

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

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4278/Del./2014
(ASSESSMENT YEAR : 2008-09)**

DCIT, Circle 8 (1), vs. M/s. Select Holiday Resorts (P) Ltd.,
New Delhi. Suite No.101 – 103, 1st Floor,
Kanchejuna Building,
18, Barakhamba Road,
New Delhi – 110 001.

(PAN : AAACS3260M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Gaurav Jain, Advocate
Ms. Manisha Sharma, Advocate
REVENUE BY : Shri Sanjet Singh, CIT DR
Shri Amit Jain, Senior DR

Date of Hearing : 18.04.2018

Date of Order : 23.04.2018

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Deputy Commissioner of Income-tax, Circle 8 (1), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal, sought to set aside the impugned order dated 22.05.2014 passed by Ld. CIT (Appeals)-XI, New Delhi qua the assessment year 2008-09 on the grounds inter alia that :-

“On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law in and on facts in deleting the additions of Rs.67,83,959/- made by the Assessing Officer under Section 14A of the I.T. Act, 1961..”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Originally assessment was framed at the income of Rs.2,16,94,837/- by making addition of Rs.60,195/- under section 143 (3) of the Income-tax Act, 1961 (for short ‘the Act’). Thereafter, assessment was framed u/s 143(3)/263 of the Act. The ld. CIT (A) noticed the discrepancy in the disallowance made by the assessee company u/s 14A of the Act with the tax deducted u/s 44AB as the assessee has suo motu disallowed an amount of Rs.86,06,128/- whereas auditor has worked out the disallowance u/s 14A of the tax audit report u/s 44AB at Rs.1,53,90,087/- and by invoking the provisions contained u/s 14A read with Rule 8D further made disallowance of Rs.67,83,959/-.

3. Assessee carried the matter by way of an appeal before the ld. CIT (A) who has deleted the addition of Rs.67,83,959/- by allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. 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. Undisputedly, the assessee has suo motu made disallowance of Rs.86,06,128/- u/s 14A of the Act as against the disallowance of Rs.1,53,90,087/- worked out by the auditor in the tax audit report u/s 44AB of the Act. It is also not in dispute that the assessee company has earned an amount of Rs.9.85 crores from its investment during the year under assessment. It is the case of the assessee company that the entire investment was made from the investment of earlier years and it has not borrowed any fund for investment which has earned tax free income.

6. Perusal of the impugned order passed by Id. CIT (A) goes to prove that the issue as to investment of funds has been duly thrashed, *“that the assessee company had invested in shares/mutual funds, the amount of Rs.1,09,83,97,709/- during FY 2003-04, which was gradually reduced to Rs.92,13,01,230/- in FY 2006-07 and it comes down to Rs.87,56,20,764/- during the year under assessment”*. AO during the original assessment proceedings u/s 143(3) has duly accepted the computation as to making suo motu disallowance by the assessee but has proceeded to make addition by invoking provisions contained u/s 14A read with Rule 18D (3) to the tune of Rs.86,06,128/-. Ld. CIT (A) as

well as AO in assessment framed u/s 143(3)/263 have made an addition of Rs.67,83,959/- merely by relying upon tax audit report of the assessee company prepared u/s 44AB without going into the fact that the assessee company has not incurred any interest on investment yielding exempt income of Rs.1,09,83,97,709/-. All these facts are not disputed.

7. When no borrowed fund has been deployed by the assessee company to earn the exempt income, disallowance under Rule 8D (2)(ii) is not sustainable.

8. Assessee has duly furnished evidence for making payment of interest during the year under assessment and the purpose for obtaining the loan. It is the case of the assessee that an amount of Rs.3,86,93,921/- was paid to Deucthe Bank and the loans were utilized for subscribing the debentures of subsidiary company, M/s. Select Infrastructure Private Limited from where the company has earned a substantial amount of interest of Rs.5,58,09,396/-. Assessee company also explained that it has paid an interest of Rs.63,75,581/- to M/s. Tourism Finance Corporation of India Limited which was utilized for hotel business and accordingly was charged against the business income.

9. In para 3.3 of the assessment order, AO categorically mentioned that the assessee has furnished fresh calculation u/s 14A

with Annexure 'X' along with tax audit report showing disallowance u/s 14A at Rs.67,83,959/- but rejected the same by merely mentioning that the same is not in consistent with Rule 8D.

10. AO without recording his dissatisfaction that fresh computation given by the assessee company as to making disallowance u/s 14A merely made further disallowance of Rs.67,83,959/- by relying upon the tax audit report which cannot be blindly applied in the face of the facts brought on record by the assessee.

11. 7. While deciding the identical issue, Hon'ble Delhi High Court in *CIT vs. Taikisha Engg. India Ltd. – (2015) 370 ITR 338* has held as under :-

“Thus, s. 14A(2) of the Act and r. 8D(1) in unison and affirmatively record that the computation or disallowance made by the assessee or claim that no expenditure was incurred to earn exempt income must be examined with reference to the accounts, and only and when the explanation/claim of the assessee is not satisfactory, computation under sub-r. (2) of r. 80 of the Rules is to be made.

13. We need not, therefore, go on to sub-r. (2) of r. 8D of the Rules unit and unless the AO has first recorded the satisfaction, which is mandated by sub-s. (2) of s. 14A of the Act and sub-r. (1) of r. 8D of the Rules.”

12. So, making disallowance u/s 14A read with Rule 8D (2)(ii) without recording dissatisfaction by the AO and in the face of the fact that no borrowed funds have been deployed by the assessee

company to earn the exempt income, no disallowance can be made under Rule 8D(2)(ii) of the Income-tax Rules, 1962.

13. In view of what has been discussed above, finding no illegality or perversity in the impugned order passed by Id. CIT (A), present appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 23RD day of April, 2018.

**SD/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

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

**Dated the 23RD day of April, 2018
TS**

Copy forwarded to:

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

**AR, ITAT
NEW DELHI.**