

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'G', NEW DELHI**

**BEFORE SHRI N.K.SAINI, ACCOUNTANT MEMBER  
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No.2722/Del/16  
A.Y. 2012-13**

ACIL Ltd.  
4 LSC Bhanot Apartments  
Pushp Vihar, Madangir  
New Delhi 110 062

vs. ACIT, C.C. 30  
ARA Centre  
Jhandewalan Extension  
New Delhi 110 055

PAN: AACCA7535P

**(Appellant)**

**(Respondent)**

**Appellant by:** Sh. Pranav Kapoor, C.A.

**Respondent by:** Sh. Kaushlendra Tiwari, Sr.D.R.

**Date of hearing:** 28.12.2017

**Date of Pronouncement:** 28.12.17.

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

The present appeal has been filed by assessee against order dated 09/02/16 passed by Ld. CIT (A)-30, New Delhi for assessment year 2012-13 on the following grounds of appeal:

*"1. The Ld.CIT(A) erred in upholding the disallowance u/s 14A of Rs.16,82,911/- while the same ought to have been quantified at Rs.5,13,790/- being the exempt income by way of dividend earned by the appellant in this year.*

2. *The Ld.CIT(A) erred in not following the decision of Hon'ble Delhi High Court in the case of Joint Investments P Ltd. vs CIT in ITA 117 of 2015 dated 25.2.2015, on this issue which was binding on him.*

3. *The Ld.CIT(A) erred in not appreciating the additional ground raised by the appellant before him in proper perspective that there cannot be any estoppel against the law, which has been clearly enunciated in the aforesaid case of Joint Investments P Ltd.*

4. *The appellant seeks Honourable Tribunal's indulgency to add, alter, modify any ground of appeal."*

2. Brief facts of the case are as under:

Assessee filed its return of income on 30/09/12 declaring a total income of Rs.11,44,56,600/-. The return was processed under section 143 (1) of the act and the assessment was completed at total income of Rs.17,81,62,340/-after making following additions:

- (i) On account of Legal & professional expenses Rs.2,42,017/-
- (ii) On account of Repair & maintenance (P&M) Rs.97,728/
- (iii) On account of security expenses Rs.42,435/-
- (iv) On account of disallowance u/s 14A Rs.6,33,23,561/-

2.1. Before Ld. CIT (A), assessee challenged disallowance of Rs. Rs. 6,33,23,561/-made by the Ld. AO under section 14A read with Rule 8D.

2.2. Ld. CIT (A) observed that assessee had made *suo moto* disallowance under section 14A read with Rule 8D of the Act at

Rs.16,82,911/-. Ld. CIT (A) restricted the disallowance as computed by assessee at Rs. 16,82,911/-.

2.3. Against the order of Ld. CIT (A) assessee is in appeal before us now.

3. Ld.AR now contends that the disallowance under section 14A read with rule 8D cannot exceed the exempt income earned by assessee during the year under consideration at Rs. 5,13,790/-. He placed reliance upon the decision of Hon'ble Delhi High Court dated 25/02/15 in the case of M/s Joint Investments Private Limited versus CIT in ITA No. 117/2015 .

3.1. Ld. DR placed reliance upon the decision of Ld. CIT (A).

4. We have perused the submissions advanced by both the sides in the light of the records placed before us.

5. The issue that has been raised by assessee before us now is to restrict the disallowance under section 14 A read with Rule 8D to the extent of the exempt income earned quantified at Rs.5,13,790/-. Admittedly assessee *suo moto* computed the disallowance under section 14 A read with Rule 8D at Rs.16,82,911/-. By this appeal assessee is seeking to further reduce the disallowance computed u/s 14A which he has *suo moto* offered to taxation in the original return of income.

5.1. The decision relied upon by Ld.AR in case of *M/s. Joint Investments Pvt.Ltd(supra)* does not come to rescue assessee in any manner whatsoever, as in that case assessing officer computed the disallowance at Rs.52,56,197/- against the *suo moto* attribution disallowed by assessee at Rs.2,97,440/- for earning exempt income

quantified at Rs.48,90,000/-. Hon'ble High Court after examining facts therein observed that the assessing officer would assume jurisdiction to proceed to make further disallowance after examination of the accounts and rejection if any of assessee's claim or explanation. Hon'ble court while deciding so relied upon decision of *Hon'ble Delhi High Court* in the case of CIT vs. Tikisha Engineering India Ltd in ITA No. 115/2014 decided on 25/11/14, wherein it was held that, "*the disallowance of expenditure for earning exempt income should be examined with reference to the accounts and only if the explanation is unsatisfactory can the assessing officer proceed further.*"

5.2. Both these decisions, in our considered opinion by Hon'ble Delhi High Court goes against the arguments raised by assessee as Ld. CIT (A) in the present case restricted disallowance under section 14 A read with Rule 8D to the extent of *suo-moto* disallowance made by assessee at Rs.16,82,911/-. Assessee cannot seek to further reduce the *suo moto* disallowance which was computed, taking into consideration the accounts of assessee as reproduced by Ld. CIT (A) in his order at page 8. (For the sake of convenience the same is reproduced hereunder):

*(ii) During the appellate proceedings, it has been submitted by the appellant that they have made suo moto disallowance of Rs.31,04,833/-, whereas the AO determined the total expenditure/disallowance of Rs.3,40,86,549/- on the basis of calculation made as per Rule 8D. Therefore, it is submitted by the appellant that the AO should have accepted the suo moto disallowance of Rs.31,04,833/- only, made by the appellant, as against the total disallowance of Rs.3,40,86,549/- determined by the*

AO. The appellant has submitted the details of the suo moto disallowance, as under.

Sl.No.	Expenditure	Amount (Rs.)
1.	STT	18,14,341
2.	Salary	7,78,092
3.	Depreciation on Computers	32,400
4.	Other admin. Expenses	30,000
5.	Rent	4,50,000
	Total:	31,04,833

5.3. It has been observed by Ld. CIT (A) that the disallowance suo moto made by assessee is based on actual expenditure determined from the books of accounts and therefore Ld.CIT(A) was correct in restricting the disallowance to that extent.

5.4. We do not find any infirmity in such findings of Ld. CIT (A) and the same is upheld. Accordingly grounds raised by assessee stands dismissed.

6. In the result appeal filed by the assessee stands dismissed.  
Order pronounced in the open court on 28.12.17.

Sd/-

**(NK SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-

**(BEENA A PILLAI)**  
**JUDICIAL MEMBER**

Dated: 28<sup>th</sup> December, 2017.

\*mv

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By Order

Asst. Registrar  
ITAT, Delhi Benches, New Delhi

S.No.	Details	Date	Initials	Designation
1	Draft dictated on Dragon			Sr. PS/PS
2	Draft placed before author			Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement			Sr. PS/PS
7	File sent to Bench Clerk			Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			