

**आयकर अपीलीय अधिकरण “B” न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री रमित कोचर लेखा सदस्य के समक्ष ।

**BEFORE SRI MAHAVIR SINGH, JM AND SRI RAMIT KOCHAR, AM**

आयकर अपील सं./ ITA No. 2248/Mum/2017

(निर्धारण वर्ष / Assessment Year 2010-11)

The Asst. Commissioner of Income Tax-Circle 7(2)(2) R.No. 623, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai- 400 020	Vs.	NSDL E-Governance Limited 4 <sup>th</sup> Floor, Trade World, Kamala Mills Compd Lower Parel, Mumbai-400 013
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAACN2082N</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri D.G. Pansari, DR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri Niraj D. Sheth, AR

सुनवाई की तारीख / <b>Date of hearing:</b>	06-09-2018
घोषणा की तारीख / <b>Date of pronouncement :</b>	06-09-2018

**आदेश / ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal of the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-13, Mumbai [in short CIT(A)], in appeal No. CIT(A)-13/DCIT-7(2)(2)/930/2015-16, dated 24.01.2017. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle-7(1), Mumbai (in short 'DCIT/ AO') for the A.Y. 2010-11 vide order dated 15.03.2013 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of expenses made by AO by invoking the provisions of section 14A of the Act read with Rule 8D(2)(iii) of the Income Tax Rules, 1962 (hereinafter the 'Rules'). For this Revenue has raised the following three grounds: -

*"1. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) is right in deleting disallowance of Rs 69,36,640/- made by the AO under section 14A of the Income Tax Act. 1961 r.w Rule 8D of the Income Tax Rules. 1962.*

*2. On the facts and in the circumstances of the case and in law. whether the Ld. CIT(A) is justified in holding that the AO has applied Rule 8D of the Income Tax Rules, 1962 without recording any dissatisfaction.*

*3. On the facts and in the circumstances of the case and in law, whether the Ld.CIT(A) justified in holding that Rule 8D of the Income Tax Rules 1962 is not applicable in the cases where voluntary disallowance u/s 14A of the Act is made by the assessee."*

3. Briefly stated facts are that the assessee company is engaged in the business of providing depository services for various clients. During the year under consideration, the assessee has earned income from interest on tax-free bonds and dividend income of ₹4,66,69,664/- and disclosed in its computation of income. The assessee claimed that it has incurred expenditure for earning of this tax-free income amounting to ₹ 12.30 lakhs and disallowed the same in the computation of income.



According to AO, in view of Rule 8D, estimation of disallowance can be made but Rule 8D is to be applied for qualification of disallowance. Accordingly, the AO applied rule 8D(2)(iii) of the Rules i.e. for administrative expenses and computed the amount of disallowance at ₹ 81,66,640/-. Thereby the differential amount of ₹ 69,36,640/-, after considering the suo moto disallowance made by assessee, added to the returned of income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who deleted the disallowance by following assessee's own case for AY 2011-12 i.e. the future assessment year. Aggrieved, Revenue is in appeal before us.

4. Before us, the learned Sr. Departmental Representative, heavily relied on the assessment order and the learned Counsel for the assessee drew our attention to Tribunal order in assessee's own case for AY 2009-10 in ITA No. 2726,2727 & 2729/Mum/2013 vide order dated 23.07.2014, wherein the assessee itself contended for set aside the matter to the file of the AO for the reason that the suo moto disallowance made by assessee in that years was not examined by the Assessing Officer. The learned Counsel for the assessee referred to Para 7 and 8 of Tribunal order which reads as under: -

*"7. The assessee's contention before us was that the A.O. was, before proceeding to apply rule 8D, admittedly mandatory w.e.f. A.Y. 2008-09, obliged to express his nonsatisfaction with the assessee's accounts leading to the expenditure incurred in relation to the income not forming part of the taxable income, which had been worked out by the assessee at Rs.10.20 lacs. On being enquired by the Bench as to the basis of the assessee's working, it was pointed out by the ld. AR that the assessee*



*maintains time sheets, booking expenditure in respect of the corresponding activity yielding income not forming part of the total income. No examination in the matter had been made by the authorities below. A restoration in the matter back to the file of the A.O. for fresh determination was prayed for.*

*The Id. Departmental Representative (DR) would, on the other hand, object thereto, claiming that apart from bald claims, no case, including for restoration, had been made by the assessee.*

*8. We have heard the parties, and perused the material on record. The entire disallowance is under rule 8D(2)(iii), i.e., at 0.5% of the average value of the investment, reckoned at one half of the book value of investments (yielding tax-exempt income), as at the beginning and the close of the year. The Id. CIT(A) has observed of substantial activity, even as mere holding of investment, as where in stocks and shares, subject to market volatility in response to various economic – macro and micro, factors, may require decision making at, and thus involvement, of the higher management, entailing incurring cost. In fact, as we observe, there is not much difference between the opening and the closing value of the investment and, two, the bulk of the tax exempt income arising by way of interest on tax-free bonds. The Revenue, in our view, ought to have required the assessee to substantiate its claim of the working of suo motu disallowance u/s.14A with reference to its accounts, and which would*



*include the underlying vouchers as well. The A.O., upon making such enquiry as he deems fit and proper in the matter, is to form his opinion, expressing his satisfaction or dissatisfaction, as the case may be, in the matter. This examination and process, as apparent, has not been undertaken, which, as explained by the hon'ble jurisdictional high court in the case of Godrej & Boyce Mfg. Co. Ltd. v. Dy. CIT [2010] 328 ITR 81 (Bom), is mandatory, forming, in fact, part of both, the law - per section 14A, which is a complete code in itself, as well as the delegated legislation in the form of rule 8D. We, accordingly, restore this matter back to the file of the A.O. to allow the assessee an opportunity to substantiate its claim qua the suo motu disallowance by it, deciding the matter afresh in accordance with law, observing the procedure as explained, and proceed in the matter following the express provision of section 14A(2) of the Act. We decide accordingly."*

5. The learned Counsel for the assessee in view of the above particular referred to the letter of the assessee written to CIT(A) dated 21.09.2016 and drew our attention to Para 4 and 5 of the write up, which reads as under: -

*"4. However, the Appellant to err on a safer side and to avoid any high pitched disallowance at the assessment stage had suo-moto made a disallowance while computing its total income of ₹ 12,30,000/- which is 5% of the cost of the salary of top management and 20% of the cost of the*



allocable salary in terms of section 14A of the Income tax Act, 1961-a detailed computation of how the Appellant arrived at the disallowance so made is given hereunder:

Salary cost (of top management)	Actuals in Rs.		Rounded off Rs. In Lakhs
Gagan Rai (Managing Director and CEO)	1,20,58,400.00		120.58
T.Koshy (Executive Director)	43,56,355.00		43.56
Hiten Mehta (Vice President)	23,17,077.00		23.17
Ravi Garg (Senior Manager)	6,95,154		6.95
Aishwarya Bansod (Assistant Manager)	2,89,401		2.89
Bhakti Matkar (Executive)	3,16,004		3.16
			200.31
Add. Staff welfare @6% (excl.MD)			4.78
A			205.09
<u>Other Overheads</u>			
Communication cost	2,95,81,091.01	295.81	
Premises, Tax & Repairs	1,44,11,034.00	144.11	
Repairs Others	1,57,86,153.00	157.86	
Rates & Taxes	81,50,874.00	81.51	
		679.29	
Total Staff Cost	36,84,82,480	3,684.82	
Ratio of Overheads to staff (679.29/3694.82*100)			18.43 (say20%)
Overhead Cost (205.09*20%) B			41.02
Total (A+B)			246.11
Disallowance U/s 14A @ 5% of total			12.31
<u>Amount Disallowed:</u>			
Salary (5% of 205.09)	10.25		
Overheads (20% of 10.25)	2.05		
Total Disallowance	12.30		

5. Here I will be appreciated that the time spent by the top management and others on the decisions relating to tax free investments is less than 5% of their time. However, with a view to err on the side of the revenue, the Appellant has considered the same

*to be % and hence the Appellant has considered a disallowance of 5% of salary and 20% of the overhead costs as having being expended for earning the tax free income.”*

6. In view of the above, the learned Counsel for the assessee stated that the above computation of disallowance made by assessee on scientific basis was before the AO and hence, in this year the AO has not rejected the computation and without recording any satisfaction how the computation of disallowance of expenses in relation to exempt income is wrong, no disallowance by invoking the provisions of section 14A of the Act read with Rule 8D of the Rules can be made.

7. We have heard the rival contentions and gone through the facts and circumstances of the case. We find from the above that the assessee in its return of income made suo moto disallowance while computing its total disallowance at ₹ 12.30 lakhs which is almost 5% of the cost of salary of top management and 20% cost of allocable salary. It was also explained that 20% of overhead as having been expended for earning this tax free income, no further disallowance is to be required. We have considered these issues and fact that the AO has nowhere recorded the satisfaction as to why he is rejecting the computation of disallowance made by the assessee. This issue has been deliberated by Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT [2018] 402 ITR 640 (SC), held as under: -

*“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. In view of the above, we are of the view that there is no satisfaction recorded by the AO despite the fact that the assessee has computed the expenses relatable to exempt income in a scientific manner and once there is no satisfaction recorded by the AO, no disallowance can be made. Hence, we confirm the order of CIT(A) deleting the disallowance. The appeal of Revenue is dismissed.

9. **In the result, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 06-09-2018.

Sd/-

(रमित कोचर / RAMIT KOCHAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 06-09-2018

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

**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)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai