

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "G", NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.245/Del/2015
Assessment Year: 2010-11

DCIT, Central Circle-20, New Delhi	Vs.	M/s. Span India Pvt. Ltd., 227, Okhla Industrial Estate, Phase-III, New Delhi
PAN :AAACS0079A		
(Appellant)		(Respondent)

And

C.O. No.245/Del/2015
[Arising out of ITA No.245/Del/2015]
Assessment Year: 2010-11

M/s. Span India Pvt. Ltd., 227, Okhla Industrial Estate, Phase-III, New Delhi	Vs.	DCIT, Central Circle-20, New Delhi
PAN :AAACS0079A		
(Appellant)		(Respondent)

Department by	Shri N.K. Bansal, Sr.DR
Assessee by	Shri M.P. Rastogi, Adv. & Shri Deepak Malik, Adv.

Date of hearing	29.01.2019
Date of pronouncement	01.02.2019

ORDER

PER O.P. KANT, A.M.:

The present appeal by the Revenue and cross objection of the assessee are directed against the order dated 19.09.2014

passed by Ld. CIT(A)-XII, New Delhi [in short 'the CIT(A)'] for assessment year 2010-11. The grounds raised in appeal are reproduced as under:

1. *That the order of the Ld. CIT(A) is not correct in law and facts.*
2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in allowing the appeal of the assessee as the working of disallowance u/s 14A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the A.Y. 20010-11 was made by A.O. on the basis of ITAT's order in A.Y. 2006-07.*
3. *On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs.67,81,653/- made by the A.O. on account of disallowance u/s 14A read with Rule 8D.*
4. *The appellant craves leave to add, amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.*

2. Briefly stated facts of the case are that the assessee-company was engaged in the business of manufacturing, trading and export of readymade garments. For the year under consideration, the assessee filed return of income on 15.10.2010, declaring total income of Rs.9,41,49,654/-. The case was selected for scrutiny and notice under Section 143(2) of the Income-tax Act, 1961 [in short 'the Act'] was issued and complied with. During the assessment proceedings, the Assessing Officer observed dividend income of Rs.2,68,65,803/- and after considering the submissions of the assessee, made disallowance under Section 14A read with Rule 8D of the Income-tax Rule, 1962 (for short 'the Rule') of Rs.67,81,653/- after reducing the disallowance of Rs.2,72,248/- made *suo-motu* by the assessee. Aggrieved, the assessee filed an appeal before the Ld. CIT(A) and

submitted that in assessment year 2006-07 also, a similar disallowance made by the AO was reduced by the AO from Rs.43,66,480/- to Rs.1,58,764/- after giving effect to the direction of the Tribunal of working out the disallowance in accordance with the decision of the Hon'ble Punjab & Haryana High Court in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT, 194 Taxman, 203. The Ld. CIT(A) further observed that no dissatisfaction to the accounts of the assessee regarding correctness of the claim of the assessee of expenditure in relation to exempted income was recorded by the Assessing officer. The Ld. CIT(A) relied on the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Deepak Mittal, 361 ITR 131 (P&H), wherein it is held that if the Assessing Officer does not agree with the quantum of disallowance made by the assessee, he must collect the relevant material and evidences to determine the expenditure incurred by the assessee for earning tax income. In view of above, the learned CIT(A) deleted the addition made by the Assessing Officer. Aggrieved, the Revenue is in appeal before the Tribunal, raising the grounds as reproduced above.

3. Before us, the Ld. DR, submitted a list of following decisions of the Hon'ble Courts and Tribunals to support the claim of the Revenue, that disallowance made under Section 14A read with rule 8D of the Rules was made properly by the Assessing Officer:

- 1** ***Indiabulls Financial Services Ltd. Vs DCIT f2016l 76 taxmann.com 268 (Delhi)**, where Hon'ble Delhi High Court held that where Assessing Officer after carrying out elaborate analysis and following steps enacted in statute, had determined amount of expenditure incurred for earning tax exempt income, merely because he did not expressly record his dissatisfaction about assessee's calculation, his conclusion could not be rejected.*

2. **Godrej & Boyce Manufacturing Company Ltd. Vs DCIT [2017] 81 taxmann.com 111 (SC)/[2017] 247 Taxman 361(SC)/[2017] 394 ITR 449 (SC)/[2017] 295 CTR 121 (SC)** where Hon'ble Supreme Court held that where Assessing Officer after carrying out elaborate analysis and following steps enacted in statute, had determined amount of expenditure incurred for earning tax exempt income, merely because he did not expressly record his dissatisfaction about assessee's calculation, his conclusion could not be rejected.
3. **Punjab Tractors Ltd Vs CIT [2017-TIQL-353-HC-P&H-IT]** (Copy Enclosed) where Hon'ble Punjab & Haryana High Court held that AO is bound to apply provisions of Rule 8D where he is not satisfied with the correctness of the claim of assessee in respect of expenditures incurred to earn exempt income.
4. **Avon Cycles Ltd Vs CIT [2015] 53 taxmann.com 297 (Punjab & Haryana)/[2015] 228 Taxman 368 (Punjab & Haryana)(HMAG.)** where Hon'ble Punjab & Haryana High Court held that where funds utilized by assessee was mixed funds and, hence, interest paid on borrowed fund was also relatable to interest on investment made in tax free funds, interest expenditure relatable to investment in tax free funds was to be computed under provisions of Rule 8D(2)(ii).
5. **Nahar Spinning Mills Ltd. Vs CIT f20171 82 taxmann.com 154 (Punjab & Haryana)** where Hon'ble Punjab & Haryana High Court held that disallowance of proportionate administrative expenditure made for earning exempted dividend income computed on reasonable basis would be just (A. Y.2006-07).
6. **Dy. CIT v. Virai Profiles Ltd. 156 ITD 72/ 46 ITR 626/ 177 TTJ 466** where Hon'ble ITAT Mumbai held that disallowance of expenditure - Addition on account of disallowance under S. 14A read with Rule 8D being expenditure in relation to earning of exempt income to book profit under S. 115JB justified .[S. 115JB]
7. **NYK Line India Ltd. v. ACIT T175 TTJ 180 /132 DTR 71** where Hon'ble ITAT Mumbai held that disallowance of expenditure - Exempt income- Disallowance of 5% expenditure on manpower was held to be justified (AY. 2007-08 , 2008-09)
8. **Vipin Malik Vs.ACIT (45 ITR 589)** Where Hon'ble ITAT Delhi held that disallowance of expenditure - Exempt income – No disallowance was made by the assessee- Invoking the provision read with rule 8D(2)(iii) was held to be justified [R.8D] (AY 2009-10).

4. On the contrary, learned counsel for the assessee relied on the finding of the learned CIT(A) on the issue in dispute and submitted that in view of no dissatisfaction as to the correctness of the claim of the assessee, recorded by the Assessing Officer, in view of the decision of the Hon'ble Punjab & Haryana High Court in the case of Deepak Mittal (supra), the Ld. CIT(A) is justified in deleting the disallowance.

5. We have heard the rival submissions of the parties and perused the relevant material on record, including the impugned order. We note that the learned CIT(A) has deleted the addition, mainly on the ground that no dissatisfaction as to the correctness of the claim of the assessee of expenditure incurred in relation to the exempt income, has been recorded either expressly or otherwise. In para 3.3 of the assessment order, the Assessing Officer has noted that the assessee has not incurred any expenditure to earn the dividend income. This finding of the Assessing Officer itself is not correct as while computing the addition in the computation portion of the assessment order, he himself has reduced the disallowance of Rs.2,72,248/- out of disallowance computed on the basis of Rule 8D. Thus, it is evident that the Assessing Officer has not examined the correctness of the claim of the assessee of expenditure incurred in relation to exempt income.

6. In absence of recording of dissatisfaction on the correctness of the claim of the assessee of expenditure in relation to exempt income, which is a prerequisite for invoking the Rule 8D of the Rules, the Assessing Officer is not justified in making the disallowance under Section 14A of the Act, invoking Rule 8D of

the Rules. In view of the above discussion, we do not find any infirmity in the order of the Ld. CIT(A) on the issue-in-dispute and accordingly, we uphold the same. The Grounds of the appeal of the Revenue are dismissed.

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

8. As regards the cross objection filed by the assessee, the assessee's counsel has withdrawn the same. Accordingly, cross objection is dismissed as withdrawn.

9. To sum up, the appeal of the Revenue as well as the cross objection filed by the assessee are dismissed.

Order is pronounced in the open court on 1st February, 2019.

Sd/-
[BHAVNESH SAINI]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 1st February, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi