

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

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4923/Del./2015
(ASSESSMENT YEAR : 2012-13)**

M/s. Priapus Infrastructure Ltd., vs. ACIT, Circle 20 (1),
M – 62 & 63, First Floor, New Delhi.
Connaught Place,
New Delhi – 110 001.

(PAN : AAFCP2749B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Anunav Kumar, Advocate
REVENUE BY : Shri Shailesh Kumar, Senior DR

Date of Hearing : 13.12.2018

Date of Order : 20.12.2018

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, M/s. Priapus Infrastructure Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 12.06.2015 passed by Ld. CIT (Appeals)-7, New Delhi qua the Assessment Year 2012-13 on the following ground that:-

“On the basis of facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in sustaining the additions made by the Assessing Officer of

Rs.17,53,900/- on account of disallowance made under section 14A of the Income Tax Act, 1961.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee is into the business of generation, transmission, distribution, trading and supply of power and allied business. Assessing Officer noticed that the assessee has made investment in mutual fund amounting to Rs.35,07,00,000/- during the year under assessment and has earned dividend income of Rs.46,25,447/- which the assessee has claimed as exempted under section 10 (34) of the Income-tax Act, 1961 (for short ‘the Act’). However, AO by invoking the provisions contained u/s 14A read with Rule 8D proceeded to conclude that he is not satisfied with the correctness of the claim of the assessee and thereby made addition of Rs.17,53,900/- u/s 14A i.e. by calculating the administrative expenses @ 0.5% of Rs.35,07,00,000/-.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the addition made u/s 14A by partly allowing 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. Undisputedly, assessee has made an investment of Rs.35,07,00,000/- in mutual funds during the year under assessment and has earned the dividend income of Rs.46,25,447/-.

It is also not in dispute that before invoking the provisions contained u/s 14A read with Rule 8D, the AO has not recorded his dis-satisfaction as to the working out made by the assessee that average investment during the year under assessment remained zero.

6. The ld. AR for the assessee contended that since average investment of the assessee in mutual funds during the year under assessment remained zero, no administrative charges are to be levied and relied upon *Commissioner Of Income Tax, Bangalore vs. B. C. Srinivasa Setty 128 ITR 294* and *DCIT vs. Gulshan Investment Co. Ltd. – (2013) 26 ITR (Trib) 674 (ITAT [Kolk])*.

7. However, on the other hand, ld. DR for the Revenue contended that the administrative charges are required to be charged at 0.05% on investment during the year and relied upon the order passed by AO/CIT(A).

8. The ld. AR for the assessee brought on record detail of the investment in mutual funds during the year under assessment,

which is otherwise not in dispute, and is extracted for ready perusal
as under :-

Particulars	Opening Balance		Dividend		Purchase		Redemption		Closing Balance	
	Units	Amount	Units	Amount	Units	Amount	Units	Amount	Units	Amount
Reliance Liquidity Fund – Daily Dividend Reinvestment Option	-	-	11,938	119439	4047936	40500000	4059873	40619439	-	-
Reliance Liquidity Fund – Daily Dividend Reinvestment Option	-	-	19,710	197203	20939321	209500000	20959031	209697203	-	-
Reliance Liquidity Fund – Daily Dividend Reinvestment Option	-	-	450371	4506008	10064867	100700000	10515238	105206008	-	-
Total		-	482019	4822649	35052123	350700000	35534143	35522649	-	-

9. Bare perusal of the investment detail, reproduced above, goes to prove that average investment of the assessee in mutual funds during the year under assessment remained zero. Hon'ble Apex Court in case cited as *Commissioner Of Income Tax, Bangalore vs. B. C. Srinivasa Setty* (supra) while deciding the identical issue as to how the computation provisions and charging sections are to be applied held as under :-

“The charging section and the computation provisions together constitute an integrated code. When there is a case to which

computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section.”

10. Coordinate Bench of the Tribunal in case cited as *DCIT vs. Gulshan Investment Co. Ltd.* (supra) decided the identical issue in favour of the assessee by confirming the findings returned by the ld. CIT (A) as under :-

“6. A plain look at the above rule shows that 8 D(2)(ii) and (iii) can only be applied in the situations in which shares are held as investments, and that this rule will not have any application when the shares are held as stock in trade. It is so for the elementary reason that the one of the variables on the basis of which disallowance under rules 8D(2)(ii) and (iii) is to be computed is the value of "investments, income from which does not or shall not form part of total income", and, when there are no such investments, the rule cannot have any application. When no amount can be computed in the light of the formula given in rule 8 D(ii) and (iii), no disallowance can be made under rule 8D (2)(ii) and (iii) either. As held by Hon'ble Supreme Court in the case of CIT v. B C Srinivas Shetty (128 ITR 294), when computation provisions fail, the charging provisions cannot be applied, and by the same logic, when the computation provisions under rule 8 D (2) (ii) and (iii) fail, disallowance under the said provisions cannot be made either as the said provision is rendered unworkable.

Quite to the contrary of what DR perceives to be advantageous to the AO, in case the application of rule 8 D was to be upheld, there would have been no disallowance at all since not only that no investments were held by the assessee, admittedly there are no direct expenses are incurred on earning of the dividends and as such in all the three segments of disallowance under rule 80(2) i.e. 80 (2) (i), (ii) and (iii), there will be zero disallowance.”

11. AO has failed to record his dis-satisfaction as to the correctness of the claim of the assessee by making his own computation of the investment in mutual funds that average investment made by the assessee during the year under assessment

was not zero as claimed by the assessee. 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.”

So, when the AO has failed to record his dis-satisfaction as to the claim of the assessee that average investment during the year under assessment remained zero, he was not empowered to resort to the provisions contained u/s 14A read with Rule 8D.

12. Following the aforesaid decision in *Godrej & Boyce Manufacturing Company Ltd. vs. DCIT* (supra) rendered by Hon'ble Apex Court and decision rendered by coordinate Bench of the Tribunal in case cited as *DCIT vs. Gulshan Investment Co.*

Ltd. (supra), we are of the considered view that when average investment of the assessee during the year under assessment undisputedly remained zero, the computation provisions contained under Rule 8D cannot be invoked and as such, addition on account of administrative charges @ 0.05% under Rule 8D cannot be made and as such, is not sustainable.

13. In view of what has been discussed above, we are of the considered view that addition made by AO and confirmed by Id. CIT (A) is not sustainable, hence ordered to be deleted. Consequently, appeal filed by the assessee is allowed.

Order pronounced in open court on this 20th day of December, 2018.

**Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER**

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

**Dated the 20th day of December, 2018
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-7, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**