

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.223/PUN/2016

निर्धारण वर्ष / Assessment Year : 2009-10

Orbit Electricals Pvt. Ltd.,  
(Erstwhile Coated Fabrics Pvt. Ltd.),  
Plot No. 5, Harmony Complex,  
ICS Colony, Ganeshkhind Road,  
Pune - 411007

PAN : AAACF2636C

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Deputy Commissioner of Income Tax,  
Circle - 1(1), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak

Revenue by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 25-04-2018

घोषणा की तारीख / Date of Pronouncement : 26-04-2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-3, Pune dated 23-11-2015 confirming disallowance made u/s. 14A r.w. Rule 8D of the Act.

2. The brief facts of the case as emanating from records are : The assessee filed its return of income for the impugned assessment year on

26-09-2009 declaring total income as Rs.45,53,970/-. In scrutiny assessment proceedings the Assessing Officer observed that the assessee has claimed dividend income to the tune of Rs.2,71,73,536/-. The assessee made suo-moto disallowance of Rs.5,000/- towards earning of exempt income u/s. 14A of the Act. The Assessing Officer computed disallowance of Rs.5,69,987/-.

Aggrieved by the disallowance, the assessee filed appeal against the assessment order dated 29-08-2011 before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) upheld disallowance and dismissed the appeal of assessee. Now, the assessee is in second appeal before the Tribunal assailing confirming of disallowances u/s. 14A r.w. Rule 8D.

3. Shri Nikhil Pathak appearing on behalf of the assessee submitted that the Assessing Officer has erred in making disallowances u/s. 14A r.w. Rule 8D without recording satisfaction as envisaged under the provisions of the Act. The Assessing Officer has not recorded reasons as to why suo-moto disallowance made by the assessee is not acceptable. The ld. AR submitted that the provisions of Sub-section (2) of section 14A mandates that the Assessing Officer has to record satisfaction before resorting to the provisions of Rule 8D. To support his submissions the ld. AR placed reliance on the following decisions :

- i. Godrej & Boyce Manufacturing Company Ltd. Vs. Deputy Commissioner of Income Tax, 81 taxmann.com 111 (SC);
- ii. Maxopp Investment Ltd. Vs. Commissioner of Income Tax, 347 ITR 272 (Delhi).

4. Dr. Vivek Aggarwal representing the Department vehemently defended the order of Commissioner of Income Tax (Appeals) in confirming addition. The ld. DR submitted that the Assessing Officer has made disallowance under Rule 8D in accordance with law. The ld. DR pointed that the Assessing Officer has recorded reasons for not accepting suo-moto disallowance of Rs.5,000/- made by assessee.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The solitary issue raised in the appeal is disallowance u/s. 14A r.w. Rule 8D without recording satisfaction. Before we proceed to decide the issue, it would be relevant to refer to the provisions of section 14A. The same are reproduce here-in-below :

***“14A. Expenditure incurred in relation to income not includible in total income.—***

*(1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.*

*(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, 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 relation to income which does not form part of the total income under this Act.*

*(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act.]”*

A perusal of sub-section (2) shows that before computing disallowance under Rule 8D, the Assessing Officer has to record satisfaction as to why suo-moto disallowance made by assessee in respect of expenditure in relation to exempt income is not correct. It is imperative on the part of Assessing Officer to give reasons for rejecting suo-moto

disallowance made by assessee. Thus, road to Rule 8D passes through sub-section (2) to section 14A of the Act.

6. The Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. Vs. Commissioner of Income Tax (supra) has held that the Assessing Officer before rejecting the claim of assessee with regard to expenditure or no expenditure, as the case may be in relation to exempt income as to indicate cogent reasons for the same. The relevant extract of the findings of Hon'ble High Court on the issue explaining the scope of sub-section (2) of section 14A and the application of Rule 8D are as under :

*"30. As we have already noticed, sub-s. (2) of s. 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 dt. 24th March, 2008, the CBDT introduced r. 8D in the said Rules. The said r. 8D also makes it clear that where the AO, 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 AO shall determine the amount of the expenditure in relation to such income in accordance with the provisions of sub-r. (2) of r. 8D. We may observe that r. 8D(1) places the provisions of s. 14A(2) and (3) in the correct perspective. As we have already seen, while discussing the provisions of sub-ss. (2) and (3) of s. 14A, the condition precedent for the AO 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 with the correctness of the claim made by the assessee that no expenditure has been incurred. It is only when this condition precedent is satisfied that the AO is required to determine the amount of expenditure in relation to income not includible in total income in the manner indicated in sub-r. (2) of r. 8D of the said Rules.*

*31. It is, therefore, clear that determination of the amount of expenditure in relation to exempt income under r. 8D would only come into play when the AO rejects the claim of the assessee in this regard. If one examines sub-r. (2) of r. 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 cl. (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 s. 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 cl. (i) of sub-r. (2) of r. 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.*

7. The Co-ordinate Bench of the Tribunal in the case of Kalyani Steels Ltd. Vs. Addl. Commissioner of Income Tax in ITA No. 1733/PN/2012 for the assessment year 2008-09 decided on 30-01-2014 after placing reliance on the judgment of Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. Deputy Commissioner of Income Tax & Anr. reported as 328 ITR 81 (Bom.) has held that the Assessing Officer can take recourse to Rule 8D only if he records finding that he is not satisfied with the correctness of the claim of assessee in respect of such expenditure.

8. In the present case we find that the Assessing Officer observes that the assessee has made suo-moto disallowance of Rs.5,000/- u/s. 14A and thereafter proceeds on to compute disallowance under the provisions of Rule 8D. The Assessing Officer has not given any cogent reasoning for rejecting disallowance made by the assessee. The manner in which Assessing Officer has enhanced disallowance u/s. 14A r.w. Rule 8D falls

short of the legal requirement for recording satisfaction before rejecting assessee's computation of disallowance under the section.

9. Thus, in view of the decisions discussed above, the mandatory provisions of section 14A and the facts of the case, we find merit in the appeal of the assessee. Accordingly, the impugned order is set aside and the appeal of assessee is allowed.

10. In the result, the appeal of assessee is allowed.

Order pronounced on Thursday, the 26<sup>th</sup> day of April, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26<sup>th</sup> April, 2018

RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-3, Pune
4. The Pr. CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune