272 (Delhi), has observed (page 290) :*
> *"Scope of sub-sections (2) and (3) of section 14A*
> *Sub-section (2) of section 14A of the said Act provides the manner in which the Assessing Officer is to determine the amount of expenditure incurred in relation to income which does not form part of the total income. However, if we examine the provision relation to income which does not form part of the total income under the said carefully, we would find that the Assessing Officer is required to determine the amount of such expenditure only if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in Act. In other words, the requirement of the Assessing Officer embarking upon a determination of the amount of expenditure incurred in relation to exempt income would be triggered only if the Assessing Officer returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Therefore, the condition precedent for the Assessing Officer entering upon a determination of the amount of the expenditure incurred in relation to exempt income is that the Assessing Officer must record that he is not satisfied with the correctness of the claim of the asses see in respect of such expenditure. Sub-section (3) is nothing but an offshoot of sub-section (2) of section 14A. Sub-section (3) applies to cases where the assessee claims that no expenditure has been incurred in relation to income which does not form part of the total income under the said Act. In other words, sub-section (2) deals with cases where the assessee specifies a positive amount of expenditure in relation to income which does not form part of the total income under the said Act and sub-section (3) applies to cases where the assessee asserts that no expenditure had been incurred in relation to exempt income. In both cases, the Assessing Officer, if satisfied with the correctness of the claim of the assessee in respect of such expenditure or no expenditure, as the case may be, cannot embark upon a determination of the amount of expenditure in accordance with any prescribed method, as mentioned in sub-section (2) of section 14A of the said Act. It is only if the Assessing Officer is not satisfied with the correctness of the claim of the assessee, in both cases, that the Assessing Officer gets jurisdiction to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the said Act in accordance with the prescribed method. The prescribed method being the method stipulated in rule 8D of the said Rules. While rejecting the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, in relation to exempt income, the Assessing Officer would have to indicate cogent reasons for the same.*
>
> *As we have already noticed, sub-section (2) of section 14A of the said Act refers to the method of determination of the amount of expenditure incurred in relation to exempt income. The expression used is-'such method as may be prescribed'. We have already mentioned above that by virtue of Notification No.*

45 of 2008, dated March 24, 2008, the Central Board of Direct Taxes introduced rule 8D in the said Rules. The said rule 8D also makes it clear that where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with (a) the correctness of the claim of expenditure made by the assessee ; or (b) the claim made by the assessee that no expenditure has been incurred in relation to income which does not form part of the total income under the said Act for such previous year, the Assessing Officer shall determine the amount of the expenditure in relation to such income in accordance with the provisions of sub-rule (2) of rule 8D. We may observe that rule 8D(1) places the provisions of section 14A(2) and (3) in the correct perspective. As we have already seen, while discussing the provisions of sub-sections (2) and (3) of section 14A, the condition precedent for the Assessing Officer to himself determine the amount of expenditure is that he must record his dissatisfaction with the correctness of the claim of expenditure made by the assessee or that no expenditure has been incurred. It is only when this condition precedent is satisfied that the Assessing Officer is required to determine the amount of expenditure in relation to income not includable in the total income in the manner indicated in sub-rule (2) of rule 8D of the said Rules.

It is, therefore, clear that determination of the amount of expen diture in relation to exempt income under rule 8D would only come into play when the Assessing Officer rejects the claim of the assessee in this regard. If one examines sub-rule (2) of rule 8D, we find that the method for determining the expenditure in relation to exempt income has three components. The first component being the amount of expenditure directly relating to income which does not form part of the total income. The second component being computed on the basis of the formula given therein in a case where the assessee incurs expenditure by way of interest which is not directly attributable to any particular income or receipt. The formula essentially apportions the amount of expenditure by way of interest (other than the amount of interest included in clause (i)) incurred during the previous year in the ratio of the average value of investment, income from which does not or shall not form part of the total income, to the average of the total assets of the assessee. The third component is an artificial figure—one half per cent. of the average value of the investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheets of the assessee, on the first day and the last day of the previous year. It is the aggregate of these three components which would constitute the expenditure in relation to exempt income and it is this amount of expenditure which would be disallowed under section 14A of the said Act. It is, therefore, clear that in terms of the said rule, the amount of expenditure in relation to exempt income has two aspects—(a) direct and (b) indirect. The direct expenditure is straightaway taken into account by virtue of clause (i) of sub-rule (2) of rule 8D. The indirect expenditure, where it is by way of interest, is computed through the principle of apportionment, as indicated above. And, in cases where the indirect expenditure is not by way of interest, a rule of thumb figure of one half per cent. of the average value of the investment, income from which does not or shall not form part of the total income, is taken."

15. Even earlier the Bombay High Court in Godrej and Boyce Mfg. Co. Ltd. v. Deputy CIT [2010] 328 ITR 81 (Bom) had referred to section 14(2) of the Act and observed (page 100) :

"Under sub-section (2), the Assessing Officer is required to deter mine the amount of expenditure incurred by an assessee in relation to such income

which does not form part of the total income under the Act in accordance with such method as may be prescribed. The method, having regard to the meaning of the expression 'prescribed' in section 2(33), must be prescribed by rules made under the Act. What merits emphasis is that the jurisdiction of the Assessing Officer to determine the expenditure incurred in relation to such income which does not form part of the total income, in accordance with the prescribed method, arises if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of the expenditure which the assessee claims to have incurred in relation to income which does not part of the total income. Moreover, the satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the assessee. Hence, sub-section (2) does not ipso facto enable the Assessing Officer to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income is correct. The Assessing Officer must, in the first instance, determine whether the claim of the assessee in that regard is correct and the determination must be made having regard to the accounts of the assessee. The satisfaction of the Assessing Officer must be arrived at on an objective basis. It is only when the Assessing Officer is not satisfied with the claim of the assessee, that the Legislature directs him to follow the method that may be prescribed. In a situation where the accounts of the assessee furnish an objective basis for the Assessing Officer to arrive at a satisfaction in regard to the correctness of the claim of the assessee of the expenditure which has been incurred in relation to income which does not form part of the total income, there would be no warrant for taking recourse to the method prescribed by the rules. For, it is only in the event of the Assessing Officer not being so satisfied that recourse to the prescribed method is mandated by law. Sub- section (3) of section 14A provides for the application of sub-section (2) also to a situation where the assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under the Act. Under the proviso, it has been stipulated that nothing in the section will empower the Assessing Officer, for an assessment year beginning on or before April 1, 2001, either to reassess under section 147 or pass an order enhancing the assessment or reducing the refund already made or otherwise increasing the liability of the assessee under section 154."

16. Equally illuminating are the following observations in Godrej and Boyce Mfg. Co. Ltd. (supra) (page 117 of 328 ITR) :

"However, if the assessee does not maintain separate accounts, it would be necessary for the Assessing Officer to determine the pro portion of expenditure incurred in relation to the dividend business (i.e., earning exempt income). It is for exactly such situations that a machinery/method for computing the proportion of expenditure incurred in relation to the dividend business has been provided by way of section 14A(2)/(3) and rule 8D."

17. More important and relevant for us are the observations in Godrej and Boyce Mfg. Co. Ltd. (supra) on requirement and stipulation of satisfaction being recorded by the Assessing Officer with reference to the accounts under section 14(2) of the Act and rule 8D(1) of the Rules. It was observed (page 120 of 328 ITR) :

"Parliament has provided an adequate safeguard to the invocation of the power to determine the expenditure incurred in relation to the earning of non-taxable income by adoption of the prescribed method. The invocation of the power is made conditional on the objective satisfaction of the Assessing Officer in

regard to the correctness of the claim of the assessee, having regard to the accounts of the assessee. When a statute postulates the satisfaction of the Assessing Officer 'Courts will not readily defer to the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicated'. (M. A. Rasheed v. State of Kerala [1974] AIR 1974 SC 2249). A decision by the Assessing Officer has to be arrived at in good faith on relevant considerations. The Assessing Officer must furnish to the assessee a reasonable opportunity to show cause on the correctness of the claim made by him. In the event that the Assessing Officer is not satisfied with the correctness of the claim made by the assessee, he must record reasons for his conclusion. These safeguards which are implicit in the requirements of fairness and fair procedure under article 14 must be observed by the Assessing Officer when he arrives at his satisfaction under sub-section (2) of section 14A. As we shall note shortly hereafter, sub-rule (1) of rule 8D has also incorporated the essential requirements of sub-section (2) of section 14A before the Assessing Officer proceeds to apply the method prescribed under sub-rule (2)."

18. It is in this context we feel that the findings recorded by the Commissioner of Income-tax (Appeals) and the Tribunal are appropriate and relevant. The clear findings are that the assessee had sufficient funds for making investments in shares and mutual funds. The said findings coupled with the failure of the Assessing Officer to hold and record his satisfaction clinches the issue in favour of the respondent-assessee and against the Revenue. The self or voluntary deductions made by the assessee were not rejected and held to be unsatisfactory, on examination of accounts. The judgments in Tin Box Co. (supra), Reliance Utilities and Power Ltd. (supra), Suzlon Energy Ltd. (supra) and East India Pharmaceutical Works Ltd. (supra) would be relevant if the satisfaction of the Assessing Officer is in issue, and such question of satisfaction is with reference to the accounts.

19. However, the decisions relied upon by the Tribunal in the case of Tin Box Co. (supra), Reliance Utilities and Power Ltd. (supra), Suzlon Energy Ltd. (supra) and East India Pharmaceutical Works Ltd. (supra) could not be now applicable, if we apply and compute the disallowance under rule 8D of the Rules. The said rule in sub-rule (2) specifically prescribes the mode and method for computing the disallowance under section 14A of the Act. Thus, the interpretation of clause (ii) to sub-rule (2) of rule 8D of the Rules by the Commissioner of Income-tax (Appeals) and the Tribunal is not sustainable. The said clause expressly states that where the assessee has incurred expenditure by way of interest in the previous year and the interest paid is not directly attributable to any particular income or receipt then the formula prescribed would apply. Under clause (ii) of rule 8D(2) of the Rules, the Assessing Officer is required to examine whether the assessee has incurred expenditure by way of interest in the previous year and, secondly, whether the interest paid was directly attributable to a particular income or receipt. In case the interest paid was directly attributable to any particular income or receipt, then the interest on loan amount to this extent or in entirety, as the case may be, has to be excluded for making computation as per the formula prescribed. Pertinently, the amount to be disallowed as expenditure relatable to exempt income, under sub rule (2) is the aggregate of the amount under clause (i), clause (ii) and clause (iii). Clause (i) relates to direct expenditure relating to income forming part of the total income and under clause (iii) an amount equal to 0.5 per cent. of the average amount of value of investment, appearing in the balance-sheet on the first day and the last day of the assessee has to be disallowed.

20. However, in the present case, we need not refer to sub-rule (2) of rule 8D of the Rules as conditions mentioned in sub-section (2) of section 14A of the Act read with sub-rule (1) of rule 8D of the Rules were not satisfied and the Assessing Officer erred in invoking sub-rule (2), without elucidating and explaining why the voluntary disallowance made by the assessee was unreasonable and unsatisfactory. We do not find any such satisfaction recorded in the present case by the Assessing Officer, before he invoked sub-rule (2) of rule 8D of the Rules and made the re-computation. Therefore, the respondent-assessee would succeed and the appeals should be dismissed.

1. Therefore, in view of the above decision we are of the opinion that in absence of any satisfaction recorded by the ld AO as provided u/s 14A(2) of the Act the disallowance u/s 14A applying provisions of Rule 8D cannot be sustained. In view of this we reverse the order of the ld CIT(A) we direct the ld Assessing Officer to delete the disallowance of Rs. 28997064/-. In the result, the appeal filed by the assessee is allowed.
2. Now we come to the appeal of the assessee for the AY 20010-11 in ITA No. 623/Del/2013 for which the assessee has filed return of income on 29.09.2010 declaring Nil income. During the year the assessee has earned exempt income of Rs. 4988797/- on account of dividend and disallowed Rs. 26635/- u/s 14A of the Act. The ld AO issued questionnaire on 09.08.2011 about the applicability of provisions of Rule 8D for disallowance u/s 14A of the Act. Further, he computed the disallowance of Rs. 135671185/- and made a final disallowance of Rs. 135644550/-. The assessment u/s 153A of the Act was passed at Rs. 135644550/- on 30.12.2011, which was challenged before the ld CIT(A) unsuccessfully and hence, this appeal.
3. Before us the ld AR repeated the similar arguments, which were raised for the appeal for AY 2009-10 and the ld DR, supported the orders of the lower authorities.
4. We have carefully considered the rival contentions and also perused the orders of the lower authorities. Identically to the facts noted in AY 2009-10 in this case also the ld AO did not record satisfaction after verification of the books of account about the correctness of the claim of disallowance made by the assessee before invoking provisions of Rule 8D as provided u/s 14A(2) of the Act. Therefore, respectfully following the decision of the Hon'ble Delhi High Court in CIT Vs. Taikisha Engineering Pvt. Ltd (supra) and for the reasons given by us in appeal of assessee for AY 2009-10, we reverse the finding of the ld CIT(A), and direct the AO to delete the disallowance of Rs. 135644550/-. In the result appeal filed by the assessee is allowed.ò

Following the above decision of coordinate Bench, the issue is decided in favour of the assessee and against the Revenue. The decisions relied by the ld. DR, being distinguishable on facts, render no help to the Revenue in the instant case.

9. As far as the addition of the disallowance to the book profit of assessee for the purpose of computation of MAT liability, challenged by the Revenue in its appeal, is concerned, we find no justification to discard the findings reached by the ld. CIT(A) reached on the basis of interpretation of section

115JB. We also support the deletion of this addition laying our hands on the decision of Special Bench of Tribunal in ACIT vs. Vireet Investment (P) Ltd., (2017) 82 taxmann.com 415 (Delhi-Trib.)(SB).

10. In view of the above discussion, the appeal of the assessee deserves to be allowed and that of the Revenue to be dismissed.

11. In the result, the appeal of assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 31.10.2017.

Sd/-	**Sd/-**
(Bhavnesh Saini)	**(L.P. Sahu)**
Judicial member	**Accountant Member**

Dated: 31.10.2017
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Copy of order forwarded to:

(1)	*The appellant*	*(2)*	*The respondent*
(3)	*Commissioner*	*(4)*	*CIT(A)*
(5)	*Departmental Representative*	*(6)*	*Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi