

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.4347/DEL/2014
Assessment Year: 2010-11

DCIT, Circle-4(1), New Delhi.	vs.	Jaypee Ventures Pvt. Ltd., Amalgamated with Jaypee Infra Ventures (A Private Co. with unlimited liability), 1095, Sector-A, Pocket-A, Vasant Kunj, New Delhi.
TAN/PAN: AAACJ 2356L (Appellant)		(Respondent)

Appellant by:	Shri Amit Jain, Sr.D.R.		
Respondent by:	Shri V.K. Garg, Adv.		
Date of hearing:	23	07	2018
Date of pronouncement:	25	07	2018

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the Revenue against impugned order dated 16.05.2014, passed by the CIT (Appeals)-VIII, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2010-11. In the grounds of appeal, the Revenue has raised the following grounds:-

“Whether on the facts and circumstances of the case and in law, the ld. CIT(A) erred in restricting the disallowance from Rs.4,84,34,962/- to Rs.2,00,00,000/- made u/s. 14A r.w.s. Rule 8D?”

2. The facts in brief are that the assessee-company is engaged

in the business of design engineering, software development and consultancy, contracting and man power supply. During the year under consideration, the assessee has received dividend income of Rs.55,29,23,615/- from one of its group company which was credited directly in the bank account of the assessee. For the purpose of disallowance u/s.14A, the assessee has given detailed working of the expenditure which could be said to be attributable for the purpose of exempt income and has worked out a disallowance of Rs.1,89,49,298/- in the following manner:-

<i>Out of personnel expenses (25%)</i>	<i>Rs.1,08,05,255</i>
<i>Out of Administrative & other expenses (25%)</i>	<i>Rs. 76,03,250</i>
<i>Out of Depreciation (25%)</i>	<i>Rs. 5,40,793</i>

3. However, the learned Assessing Officer without even considering the assessee's explanation and examining the nature of account and the expenditure debited, proceeded to apply Rule 8D mechanically on the ground that the Rule 8D was introduced only for the purpose of determining the amount of expenditure in relation to the exempt income. After following the decision of ITAT Special Bench in the case of M/s. Daga Capital Management Pvt. Ltd., 312 ITR (AT) 01 (2009) Delhi SB; and Cheminvest Ltd. vs. ITO, (2009) 317 ITR (AT) 86 (Delhi Spl. Bench), computed the disallowance of Rs.14,66,46,420/-; out of which disallowance on interest under Rule 8D(2)(ii) was determined at Rs.10,99,96,438/-; and disallowance on indirect expenditure under Rule 8D(2)(iii) was worked out to Rs.5,55,99,280/- which aggregated to Rs.16,55,95,718/-. After deducting the amount disallowed by the assessee at Rs.1,89,49,298/-, he finally added the disallowance of Rs.14,66,46,420/-.

4. Thereafter, various rectification orders were passed to rectify the mistakes and finally the net disallowance made by the Assessing Officer was reduced to Rs.4,84,34,982/- and thereby interest disallowance was reduced to Rs.16,41,412/- and administrative expenditure were reduced to Rs.4,67,93,550/- and after considering all the disallowances made by the assessee the final disallowance was computed at Rs.4,84,34,962/-.

5. Before Id. CIT(A), the assessee submitted that dividend income of Rs.55,29,23,615/- has come from group company M/s. Jay Prakash Associates Ltd. on the investment made in the earlier years and no fresh investment was made during the year and nor any fresh loan was taken during the year. In so far as nature and nexus of interest debited in the P & L account on the bank loan the assessee had submitted and stated as under:-

<i>Nature of Interest</i>	<i>Interest paid</i>	<i>Sanction purpose & use</i>	<i>Remarks</i>
<i>Term loan from ICICI Bank</i>	<i>16,45,51,542</i>	<i>Investment in Foreign company, Indesign Enterprises Pvt. Ltd.</i>	<i>Income from investment not exempt. No disallowance in prior year except in ASSESSMENT YEAR 2009-10 wherein the disallowance deleted by your goodself. Interest deleted by Assessing Officer himself as per his order u/s.154. Not in issue.</i>
<i>On service tax</i>	<i>29,73,410</i>	<i>Relates to business</i>	<i>Cannot be allocated to exempt income.</i>

6. Thereafter, it was submitted that Rule 8D is not mandatory and before applying Rule 8D, AO has to record his 'satisfaction'

as to how the working of the disallowance made by the assessee is incorrect. In support reliance was placed on various decisions including that of Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. vs. CIT, reported in (2012) 347 ITR 272 and catena of other decisions. Further, it was submitted that assessee has disallowed sum of Rs.1,89,49,298/- out of indirect expenditure and Assessing Officer should have reduced it from disallowance of indirect expenditure which he has not done. The past history of disallowances made u/s.14A and effect of the appellate orders were also filed.

7. Ld. CIT(A) held that provision of Section 14A(2) clearly provides that Assessing Officer can determine the amount of expenditure incurred in relation to such income only when he is not satisfied with the correctness of the claim of the assessee. If assessee has made a claim that only a particular income has to be disallowed u/s.14A; and if Assessing Officer is not satisfied with correctness of such a claim, then he can proposed to invoke Rule 8D after he has recorded his satisfaction on cogent reasons. After analyzing the nature of expenditure debited and disallowance offered by the assessee, Ld. CIT(A) held that the disallowance as computed by the assessee has a rational basis and looking to the past history, more than fair amount has already been disallowed by the assessee itself u/s.14A. Thus, he has restricted the disallowance u/s.14A to a round figure of Rs.2 crores.

8. After hearing both the parties and on perusal of the relevant finding given in the impugned orders, we find that it is not in dispute that assessee has received a dividend income of

Rs.55,29,23,615/- from its associated company on the investment which was made in the earlier years. Neither any fresh investment has been made during the year nor has any fresh loan been taken. Apart from that, assessee has duly explained the nature of interest and the interest paid to the bank debited to the P&L account and the purpose for which the loan has been used as incorporated above. Thus, in so far as interest expenditure is concerned, no amount can be said to be disallowable, because there is no nexus between the borrowed funds and the investment made for the purpose of disallowing the interest expenditure. On the indirect expenditure, the assessee has *suo moto* attributed disallowance of Rs.1,89,49,298/- which was 25% of; personnel expenses; administrative and other expenses; and depreciation. Such a claim for disallowance attributable for earning of exempt income was given before the Assessing Officer also including the claim as to why the interest expenditure could not have been disallowed. However, the Assessing Officer without examining the nature of accounts or nature of expenditure debited has proceeded to apply Rule 8D mechanically in complete violation of the mandatory requirement as provided in sub section (2) of Section 14A, which categorically postulates that before applying the formula prescribed under Rule 8D, Assessing Officer has to record his 'satisfaction' having regard to the accounts maintained by the assessee that the claim of the assessee is not correct and such a requisite satisfaction should be clearly discernible from the assessment and thereafter only he can proceed to make a disallowance under Rule 8D. Before us, it has been submitted that in assessee's own case for the Assessment Year 2008-09, this precise issue of disallowance

u/s.14A without recording of satisfaction had been settled by the Hon'ble Delhi High Court vide judgment and order dated 23.01.2018 passed in ITA No.75/2018, wherein same issue of non recording of satisfaction in the assessment order was involved, which upheld by the Tribunal. The Hon'ble High Court after relying upon the judgment of Hon'ble Supreme Court in the case of Godrej & Boyce vs. Dy. CIT & Anr., reported in (2017) 394 ITR 449 (SC), confirmed the order of the Tribunal.

9. Learned Department Representative, on the other hand, relying upon the judgment of Hon'ble Supreme court in the case of CIT vs. Maxopp Investment Ltd. contended that where the investment has been made to the group company as a part of strategic investment, then also the disallowance under Section 14A will apply on such strategic investment.

10. Such a contention of the learned Department Representative at the outset is not tenable, because the ld. CIT(A) has reduced the disallowance on the ground that Assessing Officer has not complied with the mandatory requirement of Section 14A(2) and has not given any relief on the ground that strategic investment disallowance u/s.14A cannot be made. We find that already assessee has given a detailed working of the disallowance made u/s. 14A looking to the exempt income and looking to the nature of expenditure debited it is still on a higher side and that too has been slightly increased to Rs.2 crore by the ld. CIT (A). Thus, there cannot be any infirmity in such an order of the ld. CIT (A), because now in view of the judgment of Hon'ble Supreme Court in the case of Godrej & Boyce (supra), no addition or disallowance can be made without applying the mandatory requirement of sub

section (2) and (3) of Section 14A. The relevant observation of the Hon'ble Supreme Court reads as under:-

“Sub-sections (2) and (3) of section 14A of the Act read with rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of section 14A(2) and (3) read with rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable.”

11. Similarly, the Hon'ble Jurisdictional High Court in the case of **HT Media Ltd. (supra)** had also reiterated the same principle in the following manner:-

Rule 8D (1) states more or less what section 14A(2) of the Act states. It requires the Assessing Officer to first examine the accounts of the assessee and then record that he is not satisfied with (a) the correctness of the assessee's claim of expenditure or (b) the claim made by the assessee that no expenditure has been incurred. Unless this stage is crossed, i.e., the stage of the Assessing Officer recording that he is not satisfied with the claim of the assessee in the manner indicated, i.e., after examining the assessee's accounts, the question of applying the formula under rule 8D (2) does not arise. That this is a mandatory pre-requisite for applying rule 8D (2) is fairly well-settled.”

12. Thus, respectfully following the ratio laid down by the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Company Ltd. (supra) and also similar principle laid down by the Hon'ble Delhi Court in the case of HT Media Ltd. (supra), we hold that the disallowance as confirmed by the ld. CIT (A) is upheld and consequently the Revenue's ground is dismissed.

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

Order pronounced in the open Court on 25th July, 2018.

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 25th July, 2018

PKK: