

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

BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER  
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5773/Del/2013

AY: 2008-09

Pavitra Commercials Ltd. 108, Ansal Bhawan 16, K.G.Marg New Delhi 110 001 PAN: AAACP0299F	vs.	Dy.CIT, C.C. 20 3 <sup>rd</sup> Floor, ARA Centre Jhandewalan Extension New Delhi 110 055
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ITA No. 6687/Del/2013

AY: 2008-09

Dy.CIT, C.C. 20 3 <sup>rd</sup> Floor, ARA Centre Jhandewalan Extension New Delhi 110 055	vs.	Pavitra Commercials Ltd. 108, Ansal Bhawan 16, K.G.Marg New Delhi 110 001 PAN: AAACP0299F
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**(Appellant)**

**(Respondent)**

**Assessee by :** Smt. Prem Lata Bansal, Sr.Adv.

**Department by :** Smt. Naina Soin Kapil, Sr.DR

**Date of Hearing :** 28/01/2019

**Date of Pronouncement:** 18 /02/2019

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

Present cross appeals has been filed by assessee as well as revenue against order dated 01/08/13 passed by Ld.CIT (A)-8, New Delhi, on following grounds of appeal:

ITA No.5773/Del/2013 (assessee's appeal)

The order of the Ld. Commissioner of Income Tax - (Appeals) -XVII, New Delhi is bad in law, wrong on facts and against the principles of natural justice.

2(a). The Ld CIT-(A) has erred in confirming the disallowance of expenditure u/s 14A of the Income Tax Act at Rs 47,48,056/- by applying Rule 8D and concluding that expenditure has been incurred for earning tax free income. Further Ld CIT(A) has totally ignored the disallowance already made by the appellant u/s 14A of the Act in its return of income amounting to Rs 13,07,152/- and direct expenses of Rs 1,73,664/-.

b) The Ld CIT (A) while confirming the disallowance u/s 14A of the Income Tax Act, 1961 at Rs 47,48,056/- has failed to appreciate that the appellant company in the return of income had already disallowed a sum of Rs 13,07,152/- u/s 14A by proportionately dividing the total expenses claimed in the ratio of turnover of exempt income to turnover of total income and direct expenses of Rs 1,73,664/- which is a scientific and logical method for computing disallowance u/s 14A. Therefore the disallowance made by the Ld A.O. and confirmed by Ld CIT (A) is incorrect as per the ratio laid down by the decision of the Hon'ble Delhi High Court in the case of CIT vs. Maxopp Investment Ltd.

c) Without prejudice, The Ld. CIT(A) has failed to appreciate that the appellant company during the year under appeal has claimed total expenses at Rs 27,70,562/- only, in the income tax return, therefore,

*the question of disallowance u/s 14A at Rs 47,48,056/- does not arise at all.*

*d) Without prejudice, The Ld. CIT (A) has erred in confirming the disallowance out of total interest paid, at Rs 12,77,588/- under rule 8D(2)(ii) without appreciating the fact that total interest paid is Rs 21,29,313/- and interest received is Rs 97,79,491/- and thus there is net interest income of Rs 76,50,178/- and interest paid and interest received has direct nexus and therefore no disallowance u/s 14A is required out of interest paid.*

*The appellant craves leave to add, alter amend, modify or forego any of the grounds of appeal before or at the time of hearing.*

ITA No.6687/Del/2013 (revenue's appeal)

- 1. 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 deleting the addition of Rs.2,42,55,548/- on account of sale of investment treated as business income by the AO.*
- 3. 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. Brief facts of the case are as under:**

Assessee filed its return of income on 27/09/08, showing total income of Rs.90,51,460/-. Return was processed under section 143 (1) of the I.T.Act, 1961 (the Act), followed by issuance of notice under section 143 (2), notice under section 142 (1) and along with questionnaire. In response to statutory notices, representative of assessee appeared before Ld.AO and filed requisite details as called for.

**2.1.** Ld.AO observed that, assessee is in business of finance, sale and purchase of shares, agency and agriculture. It was observed that assessee declared profit of Rs.2,42,55,548/-, from sale of investment, short-term capital gain of Rs.9,28,121/-, and long-term capital loss of Rs.1,33,59,720/-. Ld.AO observed that, till financial year 2003-04, assessee held many shares as stock-in-trade and in financial year 2004-05 major part of shares were transferred to investment account. Ld.AO after calling for various details, was of opinion that just because assessee showed shares as investment in its books of accounts, profits on sale of such shares can't be treated as capital gain. He thus assessed profit of Rs.2,42,55,484/- derived from sale of shares as business income.

**2.2.** Another issue observed by Ld.AO was regarding dividend earned by assessee amounting to Rs.2,70,13,464/-.

It was observed that assessee *suo-moto* disallowed a sum of Rs.13,07,152/-, Ld.AO applied Rule 8D, and computed disallowance at Rs.47,48,056/-.

**3.** Aggrieved by additions made by Ld.AO, assessee preferred appeal before Ld.CIT (A), who partly allowed claim of assessee in respect of 14A disallowance computed by Ld.AO, however confirmed profits earned from sale of shares to be computed as business income.

**4.** Aggrieved by order of Ld.CIT (A), assessee as well as revenue are in appeal before us now.

**5. ITA No. 5773/Del/2013**

In appeal filed by assessee all grounds relate to disallowance under section 14 A computed by Ld.AO by applying Rule 8D. Therefore all these grounds are being disposed of hereinafter together.

**6.** Ld.Counsel submitted that assessee in its return had disallowed ₹13,07,152/-, towards indirect expenses and direct expenses of ₹1,73,664/-.

**6.1.** He submitted that out of total investment as on 31/03/2008 amounting to ₹76.91 crores, a sum of ₹9.49 crores was invested in mutual funds and balance sum of ₹67.42 crores was invested in shares. It was submitted by Ld.Counsel that investment made in mutual funds cannot be considered as business income for purposes of disallowance under Rule 8D(iii).

**6.2.** He further submitted that, while making disallowance over and above what has been disallowed by assessee, Ld.AO failed to give reasons for not accepting basis adopted by assessee as per Sub-Class 2 of section 14 A.

**6.3.** On the contrary, Ld.Sr.DR submitted that, assessee received dividend amounting to ₹160.75 lakhs from mutual funds and ₹109.39 lakhs from equity shares, totalling to ₹270.13 lakhs. Thus, it was submitted that, mutual funds cannot be excluded for purposes of computing value of average investment under (iii) of Rule 8D. He placed reliance upon decision of Hon'ble Supreme

Court in case of Maxopp Investments vs. CIT reported in 91.taxman.com 154.

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

7.1. It is observed that year under consideration being Assessment Year 2008-09, there is no dispute that 14A disallowance needs to be computed as per Rule 8D of Income Tax Rules, 1963. Regarding *suo moto* disallowance by assessee, we agree with contention of Ld.Counsel, that Ld.AO did not give reasons, for not accepting the same, under Sub-Class 2 of Section 14 A of the Act.

7.2. Mandate of Section 14 A is to compute disallowance in respect of exempt income. Admittedly assessee earned dividend income amounting to Rs.2.70 crores against which disallowance of ₹1,73,664/- as being computed being direct expenses and ₹13,07,152/- as indirect expenses.

It is observed that total expenses incurred by assessee were ₹40,77,765/-. And since exempt income was 32.06% of total income during the year, assessee attributed 32.06% of such expenses being Rs.13,07,152/- towards indirect expenses. This in our considered opinion has not been calculated having regards to expenses claimed by assessee in P&L account.

7.3. During hearing, Ld.Counsel submitted working of expenses under section 14 A read with rule 8D (ii) as under:

S. No.	Particulars	Amount	Page No. of
1.	Expenses debited in P&L account	5,76,407	8/17
	Personal expenses	21,39,895	8/18
	Financial expenses		
	Other expenses	12,80,833	8/18
	Depreciation as per Companies Act	5,53,944	8
		45,51,069	
2.	Less: Expenses disallowed as per Income	5,53,944	8
	Depreciation as per Companies Act	1,73,664	25
	Demat charges	12,305	25
	Disallowance u/s 40A	257	25
	Disallowance u/s 43B	7,40,170	
3.	Add: Expenses allowed as per Income tax		25
	Issue expenses u/s 35DD	61,279	25/46
	Depreciation as per Income tax Act *		
4.	Total expenses disallowable u/s 14A	<b>38,72,178</b>	
5.	Less: Suo-motu disallowed in tax return	<b>(13,07,152)</b>	25
6.	Balance expenses	<b>25,65,026</b>	

*Depreciation is a non-cash expenditure and is in the nature of charge on the fixed assets utilized for business purposes and has no nexus with investment in shares/ mutual fund (refer Vishnu Anant Mahajan vs ACIT: 137ITD 189 (SB))*

On the basis of above computation total expenses have been computed at Rs.38,72,178/- under Rule 8D(ii).

7.4. He submitted that while computing disallowance under rule 8D (ii) being in indirect expenses, Ld.AO took into consideration interest paid amounting to ₹21,29,313/-, by ignoring that assessee received interest income which was more than interest paid, and net interest income declared by assessee was ₹7,650,178/-. It has been submitted that, there is no nexus between investments made and interest-bearing funds, as investments have been made from funds available with assessee.

7.5. Upon perusal of accounts filed by assessee, we agree with above argument advanced by Ld.Counsel regarding exclusion of interest while computing disallowance under section 14 A and thus direct Ld.AO to exclude interest amounting to ₹21,29,313 from computation of disallowance under section 14 A.

7.6. Coming to 3<sup>rd</sup> limb of Rule 8D being average investment, we direct Ld.AO to consider same as per decision of *Hon'ble Supreme Court* in case of *Maxopp Investments Vs. CIT* reported in (2018) 91 *taxman.com* 154.

Needless to say that disallowance computed by Ld. AO shall not exceed exempt income.

**7.7. Accordingly we allow the grounds raised by assessee for statistical purposes.**

**8. In the result appeal filed by assessee stands allowed for statistical purposes.**

**9. ITA No. 6687/Del/2013 (revenue's appeal)**

Only issue raised by revenue is in respect of sum of Rs.2,42,55,548/- deleted by Ld.CIT(A) on account of sale of investment, which was treated as business income by Ld.AO.

**9.1.** At the outset Ld.Counsel submitted that this issue stands settled with order dated 31/07/2017 by this Tribunal for Assessment years 2005-06 to 2007-08 in ITA No. 3134/Del/2009 and ITA No. 944 and 4066/Del/2010 in assessee's own case. He placed reliance on page 1-20 of paper book. It has been submitted that there is no change in facts during year under consideration vis-a-vis earlier Assessment Years and assessee has been carrying out with investment activity which is supported by Object Clause in Memorandum of Association. Further it has been submitted that no borrowed funds have been utilised for purposes of investment in shares and same has been made out of own funds being share capital and reserves and surplus available with assessee. He emphasised that shares sold during year under consideration were held by assessee as investment from investment portfolio and not from trading portfolio.

**9.2.** Ld.Sr.DR on contrary, placed reliance upon order of Ld.AO.

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

**11.** Profit and Loss account placed in paper book Schedule 6 gives details of investments made by assessee in equity shares

quoted & unquoted, preference shares, warrants, debentures and mutual funds. Page 25 of paper book is a computation of total income wherein assessee is declaring net profits on sale of shares at ₹ 51,427,843/- under the head 'Income from Business'. Ld.CIT(A) has recorded that assessee has shown in audited accounts two portfolios being stock-in-trade and investments, which proves that intention of assessee was to carry out business as well as investment in shares. It has also been observed by Ld. CIT(A) that substantial dividend has been earned from investment portfolio and has been consistently following this practice. It is observed that Ld.CIT(A) by referring to CBDT Circular No. 4/2007 dated 15/06/2007 deleted addition in hands of assessee.

**12.** On perusal of order of preceding assessment year relied upon by Ld.Counsel it is observed that assessee has been carrying out with investment as well as trading in shares with distinct portfolios in preceding assessment years, and this Tribunal upon similar facts allowed claim of long-term capital loss on debentures and short-term capital gain on similar facts on sale of shares under investment portfolios. During year under consideration there is nothing on record brought by revenue to show that the shares sold during the year are from trading portfolios. Further, investment has been made with the intention to earn dividend/for appreciation of value. There being no change in activities for year under consideration vis-a-vis preceding Assessment Years, and respectfully following decision of this Tribunal in assessee's own

case (supra), we do not find any infirmity in view taken by Ld.CIT (A) and same is upheld.

**12.1. Accordingly grounds raised by revenue stands dismissed.**

**13. In the result, appeal filed by assessee stands allowed for statistical purposes and appeal filed by revenue stands dismissed.**

Order pronounced in the Open Court on 18/02/2019.

Sd/-

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Sd/-

**(BEENA A PILLAI)  
JUDICIAL MEMBER**

Dt. 18<sup>th</sup> February, 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

**ITA 5773/Del/2013 A.Y. 2008-09 Pavitra Commercials Ltd. Vs. DCIT**  
**ITA 6687/Del/13 A.Y. 2008-09 DCIT vs. Pavitra Commercial Ltd**

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