

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'A', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND MS.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.561/Chd/2017
(Assessment Year : 2009-10)

Jatinder Garg, 172-C, B.R.S. Nagar, Ludhiana.	Vs.	The A.C.I.T., Circel 6, Ludhiana.
PAN: ADFPG2621P		

ITA No.564/Chd/2017
(Assessment Year : 2009-10)

Anirudh Garg, 125-A, Raj Guru Nagar, Ludhiana.	Vs.	The A.C.I.T., Circel 6, Ludhiana.
PAN: AHYPG956A		

&

ITA No.1414/Chd/2017
(Assessment Year : 2010-11)

Anirudh Garg, 125-A, Raj Guru Nagar, Ludhiana.	Vs.	The J.C.I.T., Range-VI, Ludhiana.
PAN: AHYPG956A (Appellant)		(Respondent)

Appellant by : Shri K.J.Shelly, Adv.
Respondent by : Smt.Chanderkanta, Addl.CIT
Date of hearing :26.04.2018
Date of Pronouncement :20.06.2018

ORDER

Per Sanjay Garg, Judicial Member :

All above appeals have been preferred by two assesseees against the separate orders of Ld. Commissioner of Income Tax(Appeals)-4, Ludhiana (hereinafter referred to as ('Ld.CIT(Appeals)') in Appeal No.245/ROT(213)/IT/CIT(A)-4/LDH/2014-15, Appeal No.246/ROT(214)/IT/CIT(A)-

4/LDH/2014-15 and Appeal No.355/ROT(417)/IT/CIT(A)-4/LDH/2014-15 dated 16.1.2017, 16.1.2017 & 26.7.2017 relating to assessment years 2009-10, 2009-10 and 2010-11 respectively, passed u/s 250(6) of the Income Tax Act, 1961 (in short 'the Act').

2. Since identical issues have been raised in all the appeals, the same were heard together and are being disposed off by this consolidated order.

3. The sole issue raised in all the appeals is in relation to disallowance of expenditure u/s 14A r.w.r. 8D of the Income Tax Rules, 1962 (in short 'the Rules') in relation to the tax exempt dividend income earned by the assessee.

First we take up the appeal of Shri Jatinder Garg in ITA No.561/Chd/2017 for assessment year 2009-10.

ITA No.561/Chd/2017 (Jatinder Garg):

4. The assessee is in the business of trading in securities and derivative products and also make investment in shares and securities. The assessee filed his return of income for the year under consideration on 30.9.2009 declaring therein an income of Rs.18,50,040/-. During assessment proceedings, the Assessing Officer noticed that the assessee during the year had earned dividend income of Rs.1,15,227/- from the investment made of Rs.2,61,81,348/- in shares. On being asked to explain as to the disallowance of expenditure in relation of the tax exempt income, the assessee explained that he has suo

motto disallowed a sum of Rs.6000/- which was incurred in relation to earning of the tax exempt income. Since the said dividend was tax exempt income, the Assessing Officer invoking the provisions of section 14 r.w.r. 8D of the Income Tax Rules apportioned the expenditure incurred by the assessee in relation to the above said activities and made the disallowance of Rs.1,27,788/-, which has been further confirmed by the CIT(Appeals). Thus, the assessee has come in appeal before us.

5. At the outset, the Ld. counsel for assessee has submitted that no disallowance under Rule 8D(2)(ii) of the Rules on account of apportionment of interest expenditure has been made by the Assessing Officer. The only disallowance that has been made is on administrative expenses under Rule 8D(2)(iii) of the Rules. The Ld. counsel for assessee has submitted that the total expenditure claimed by the assessee on account of business expenditure debited to the Profit & Loss Account in the year under consideration was Rs.83,560/-. The assessee had shown total turnover to the tune of Rs.62,14,224/-, out of which the assessee had returned an income of Rs.18,50,040/-. The assessee himself suo motto had disallowed the expenditure of Rs.6000/- incurred in relation to earning of tax exempt income. The Ld. counsel for assessee has further invited our attention to the impugned assessment order in question to submit that while invoking the provisions of Rule 8D of the Rules, the Assessing Officer had not

recorded any dis-satisfaction in relation to the suo motto expenditure offered by the assessee. He, therefore, has pleaded that the action of the Assessing Officer in straightway applying the provisions of Rule 8D was wrong.

6. The Ld. DR, on the other hand, has relied upon the findings of the lower authorities.

7. We have considered the rival submissions. The above facts and figures show that the Assessing Officer made disallowance of expenditure more than the total expenditure claimed by the assessee. Even the disallowance made by the Assessing Officer is more than the tax exempt income earned by the assessee. The assessee has returned an income of Rs.18,50,040/-, against which an expenditure of Rs.83,560/- has been claimed. The Assessing Officer has not recorded any satisfaction in regard to the claim of the assessee that it has not incurred expenditure more than that has been suo motto offered by the assessee. It has been held by the Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Co., 328 ITR 81 that under section 14A of the Act, resort can be made to Rule 8D of the Income Tax Rules for determining the amount of expenditure in relation to exempt income, if, the Assessing Officer is not satisfied with the correctness of the claim made by the assessee in respect of such expenditure. The satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the assessee. Sub section (2) does not ipso facto enable the Assessing Officer to apply

the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of such expenditure is correct. The satisfaction of the Assessing Officer must be arrived at on an objective basis. In a situation where the accounts of the assessee furnish an objective basis for the Assessing Officer to arrive at a satisfaction in regard to the correctness of the claim of the assessee, there would be no warrant for taking recourse to the method prescribed by the rules. An objective satisfaction contemplates a notice to the assessee, an opportunity to the assessee to place on record all the relevant facts including his accounts and in the event that he comes to the conclusion that he is not satisfied with the claim of the assessee. The above decision of the Hon'ble Bombay High Court has been upheld by the Hon'ble Supreme Court vide decision reported in reported in (2017) 81 Taxmann.com 111 (SC) in the case of Godrej & Boyce Manufacturing Co. Vs. DCIT. Further, the Hon'ble Supreme Court in the case of Maxo Opp Investment Ltd. Vs. CIT (2018) 91 Taxmann.com 154 (SC) has reaffirmed the above proposition in the following words:

“41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.”

8. However, as observed above, in the case in hand, the Assessing officer, while making the disallowance, has not followed the guidelines of objective satisfaction as laid down in the above referred to decisions of the Hon'ble Supreme Court. He without recording any reasoning for his dissatisfaction with regard to the working/claim of the assessee, straightway applied Rule 8D against the mandate of the provisions of section 14A of the Income Tax Act.

9. In view of the legal position as discussed above, we do not find any justification on the part of the lower authorities in making further disallowance as has been suo motto offered by the assessee.

10. The appeal of the assessee is allowed.

11. Now coming to the case of Shri Anirudh Garg in ITA Nos.564 & 1414/Chd/2017.

ITA Nos.564 & 1414/Chd/2017 (Anirudh Garg):

12. In both these cases, facts and circumstances are almost identical to the case of the assessee in ITA No.561/Chd/2017. In these cases also, no disallowance on account of interest expenditure has been made by the Assessing Officer. The disallowance u/s 14A has been made in respect of administrative expenses u/s 8D(2)(ii) of the Income Tax Rules. However, while making the aforesaid disallowance, no satisfaction has been recorded by the Assessing Officer regarding the claim of the assessee in respect of expenditure/no expenditure incurred by him in

relation to earning of tax exempt income. In view of our findings given above, while deciding the case of Shri Jatinder Garg in ITA No.561/Chd/2018, the additions made by the lower authorities on this issue are not sustainable in the eyes of law and accordingly, the same are deleted.

13. Both the appeals of the assessee are allowed.

14. In the result, all the above appeals of the assesseees are allowed.

Order pronounced in the open court on 20.06.2018.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Dated : 20th June, 2018
Rati

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,
ITAT, Chandigarh