

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

**BEFORE SHRI G. D. AGRAWAL, PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 5667/DEL/2014 (A.Y 2011-12)

DCIT Circle-2(1) New Delhi (APPELLANT)	Vs	Bharti Telecom Ltd. Bharti Crescent, 1-Nelson Mandela Road, Vasant Kunj, Phase-II New Delhi AAACB1456G (RESPONDENT)
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Appellant by	Sh. Ravi Kant Gupta, Sr. DR
Respondent by	Sh. Anil Bhalla, AR

Date of Hearing	05.02.2018
Date of Pronouncement	27.02.2018

ORDER

PER SUCHITRA KAMBLE

This appeal has been filed by the Revenue against the order dated 14/08/2014 passed by CIT(A)-V, New Delhi.

2. The grounds of appeal are as under:-

1. “ On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance of Rs.6,47,21,925/- made by the A.O. u/s 14A in normal computation as well as under special provisions of the Act by ignoring the fact that expenses relatable to earning of exempt income have to be considered for disallowance as per Rule 8D of the I.T. Rules 1962 r.w.s.MA of the Act irrespective whether any exempt income has been

earned by the assessee during the year or not.

2. *The appellant craves leave for reserving the right to amend, modify, alter add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.*
3. The assessee company is engaged in the business of promoting and investment telecom business. The A.O completed the assessment at an income of Rs.7,74,95,320/- under provision of the I.T Act, 1961 and Book profit at Rs.8,22,16,670/- as against the returned income of Rs.1,27,73,395/-. The Assessing Officer was not satisfied with the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act and held that this is a fit case for invoking the provisions of Section 14A(2) of the I.T Act 1961 and to compute the expenses in accordance with the Rule 8D of the Income Tax Rules 1962.
4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.
5. The Ld. DR relied upon the assessment order.
6. The Ld. AR relied upon the order of the CIT(A).
7. We have heard both the parties and perused the material available on record. The CIT(A) held as under:-

“The facts of the case lies in a narrow canvas. In the facts of the case it is seen that the total expenses debited to the profit & loss account are only to the extent of Rs. 9,24,840/- out of which Rs. 3,43,030/- had already been disallowed by the appellant by treating the same as related to earning of

exempt income in the form of dividend. The sum and substance of the appellant's contention is that the balance of the expenses totaling to Rs. 5,18,810/- has been incurred under three heads i.e. legal & professional; statutory audit fee and internal audit fee and that from the breakup of these expenses it is evident that these are not related to earning of the exempt income and therefore cannot be subjected to disallowance in terms of section 14A of the Act. The other argument of the appellant is that in terms of section 14A (2) the AO is mandated to determine the expenses incurred in relation to exempt income in terms of the method prescribed under Rule 8D only if the AO is not satisfied with the correctness of the claim of the assessee, having regards to the account of the assessee. It has thus been argued that since the AO has not recorded his satisfaction for invoking Rule 8D (having regard to the account of the assessee), therefore the disallowance calculated in terms of Rule 8D(2)(ii) amounting to Rs. 6,47,21,925/- is a mechanical exercise which is not in accordance with law. It has also been alternatively argued that at best the disallowance can extend upto the total expenses debited to the profit & loss account and cannot exceed the same.

I have gone through the facts and submissions made by the appellant and am of the view that in terms of the decision of Hon'ble Delhi High Court in case of Maxopp Investment Ltd vs CIT [2011] 15 Taxmann.com 390 (Delhi) it is imperative for the AO to record his satisfaction with regard to the correctness of the assessee's claim with regard to Section 14A(2) of the IT Act, before embarking upon application of Rule 8D(2)(ii). Additionally, it is also seen that in the facts of the case while the assessee has made a suo motu disallowance of Rs. 3,43,030/- but then the balance expense of Rs. 5,18,810/- cannot be treated or held as incurred in relation to earning of exempt income. In this regard reliance is placed on the decision in Bengal & Assam Co. Ltd. ITA No 2484/Del/2012 dated 22.07.2014 wherein the Hon'ble ITAT has cited with approval the decision of ITAT Mumbai in the

case of Udhav Holdings Pvt. Ltd. vs ACIT [2014] 1 TMI 1134- ITAT Mumbai wherein it is held that the expenditure related to legal & Profession charges, auditors remuneration, depreciation and bank charges and rates and taxes are in any way required to be incurred for the maintenance and running of corporate office and other business of the assessee and cannot be said to be attributable to earning of exempt income . Further in the case of Modern Info Technology Ltd in ITA no 4294/Del/2012 reported in 2012-TIOL-644_ITAT-Del. the Hon'ble ITAT has held that disallowance under section 14A cannot exceed the total actual expenditure incurred and claimed by the assessee. Applying the ratio of the above decisions to the facts of the appellant case the appeal is allowed and the excess additions made in terms of Rule 8D for an amount of Rs. 6,47,21,925/- is directed to be deleted. As a logical corollary this addition would also be required to be deleted in computing book profit under section 115JB of the IT Act”

The CIT(A) has given detailed finding, therefore, there is no need to interfere with the same. The order of the CIT(A) is upheld.

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

Order pronounced in the Open Court on 27th FEBRUARY, 2019.

Sd/-
(G. D. AGRAWAL)
PRESIDENT

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 27/02/2018

R. Naheed *

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	06/02/2018	PS
2.	Draft placed before author	06/02/2018	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	27.02.2018	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	28.02.2018	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

