

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'F', NEW DELHI

BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER  
AND Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No. 5005/Del/2014  
AY: 2010-11

DCIT, Circle 10(1) New Delhi	vs.	DBH International Pvt. Ltd. N-75, Connaught Place New Delhi 110 001  PAN: AAACD0085D
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(Appellant)

(Respondent)

**Appellant by :** Sh. Surender Pal, Sr.D.R.

**Respondent by :** Sh. G.S. Grewal, FCA and  
Sh. Tanpreet, C.A.

**Date of Hearing :** 01/01/2019  
**Date of Pronouncement:**

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by revenue against order dated 10.06.2014 of Ld. CIT(A)-XIII, New Delhi on following grounds:

*"1. On the facts and in the circumstances of the case the Ld.CIT(A) has erred in deleting the addition of Rs.59,14,768/- made by the A.O. u/s 14A.*

2. *On the facts and in the circumstances of the case the Ld.CIT(A) has erred in deleting the addition of Rs.1,25,000/- in respect of depreciation.*

3. *On the facts and in the circumstances of the case the Ld.CIT(A) has erred in deleting the addition of Rs.3,50,000/- on account of assets used for farm house.*

4. *On the facts and in the circumstances of the case the Ld.CIT(A) has erred in deleting the addition of Rs.5,00,000/- on account of travelling & conveyance exp.*

5. *On the facts and in the circumstances of the case the Ld.CIT(A) has erred in deleting the addition of Rs.5,00,000/- on account of legal and professional charges."*

**2. Brief facts of the case are as under:**

Assessee filed its return of income on 25/09/2009 declaring loss of Rs.5,01,052/-. Assessee is engaged in business of mining activities located in Kerala, for extraction of raw clay matrix, used by processed clay manufacturers. Assessee is also holding shares of group companies such as Greaves Cotton Ltd., English Indian Clays Ltd., and Premium Energy Transmission Ltd. Average investments in shares of Group Companies amounted to Rs.1,90,21,05,659/-from which dividend income earned amounted to Rs.18,59,46,489/- during year under consideration. It was also observed by Ld.AO that assessee made *suo moto* disallowance of Rs.23,82,198/-, under section 14 A of the Act.

**2.1.** The case was selected for scrutiny through CASS and accordingly notice u/s 143(2) was issued. Assessing Officer

invoked provisions of section 14A read with Rule 8D and disallowed expenses relating to earning exempt income amounting to Rs.1,28,58,236/-, comprising of the following:

- i. Under Rule 8D(2)(i) : Rs. 23, 82,198/-
  - ii. Under Rule 8D(2)(ii) : Rs. 9,65,510/-
  - iii. Under Rules 8D(2)(iii): Rs 95,10,528/-
- Total Rs.1,28,58,236/-**

Ld.AO also made following other disallowances:

- i. disallowance of depreciation - Rs.1,25,000/-
- ii. disallowance of repairs and renovation expenses - Rs.3,50,000/-
- iii. disallowance of travelling and conveyance expenses - Rs.5,00,000/-

3. Aggrieved by disallowances made by Ld.AO assessee preferred appeal before Ld.CIT(A), who deleted additions.

4. Aggrieved by order of the Ld.CIT(A), revenue is now in appeal before us.

5. At the outset, Ld. AR submitted that, ground relating to 14 A in Ground No.1 stands squarely covered in favour of assessee by order passed by this Tribunal in assessee's own case for preceding Assessment Year. Referring to page No. 41-54 of paper book, he submitted that for Assessment Year 2008-09 and 2009-10 identical disallowance made by Ld.AO was deleted by this Tribunal and for Assessment Year 2009-10 Hon'ble High Court confirmed the order passed by this Tribunal, which is placed at page 55-56 of paper book.

**5.1.** The Appellant earned exempt income of Rs.18,59,46,489/- as dividend income and had voluntarily disallowed Rs.23,82,198/- under section 14A of the Act.

**5.2.** Ld. AR submitted that expenses that is attributable for earning exempt income for disallowance u/s 14A are identifiable from books of accounts. The division wise Profit and Loss account was submitted before both Id. AO as well as the Id. CIT(A). He further submitted that the Id. AO applied Rule 8D and disallowed Rs.59,14,768/- over and above voluntary disallowance made by the appellant u/s 14A amounting to Rs.23,82,198/- against dividend earned by assessee during the year.

**5.3.** The Ld.AR submitted that Ld.AO disregarded computation of taxable income, books of accounts and division wise Profit and Loss account furnished by assessee and proceeded mechanically to apply Rule 8D of the Income Tax Rules, 1962. The Ld.AR further submitted that the Ld.AO neither expressed his dissatisfaction nor gave cogent reasons before proceeding to disallow expenses u/s 14A of the Act. The Ld. AR submits that Id. CIT(A) has also failed to follow parameters laid down by *Hon'ble Delhi High Court* in case of *Joint Investment Pvt.Ltd. vs CIT*, reported in (2015) 59 *Taxmann.com* 295. He further submits that issue stands covered in assessee's own case by order passed by this Tribunal for preceding Assessment Years (supra).

**6.** On the contrary, Ld.DR placed reliance upon decision of *Hon'ble Supreme Court* in case of *CIT vs. Maxopp investments Ltd* reported in (2018) 91 *Taxmann.com* 154.

7. We have perused submissions advanced by both sides in the light of the records placed before us.

8. We find that during relevant previous year, apart from interest expenses, loss on sale of investments, depository charges and common expenses, assessee had incurred following expenses, aggregating to Rs.2,20,81,159/-, under various heads:

Mining and other related expenses	: Rs.44,61,795/-
Personal Expenses	: Rs.42,21,947/-
Administrative and other Expenses	:Rs.1,03,58,091/-
Selling &Distribution Expenses	:Rs.12,01,897/-

8.1. In view of the above details, we find that there was no expenditure having proximate nexus / direct relation with investment in shares or earning of dividend income therefrom, except for interest income, loss on sale of investments, depository charges and common expenses. It was, therefore, pleaded that personal expenses, administrative and other expenses and selling & distribution expenses should not be considered for purposes of disallowance u/s 14A of the Act. We find force in argument of Ld. A.R in this regard.

8.2. Secondly, we find that Ld.AO neither recorded his satisfaction, nor gave reasons, as to how claim of expenditure in relation to tax free income has not been correctly made by assessee, as envisaged under section 14A(2) and has mechanically invoked Rule 8D. Sub-section (2) of section 14A of the Act provides manner

in which Ld.AO is to determine amount of expenditure incurred in relation to income, which does not form part of the total income.

The requirement of Ld.AO embarking upon determination of amount of expenditure incurred in relation to exempt income would be triggered only if Ld.AO records finding that he is not satisfied with correctness of the claim of assessee in respect of such expenditure. Therefore, condition precedent for Ld.AO to start determination of amount of expenditure incurred in relation to exempt income where assessee has suo moto made a disallowance is that, Ld.AO must record that satisfaction regarding correctness of claim of assessee having regards to its books of accounts. In other words, sub-section (2) deals with cases where assessee specifies amount of expenditure in relation to income which does not form part of total income under the Act and Ld.AO, if satisfied with correctness of disallowance of expenditure, cannot embark upon determination of amount of expenditure in accordance with prescribed method under Rule 8D. It is only if Ld.AO is dissatisfied with correctness of disallowance of assessee, that Ld.AO gets jurisdiction to determine amount of expenditure incurred in relation to such income, which does not form part of the total income under the Act in accordance with prescribed method stipulated in Rule 8D of the Rules.

**8.3.** While rejecting the claim of assessee in facts of present case, with regards to expenditure in relation to exempt income, Ld.AO has to indicate cogent reasons for the same. It is, therefore, clear that determination of amount of expenditure in relation to exempt

income under Rule 8D would only come into play when Ld.AO rejects disallowance computed by assessee in this regard. We draw our support from decision of *Hon'ble Delhi High Court* in case of *Joint Investment Pvt.Ltd. vs CIT (supra)*.

**8.4.** It is seen that assessee has made disallowance of expenditure u/s 14A r.w.r. 8D of Rs.23,82,198/. The claim of disallowance made by assessee has been examined by Ld.AO during course of assessment. Ld.AO has not pointed out any deficiency in books of accounts maintained by assessee, nor in respect of disallowance computed by assessee u/s 14A of the Act. In other words, the AO has not expressed his dissatisfaction regarding disallowance computed by assessee u/s 4A(1), a prerequisite for invoking the provisions of section 14A(2) of the Act. The *Hon'ble Delhi High Court* in the case of *Joint Investment Pvt.Ltd. vs CIT (supra)* has held that:

*"9. In the present case, the AO has not firstly disclosed why the appellant/assessee's claim for attributing Rs. 2,97,440 as a disallowance under s. 14A had to be rejected. Taikisha Engg. India Ltd. (supra) says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assessee's claim or explanation. The second aspect is there appears to have been no scrutiny of the accounts by the AO-an aspect which is completely unnoticed by the CIT(A) and the Tribunal. The third, and in the opinion of this Court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is Rs. 48,90,000, the disallowance ultimately directed works out to nearly 110 per cent of that sum, i.e., Rs. 52,56,197. By no stretch of imagination can s. 14A or r. 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in s.*

*14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case."*

**8.5.** It is thus observed from the assessment order that Ld.AO has not found any deficiency in *suo-moto* disallowance of expenditure, u/s 14A made by assessee. Decision of *Hon'ble Supreme Court* in case of *CIT vs. Maxopp investments Ltd* (supra) relied upon by Ld.Sr.DR would come into picture only when there is a dissatisfaction recorded by Ld.AO regarding the *suo motu* disallowance made by assessee, having regards to books of accounts maintained by assessee. Otherwise presumption lies in favour of assessee that the disallowance subsumes the item under Rule 8D(iii) regarding average investment.

**8.6.** Accordingly we do not find any infirmity in the observations of Ld. CIT (A) and the same is upheld.

**9. Accordingly this ground raised by revenue stands dismissed.**

**10. Ground No. 2** has been raised in respect of deleting addition on account of depreciation amounting to Rs.1,25,000/-.

**10.1.** Ld. Sr. DR placed reliance upon order of Ld. AO.

**10.2.** Ld.AR submitted that details regarding additions to fixed assets were submitted before Ld.A.O. along with depreciation schedule. He submitted that assessee made addition to fixed asset amounting to Rs.39,54,412/-under the head buildings, computers, furniture and fixtures, and vehicles. It was observed that addition

under the head building amounted to Rs.22,08,500/-out of which Ld.AO considered addition of Rs.12,50,000/- being cost of building, as not for business purposes and disallowed 10% depreciation on this amount. Ld.AR submitted that even though cost of purchase of building has been considered as not for business purposes, however incidental expenses and construction cost has been allowed and considered for business purposes. He further submitted that total depreciation claimed by assessee amounted to Rs.1,10,425/-whereas Ld.AO disallowed depreciation amounting to Rs.1,25,000/-. He thus prayed for addition to be deleted, as Ld.A.O. made addition without any evidence, on mere assumptions and surmises.

**10.3.** We have perused submissions advanced by both sides in light of records placed before us. On perusal of order passed by Ld.CIT (A), it is observed that Ld.CIT (A) decided the issue by observing as under:

*“ 3.1. I have carefully considered the facts of the case, assessment order and the submissions filed by the counsel of the appellant. The Assessing Officer has disallowed Rs.1,25,000/-being depreciation on addition of asset (Building) of Rs. 12,50,000/-holding that it is not for the purposes of business. The assessee has submitted that the addition to building is the office of the Chairman of the company Mr. B M Thapar. The Counsel of the assessee also submitted that the Assessing Officer had not raised any query on the claim of depreciation during the assessment proceedings. It has along with it submitted depreciation chart under the Income Tax Act, 1961 which is part of the Income Tax Return submitted by it. It is observed from the chart that the assessee had claimed depreciation of Rs.1,10,425/- on the building and not Rs.1,25,000/-as is stated by the Assessing Officer.*

*The assessment records were called for and perused. The Assessing Officer had not questioned the allowability during the assessment proceedings about the claim of depreciation being for the purpose of business. The Assessing Officer has also not brought any evidence on record to show that the asset is not used for the purpose of business. In the absence of any evidence contradicting to that of the assessee, claim of assessee is accepted and the addition made by the Assessing Officer is deleted."*

**10.4.** Admittedly, Ld.A.O. has not questioned allowability during assessment proceedings about claim of depreciation. He has also not brought on record any evidence to show that asset is not used for purposes of business. In our opinion Ld.A.O. has made addition on assumptions.

**10.5.** We therefore do not find any infirmity in the order of Ld. CIT (A) and the same is upheld.

**10.6. Accordingly this ground raised by revenue stands dismissed.**

**11. Ground No. 3** has been raised in respect of deleting addition of Rs.3,50,000/-, on account of assets used for farmhouse.

**11.1.** Ld.Sr.DR placed reliance upon the order of Ld.AO.

**11.2.** Ld.AR submitted that assessee filed all details regarding repairs and maintenance before Ld.AO, from where, it is evident that furniture purchased includes beds etc., amounted to Rs.2,54,212/-, and has been capitalised. He submitted that Ld.A.O. called upon assessee to explain as to where furniture is used, to which assessee answered that it has been used in Chattarpur Farm. Ld.AR submitted that disallowance is

hypothetical as amount spent on repair and renovation disallowed by AO was Rs.3,50,000/ whereas the addition to furniture amounts to Rs.2,54,212/-. He thus placed reliance upon order of Ld.CIT(A).

**12.** We have perused submissions advanced by both sides in light of records placed before us. On perusal of order passed by Ld.CIT (A), it is observed that Ld.CIT (A) decided issue by observing as under:

*" 4.1 I have carefully considered the facts of the case, assessment order and the submissions filed by the counsel of the appellant. The Assessing Officer has disallowed Rs.3,50,000/-out of repairs and renovations. The assessee has submitted the details of repair and renovation out of which Rs.350000/- was disallowed by the Assessing Officer. The assessee contended that there was no amount of Rs.350000/-in the detail and the Assessing Officer has added the amount on surmises. The assessment records were perused and it was observed that the details of Repair and Renovation does not contain any item of Rs.350000/-. The Assessing Officer has also not stated in his order as to how the addition of Rs. 3,50,000 has been made to the income of the appellant. There is no evidence/ details on the record on the basis of which disallowance has been worked out. The addition has been made on the basis of the guess work. The addition made by the Assessing Officer is as such, deleted."*

**12.1.** Admittedly, addition to furniture is amounting to Rs.2,54,212/-, for which details has been submitted by assessee during assessment proceedings. Ld.A.O. has not brought on record

any evidence which could substantiate disallowance of Rs.3,50,000/- towards purchase of furniture. We therefore do not find any infirmity in the afore stated findings of Ld.CIT(A) and the same is upheld.

**12.2. Accordingly ground raised by revenue stands dismissed.**

**13. Ground No. 4** has been raised in respect of deleting addition of Rs.5,00,000/-on account of travelling and conveyance expenses.

**13.1.** Ld.Sr.DR placed reliance upon order of Ld. AO.

**13.2.** Ld.AR submitted that details of travelling expenses amounting to Rs.21,74,142/-was filed before Ld.AO. He submitted that Ld.AO has sought reason and purpose for travelling by chartered plane which was used by Mr. Karan Thapar. Ld.AR submitted that chairman along with his officials of company travelled on that plane for his business trips. Ld.AR submitted that Ld.AO on mere assumption that, as wife and children of Mr. Karan Thapar stay abroad, disallowance of Rs. 5 lakhs was made. He placed reliance upon observations of Ld.CIT(A).

**14.** We have perused submissions advanced by both sides in light of records placed before us. On perusal of order passed by Ld.CIT(A), it is observed that Ld.CIT(A) decided the issue by observing as under:

*"5.1. I have carefully considered the facts of the case, assessment order and the submissions filed by the counsel of the appellant. The Assessing Officer has disallowed Rs.5,00,000/-out of Travelling and Conveyance expenses on the basis that travelling is through chartered plane and the personal element cannot be ruled out.*

*The assessee on other hand has contended that the plane was chartered for the business of the Company and the Managing Director and other officials of the Company travelled to the destination for the urgent meeting. The Assessing Officer has not referred to any evidence while making the addition. The businessman is the best judge to decide the mode of travel. The Revenue cannot step into the shoes of the businessman to judge the adequacy of the mode of travel. There is no evidence on record to suggest that the travel was for the personal purposes. The addition made by the A.O. is, therefore, deleted."*

**14.1.** The observations of Ld.CIT(A) cannot be found fault with and an adhoc disallowance without there being cogent material cannot be entertained. Accordingly we uphold the observations of Ld. CIT (A).

**14.2. This ground raised by revenue stands dismissed.**

**15. Ground No. 5** has been raised in respect of deleting the addition of Rs.5,00,000/- on account of legal and professional charges.

**15.1.** Ld.Sr.DR placed reliance upon the order of Ld.AO.

**15.2.** Ld.AR submitted that assessee had incurred Rs.22,09,578/- as legal and professional charges, out of which sum of Rs.9,89,550/-has been voluntarily disallowed under section 14A. He submitted that expenses disallowed under section 14A pertains to executing scheme of arrangement for acquisition of shares. In furtherance Ld.AR submitted that details of legal and professional expenses submitted before Ld.AO, based upon which, Ld.AO made addition of Rs. 5 lakhs due to volume of investment and quantum

of expenditure incurred for family settlement, in addition to amount already added back by assessee under section 14A. Ld.AR submitted for upholding the order of Ld. CIT (A) as disallowance was made without any basis.

**16.** We have perused submissions advanced by both sides in the light of records placed before us. On perusal of order passed by Ld.CIT (A), it is observed that Ld.CIT (A) decided the issue by observing as under:

*" 6.1. I have carefully considered the facts of the case, assessment order and the submissions filed by the counsel of the appellant. The Assessing Officer has disallowed Rs.5,00,000/- out of legal and professional charges stating that the amount of Rs.5 lakhs is further disallowed as the voluntary disallowance made by the appellant is on the lower side. The Counsel of the assessee has submitted the complete details of legal and professional charges and explained that the assessee had voluntarily disallowed Rs.9,89,550/- out of the total expenses of Rs.22,09,578/- u/s 14A of the Act, being legal expenses relating to the scheme of arrangement i.e. investment activity. He drew the attention to the computation of taxable income highlighting the disallowance. The assessee has explained the nature of expenses debited to legal and professional charges.*

*On the other hand, the AO has not given any basis for making the further disallowance of Rs.5 lakhs. The adhoc disallowance made by AO is, therefore, deleted."*

**16.2.** The observations of Ld.CIT(A) cannot be found fault with and an ad- hoc disallowance without there being cogent material cannot be entertained. Accordingly we uphold observations of Ld.CIT(A).

**16.3. This ground raised by revenue stands dismissed.**

**17.** In the result, appeal filed by revenue stands dismissed.

Order pronounced in the Open Court on 03/01/2019.

Sd/-

**( B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

Sd/-

**(BEENA A PILLAI)**  
**JUDICIAL MEMBER**

Dt. 03/01/2019

\*Gmv

Copy forwarded to: -

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

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By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches

	Date
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