

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRIK.NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. Nos.510& 511/Del/2017  
Assessment Years: 2012-13& 2013-14**

**M/s Minda Investments Limited, vs DCIT, Circle 16(2),  
B-64/1, Wazirpur Industrial Area, New Delhi.  
Delhi.**

**PAN: AAACL1433F  
(Appellant)**

**(Respondent)**

**Assessee by: Shri R.K. Kapoor, CA**

**Department by: Ms. Rinku Singh, Sr.DR**

**Date of Hearing: 19.08.2019**

**Date of Pronouncement: 03.09.2019**

**ORDER**

**PER NARASIMHA K. CHARY, JM**

Challenging the orders for the Asstt. Years 2012-13 and 2013-14 both dated 29.11.2016 in Appeal Nos.214/16-17 and 343/16-17 respectively passed by the Commissioner of Income-tax (Appeals)-33, New Delhi, M/s Minda Investments Limited(the assessee) preferred these appeals.

2. Briefly stated facts are that the assessee company is a non-banking financial company which is engaged, inter alia, in the business of leasing, finance and investment. For the Assessment Years 2012-13 and 2013-14, they have filed their returns of income declaring taxable income of

Rs.3,59,80,466/-and Rs.5,85,14,205/-respectively. During the financial years 2011-12 and 2012-13, the assessee earned dividend income of Rs.94,98,250/-and Rs.1,06,51,380/-respectively which is exempt under section 10(34) of the Income Tax Act, 1961 (for short "the Act"), and, therefore, disallowed a sum of Rs.20,70,924/-and Rs.35,65,400/-under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 ("the Rules"). Learned Assessing Officer completed the assessment under section 143(3) of the Act by orders dated 5.3.2015 and 8.3.2016 respectively by making additions of Rs.1,04,21,461/-and Rs.1,16,54,737/-respectively under section 14A of the Act read with Rule 8D of the Rules.

3. Assessee preferred appeal before the Ld. CIT(A) and contended that the learned Assessing Officer had not recorded the satisfaction as to the correctness of the claim of expenditure made by the assessee company and thus making the disallowance of Rs.1,04,21,461/-and Rs.1,16,54,737/-respectively for Assessment Years 2012-13 and 2013-14 respectively is bad under law. It was further contended by the assessee before the Ld. CIT(A) that the Assessing officer had not considered the submissions filed by the assessee in the course of assessment proceedings whereunder it was stated that no disallowance should have been made under section 14A of the Act read with Rule 8D of the Rules computing the income from business or profession. It was further contended that the computation of disallowance made as per rule 8D of the Rules was wrong.

4. Ld. CIT(A), however, by way of impugned orders, upheld the disallowance under section 14A of the Act read with Rule 8D of the Rules but restricted the same to the quantum of dividend received by the assessee and claimed as exempt, i.e., to Rs.94,98,250/-and

Rs.1,06,51,380/- for the Assessment Years 2012-13 and 2013-14 respectively.

5. Aggrieved by the impugned orders, assessee preferred these appeals stating that the restriction of the disallowance under section 14A of the Act read with Rule 8D of the Rules to the extent of dividend income earned by the assessee in a mechanical way is not according to the law laid down by the Hon'ble jurisdictional High Court and also the Hon'ble Apex Court; that the nonrecording of the dissatisfaction as to how the disallowance offered by the assessee was not sufficient goes to the root of the matter and vitiates the entire process of disallowance; and that the authorities below committed error in including the total interest cost in the computation of disallowance under section 14A of the Act read with Rule 8D of the Rules without pointing out as to how such interest cost is attributable to the earning of the exempt income.

6. It is argued by the Ld. AR that in view of several decisions of the Hon'ble jurisdictional High Court, and to name a few, in the cases of UK Paints (India) (P) Ltd (2017) 392 ITR 552 (Delhi), Tariksha Engineering India Ltd (2015) 54 taxmann.com 109 (Delhi), HT Media Ltd vs. PCIT 399 ITR 576-Delhi, India Bulls Financial Services Ltd vs DCIT 395 ITR 242-Delhi etc., the Assessing Officer, in the first instance, must examine the disallowance made by the assessee or the claim of the assessee that only a particular amount was incurred as expenditure to earn the exempt income, and only if the AO is not satisfied on this count after making reference to the accounts, then only he would require jurisdiction to follow the method prescribed under Rule 8D of the Rules. He submitted that, inasmuch as the assessee suo-moto disallowed certain amounts

under 14A of the Act read with Rule 8D of the Rules, without expressing any dissatisfaction as required by law under 14A of the Act read with Rule 8D of the Rules, the learned Assessing Officer cannot assume jurisdiction to apply the formula under Rule 8D of the Rules.

7. Second limb of arguments advanced on behalf of the assessee is that the assessee has got enough own funds in share capital and reserves for making investment in quoted shares to earn exempt income and, therefore, there is no occasion for adding the interest component under Rule 8D (ii) of the Rules.

8. He brought to our notice that the assessee had the surplus funds/interest free funds to the tune of Rs.72.45 crores for the Assessment Year 2012-13 and Rs.76.60 crores for Assessment Year 2013-14 whereas the total amount of opening and closing investments on which the dividend was earned was only Rs.6.71 crores and Rs.8.74 crores respectively for the Assessment Year 2012-13 whereas it was Rs.8.74 crores and 8.74 crores respectively for the Assessment Year 2013-14, which is far less than the interest free funds available with the assessee.

9. Per contra, it is submitted by the Ld. DR that in view of the decision of the Hon'ble jurisdictional High Court in the case of Joint Investments P. Ltd., (2015) 372 ITR 694, the action of the Ld. CIT(A) in restricting the disallowance to the quantum of dividend earned is quite justifiable and according to law. He placed heavy reliance on the orders of the authorities below.

10. We have gone through the record in the light of the submissions made on either side. From the information furnished in the paper book at

page No. 20 in respect of each of these assessment years, we find that the investment as on 31.3.2012 was Rs.8.75 crores and as on 31.3.2011 was Rs.6.76 crores in respect of the Assessment Year 2012-13 whereas it was Rs.8.62 crores as on 31/3/2013 and Rs.8.60 crores as on 31.3.2012 respectively. Further, the balance sheet clearly shows that the assessee had sufficient share capital and the reserve and surplus to the tune of Rs.72.45 crores as on 31.3.2012 and Rs.76.60 crores as on 31.3.2013 respectively. It is, therefore, clear that own funds of the assessee which are interest free are exceeding the investments during the year and they do not require the utilisation of the interest-bearing funds for investment. It is the settled principle of law vide the decision of the Hon'ble Apex Court in the case of Godrej & Boyce manufacturing company limited (2017) 394 ITR 449 (SC) that, in the absence of any proof by way of material that any part of the borrowings of the assessee had been diverted to earn tax free income, despite the availability of surplus or interest free funds available, the disallowance is not permissible. The legal requirement is that the basis has to be disclosed establishing a reasonable nexus between the expenditure disallowed and the dividend income received.

11. In the case of ACB India Ltd (2015) 62 taxmann.com 71 (Delhi), the Hon'ble High Court observed that instead of adopting the average value of investment of which income is not part of the total income, i.e., the value of tax-exempt investment, if the assessing officer chooses to factor in the total investment itself it amounts to error and requires correction by considering the average value of investment of which income is not part of the total income in the place of the total investment itself.

12. A calculation is furnished by the assessee showing that by following the decision of the Hon'ble court in the case of ACB India, the disallowance under rule 8D (III) is Rs.3 86,597/- for the assessment year 2012-13 and Rs.4,30,810/- for the assessment year 2013-14 which is far less than the amount suo moto disallowed by the assessee. It is, therefore, clear that in view of the fact that the interest free funds available with the assessee are far exceeding the investments and there is no evidence to show that despite the fact of such availability, the assessee diverted the interest-bearing funds for investment, computation of disallowance under rule 8D (ii) of the Rules is not permissible. Further, the computation of disallowance under rule 8D (iii) of the Rules is far less than the disallowance made by the assessee. It is, therefore, clear that any disallowance or/and above the suo moto disallowance made by the assessee cannot be sustained.

13. Even otherwise, order of the Assessing Officer does not reveal the dissatisfaction of the Assessing Officer as to the correctness of the amount of expenditure to earn the exempt income, with regard to the accounts maintained by them. Directly the Assessing Officer jumped to the disallowance under section 14A of the Act read with Rule 8D of the Rules and applied the formula given under rule 8D of the rules. In view of the catena decisions on this aspect of both the Hon'ble jurisdictional High Court and the Hon'ble Apex Court, we are of the considered opinion that the disallowance under section 14A of the Act read with Rule 8D of the Rules fails.

14. Viewing from any angle, we are of the considered opinion that, there are no grounds to sustain the addition made by the learned

Assessing Officer or as restricted by the Ld. CIT(A) over and above the suo moto disallowance made by the Assessing Officer, accordingly, we direct the deletion of such addition.

15. In the result, both the appeals of the assessee are, accordingly, allowed.

**Order pronounced in the Open Court on 3<sup>rd</sup> September, 2019.**

**Sd/-**

**sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**(K.NARASIMHACHARY)  
JUDICIAL MEMBER**

Dated: 3<sup>rd</sup> September, 2019.

VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Draft dictated on	19.8.2019
Draft placed before author	21.8.2019
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on	
Date of uploading order on the website	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	