

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

**BEFORE HON'BLE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5463/Del./2015
(ASSESSMENT YEAR : 2011-12)**

M/s. K.L. Rathi Sales Limited, vs. Addl.CIT, Range 5,
No.1/5812, Loni Road, New Delhi.
Shahdara,
Delhi – 110 032.

(PAN : AAACK1141M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ashish Chadha, Advocate
REVENUE BY : Shri Janardan Dass, Senior DR

Date of Hearing : 10.09.2018

Date of Order : 17.09.2018

ORDER

PER KULDIP SINGH, ACCOUNTANT MEMBER :

The appellant, M/s. K.L. Rathi Sales Limited (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 08.07.2015 passed by Ld. CIT (Appeals)-5, New Delhi qua the assessment year 2011-12 on the grounds inter alia that :-

“1. That on facts and circumstances of the case and in law, the learned CIT(A) seriously erred in upholding the disallowance of Rs.6,73,286/- out of interest expenses incurred by the appellant inspite of the fact

that appellant having proved that no part of the said expenses are related to earning of Dividend Income.

2. That the learned lower authorities totally failed to prove that there exist a nexus between earning of Dividend Income and incurring interest expenditure by the appellant, the disallowance made by the learned lower authorities without proving is wholly arbitrary, without any basis in support thereof and totally based on assumption & presumption, thus the disallowance made by the Assessing Officer and uphold by the learned CIT(A) deserve to be deleted.

3. That holding by the learned CIT(A) that appellant has not explained the disallowance of Rs.1,86,600/- made in the return of income either before the Assessing Officer or before CIT(A), is totally contrary to facts on record and wholly incorrect as the said disallowance is made as per Rule 8D (2)(iii) of the Income Tax Rules as evident from the assessment order itself inspite of the fact that the appellant have not incurred any such expenditure for earning Dividend income, thus the said disallowance is also deserves to be deleted.

4. That the observation by the learned CIT(Appeals) regarding expenses incurred in relation to "Portfolio Investments" is totally misunderstood and that too without giving opportunity to appellant to explain the modus operandi of the said investments being managed by the portfolio investments management company.

5. That the reliance placed on certain judgments in the order by the learned CIT(A) is wholly misconceived and relied upon without giving opportunity to appellant.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing Officer by invoking the provisions contained under section 14A of the Income-tax Act,

1961 (for short 'the Act') read with Rule 8D of the Income-tax Rules 1962 (for short 'the Rules) has made disallowance of Rs.8,59,886/- on the sole ground that suo moto disallowance of Rs.1,86,600/- made by the assessee is not found correct as per Rule 8D.

3. Assessee carried the matter by way of appeal before the Id. CIT (A) who has dismissed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. 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. The Id. AR for the assessee challenging the impugned order passed by the Id. CIT (A) contended inter alia that the AO proceeded to invoke the provisions contained u/s 14A read with Rule 8D without recording his dis-satisfaction as to the working out of suo moto disallowance made by the assessee; that the AO has not taken into account that the assessee has suo moto made disallowance of Rs.1,86,600/-.

6. However, on the other hand, ld. DR for the Revenue to repel the arguments of the ld. AR for the assessee contended inter alia that the AO has worked out the disallowance under Rule 8D as per accounts rendered by the assessee having been duly explained at the second last page of the assessment order; that section 114 of the Evidence Act, 1872 raises presumption in favour of the Revenue that there was non-satisfaction of the AO and relied upon the order of the AO.

7. Undisputedly, the AO without recording dis-satisfaction as to the working out made by the assessee that only expenses to the tune of Rs.1,86,600/- have been incurred on earning dividend income of Rs.10,69,000/- proceeded to invoke the provisions contained u/s 14A read with Rule 8D in a mechanical manner which is not permissible.

8. Hon'ble Delhi High Court in judgment cited as *Maxopp Investment Ltd. vs. CIT – (2012) 347 ITR 272 (Del.)* while deciding the identical issue held as under :-

“Section 14A even prior to the introduction of sub-sections (2) and (3) would require the Assessing Officer to first reject the claim of the assessee with regard to the extent of such expenditure and such rejection must be for disclosed cogent reasons. It is then that the question of determination of such expenditure by the Assessing Officer would arise. The requirement of adopting a specific method of determining such expenditure has been introduced

by virtue of .sub-section (2) of section 14A . Prior to that, the assessee was free to adopt any reasonable and acceptable method. So, even for the pre-rule 80 period, whenever the issue of section 14A arises before an Assessing Officer, he has, first of all, to ascertain the correctness of the claim of the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income under the Act. Even where the assessee claims that no expenditure has been incurred in' relation to income which does not form part of the total income, the Assessing Officer will have to verify the correctness of such claim. In case, the Assessing Officer is satisfied with the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, the Assessing Officer is to accept the claim of the assessee in so far as the quantum of disallowance under section 14A is concerned. In such eventuality, the Assessing Officer cannot embark upon a determination of the amount of expenditure for the purposes of section 14A(1). In case, the Assessing Officer is not, on the basis of the objective criteria and after giving the assessee a reasonable opportunity, satisfied with the correctness of the claim of the assessee, he shall have to reject the claim and state the reasons for doing so. Having done so, the Assessing Officer will have to determine the amount of expenditure incurred in relation to income which does not form part of the total income under the Act. He is required to do so on the basis of a reasonable and acceptable method of apportionment.”

9. Hon'ble Apex Court in *Godrej & Boyce Manufacturing Company Ltd. vs. DCIT – 394 ITR 449 (SC)* thrashed the issue in controversy as to invoking of the provisions contained under Rule 8D of the Rules by observing as under :-

“37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. 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.”

10. By following the law laid down by Hon'ble Apex Court in judgment cited as *Godrej & Boyce Manufacturing Company Ltd.* (supra) and Hon'ble High Court of Delhi in *Maxopp Investment Ltd.* (supra), we are of the considered view that the findings returned by AO that, “*disallowance to the tune of Rs.8,59,886/- needs to be disallowed as per Rule 8D*” are not sustainable in the eyes of law as there is not an iota of reasons of dis-satisfaction recorded by AO as to computation of income made by the assessee because sub-section (2) & (3) of section 14A with Rule 8D of the Rules has only prescribed a formula for determination of an expenditure to earn the income which does not form part of the total income under the Act, which can only be invoked if the AO is

not satisfied with the claim of the assessee. AO has given vague and ambiguous reason that, *“The disallowance of Rs.1,86,600/- submitted by the assessee is not found correct as it is not as per rule 8D.”*

11. Moreover, the assessee has given complete computation of income along with return of income based upon audited account which has again not been questioned by the AO as well as Id. CIT (A). The assessee has also come up with specific argument based upon this audited account that except incurring an amount of Rs.1,86,600/-, he has not incurred any cost for earning the exempt income and this fact has not been displaced by the Revenue by writing any reasons or by bring on record any facts.

12. In view of what has been discussed above, AO as well as Id. CIT (A) have erred in making / affirming the disallowance of Rs.8,59,886/- u/s 14A read with Rule 8D without questioning the computation made by assessee itself under section 14A of the Act. Accordingly, appeal filed by the assessee is allowed.

Order pronounced in open court on this 17th day of September, 2018.

**Sd/-
(G.D. AGRAWAL)
PRESIDENT**

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

**Dated the 17th day of September, 2018
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-19, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.