

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

**BEFORE HON'BLE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5465/Del./2015
(ASSESSMENT YEAR : 2012-13)**

M/s. Paliwal GDR Homestyles (P) Ltd., 38, Functional Incl. Estate, Patparganj, New Delhi – 110 092.	vs.	DCIT, Circle 14 (1), New Delhi.
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(PAN : AACCP3904F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sanjay Sharma, CA
REVENUE BY : Shri Ravi Kant Gupta, Senior DR

Date of Hearing : 06.02.2018

Date of Order : 23.02.2018

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, M/s. Paliwal GDR Homestyles (P) Ltd. (hereinafter referred to as 'the assessee company') by filing the present appeal, sought to set aside the impugned order dated 09.07.2015 passed by Ld. CIT(Appeals)-7, New Delhi qua the assessment year 2012-13 on the grounds inter alia that :-

“1. That the learned Commissioner of Income tax (Appeals)-7, New Delhi has erred both in law and on facts in sustaining the disallowance of Rs.3,83,063/- representing expenditure disallowable by invoking section 14A read with rule 8D of the Act.

2. That the learned Commissioner of Income tax (Appeals) ignored the fact that, only a portion of investment is generating dividend which is tax free and also failed to appreciate that even on the principle of consistency the disallowance made is untenable.

It is therefore prayed that disallowance made and sustained by the learned Commissioner of Income Tax (Appeals) may kindly be deleted and appeal of the appellant company be allowed.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing Officer by invoking the provisions contained under section 14A of the Income-tax Act, 1961 (for short ‘the Act’) read with Rule 8D(2) of the Income-tax Rules, 1962 (for short ‘the Rules) made disallowance of Rs.3,83,063/- on the ground that expenditure incurred in relation to the forming part of the total income are required to be disallowed.

3. Assessee company carried the matter by way of filing appeal before the Id. CIT (A) who has confirmed the disallowance made by the AO and thereby dismissed the appeal. Feeling aggrieved, the assessee company has come up before the Tribunal by way of filing the present appeal.

4. 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.

5. The Id. AR for the assessee challenging the impugned order contended inter alia that the assessee is a manufacturing company and is also investing surplus money in mutual funds (dividend plan) and gets dividend income credited to its bank account not forming the part of the total income; that no specific loan has been used by the assessee for investment except the cash flows generated by way of profit; that the entire investment has been made by the assessee in mutual funds out of its own funds in the regular course of its business; that out of an amount of Rs.10.98 crores of freehold interest free funds in its general reserve and from its share capital, the assessee has invested Rs.6.46 crores in taxable security and Rs.0.78 crores were invested in tax free securities. However, on the other hand, the Id. DR for the Revenue relied upon the decision rendered by the AO as well as the Id. CIT (A).

6. Perusal of the copy of financial statement, tax audit report, computation of income and income-tax return, available at pages 29 to 74 of the paper book, it is apparently clear that there are sufficient interest free funds available with the assessee sufficient to make investment in question. In such circumstances, the investment in question has to be considered having been made out of interest free funds. As against total interest free funds of Rs.10.98 crores available with the assessee, it has only invested

roughly Rs.7.25 crores. Undisputedly, the assessee has not utilized any borrowed funds for investment nor made any interest payment during the year under assessment.

7. However, in the instant case, the AO has made addition by making disallowance of Rs.3,83,063/- by invoking the provisions contained u/s 14A read with Rule 8D(2)(iii) of the Rules. When this fact is examined in the light of the undisputed fact that the assessee earned dividend income to the tune of Rs.10,03,840/- during the year under assessment claimed as exempt income u/s 10(34) of the Act, it cannot be denied that the assessee company has made expenditure in investing and maintaining the stock, earning interest free dividend income. So, the expenditure incurred by the assessee company in relation to the income which does not form part of the total income shall have to be disallowed.

8. So, the contention of the Id. AR for the assessee company that since the entire investment has been made out of interest free funds available with the assessee company and no payment has been made on account of interest during the year under assessment, no disallowance can be made is not sustainable as the disallowance in this case has been made under section 14A read with Rule 8D (2)(iii) and not under Rule 8D(2)(ii). So, the AO after recording his dissatisfaction qua the correctness of the claim of the assessee

that no expenses were incurred for earning the dividend income has rightly calculated the amount of expenses equal to ½ % of the average of the value of the investment and thereby made disallowance of Rs.3,83,063/-. Ld. CIT (A) has rightly confirmed the disallowance made by the AO.

9. In view of what has been discussed above, we find no illegality or perversity in the impugned order, hence appeal filed by the assessee is hereby dismissed.

Order pronounced in open court on this 23rd day of February, 2018.

**Sd/-
(G.D. AGRAWAL)
PRESIDENT**

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

**Dated the 23rd day of February, 2018
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-7, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**