

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.5731/Del/2016  
Assessment Year: 2013-14

M/s. Ajanta Mercantile Ltd., Now Known as QRG Investments and Holdings Ltd., 1/7, Ram Kishore Road, Civil Lines, Delhi	<b>Vs.</b>	DCIT, Circle-2(1), New Delhi
<b>PAN : AAACA1955D</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Ved Prakash Bansal, FCA
Respondent by	Shri Manoj Kumar Mahar, Sr.DR

Date of hearing	06.08.2019
Date of pronouncement	03.09.2019

**ORDER**

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

This appeal by the assessee is directed against order dated 15/09/2016 passed by the Ld. Commissioner of Income-tax (Appeals)-I, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2013-14, raising following grounds:

- 1. That the impugned order of CIT(Appeals)-I, New Delhi, is bad in law and wrong on the facts and in the circumstances of the case and legal position.*
- 2. That on the facts and in the circumstances of the case and the legal position, the learned CIT(Appeals) has erred in*

*confirming of addition on account of disallowance u/s 14A amounting to Rs.1,25,872 whereas;*

- a) there is no nexus between the expenditure incurred and income not forming part of total income.*
- b) the investment has been made out of interest free funds available with the Company.*
- c) the AO did not bring any evidence on record to establish that any expenditure has been incurred for earning exempt income.*

**3.** *That the appellant, craves, leave to add/alter/delete/amend any ground(s) of appeal before or at the time of hearing.*

**2.** Briefly stated facts of the case are that the assessee, a nonbanking finance company, deals in shares, investment and Finance. For the year under consideration, the assessee filed return of income on 07/09/2013, declaring total income of Rs.1,31,02,325/-. The case of the assessee was selected for scrutiny and assessment under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') was completed on 18/12/2015 after making disallowance of Rs.1,25,872/- under section 14A of the Act. Aggrieved, the assessee filed appeal before the Ld. CIT(A) and made detailed submission contesting that investments were made out of the interest free funds. The Ld. CIT(A), however, rejected the contention of the assessee and upheld the disallowance holding that once Rule 8D of the Income-tax Rules, 1962 has been invoked as per the provisions of section 14A of the Act, the action of the Assessing Officer was in accordance with law. Aggrieved, the assessee is before the Tribunal raising the grounds as reproduced above.

**3.** Before us, the Ld. counsel of the assessee reiterated submission filed before the Ld. CIT(A) and submitted that investments have been made out of the interest free funds available with the assessee. The Ld. counsel also submitted that for the purpose of income tax, the assessee has claimed total expenses of Rs.5,70,895/- in the profit and loss account, which mainly pertained to interest on income-tax (Rs.1,53,800/-); bank charges (Rs.867); accountancy charges (Rs.36,000); Post & telegram and telephone (Rs.872); Annual listing fee (Rs.22,472); legal and professional charges (Rs.19,71,477/-out of which Rs.15,95,625/-were added in the computation of income); payment to Auditors (Rs.1,34,832/-); tax (Rs.1059/-which was added in the computation of total income). Accordingly, the Ld. counsel submitted that claim of the assessee of no expenses incurred for earning exempt income was justified and the Ld. CIT(A) is not justified in sustaining the disallowance of Rs.1,25,872/-.

**4.** The Ld. DR, on the other hand, relied of the order of the lower authorities.

**5.** We have heard the rival submission and perused the relevant material on record. We find that the assessee has earned dividend of Rs.8,82,18,884/- from M/s Havells India Ltd and no expenses were disallowed by the assessee in the return of income in terms of section 14A of the Act for earning said dividend income. The Assessing Officer was not satisfied with the claim of the assessee and accordingly invoking rule 8D of Income Tax Rules, 1962, he made disallowance of Rs.1,25,872/-. The Ld. CIT(A) upheld the disallowance observing as under:

*"I have considered the submission of the appellant and observation of the AO made in the assessment order on the issue. It is seen that an amount of Rs.1,25,872/- has been disallowed by the AO being 0.5% of the average investment of the appellant during the year. The AO has held that average investment of the appellant during the year comes to Rs.2,51,74,359/-. AO has also held that the appellant has earned dividend income of Rs.8,82,18,884/- from M/s Havells India Ltd. during the year. Therefore, the provisions of section 14A are applicable. AO has given the finding that appellant company has not disallowed any expenditure relatable to earning exempt income. It is also mentioned by the AO that appellant has incurred indirect expenses to earn dividend income which is exempt from income tax. The AO has given following reasons for disallowance of expenses pertaining to earning exempt income:-*

- I. *The assessee has made long term investment in equity shares. First of all, the assessee must have taken decision to invest in shares for which board resolution in this regard would have been passed. Decision and necessary formalities would be required. For all these activities, the assessee must have used resources entailing some expenditure. Therefore, I am satisfied that the assessee has incurred expenses in earning exempt income which needs to be disallowed U/s 14A r.w.r. 8D.*
- II. *The provision of section 14A(1) are substantive in nature. As per the provision, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of total income under the Act.*
- III. *The provisions of sub section (2) & (3) of Section 14A are procedural in nature which provide for computation of disallowance. These provisions seek to achieve the objectives of substantive provision of contained in sub section (1) of Section 14A.*
- IV. *The various courts have held that the expenses connected with the exempt income have to be disallowed irrespective of the fact that they are direct or indirect, fixed or variable, managerial or financial, in accordance with the provisions of the law. Hon'ble High Court of Mumbai in the case of Godrej and Boyce manufacturing Company Limited vs. DOT and other (234 CTR 1), Concluded that:-*
  - *The provision of sub section (2) and (3) of section 14A; of the Income-tax Act, 1961 are constitutionally valid.*
  - *The provisions of rule 8D of the Income Tax Rules as inserted by the IT. Rules, 2008 are not ultra vires the provisions of section 14A, more particularly sub section (2), and do not offend Art. 14 of the constitution.*
  - *The provisions of rule 8D of the Income Tax Rules which have been notified w.e.f. 24th March, 2008 shall apply w.e.f. AY 2008-09.*

*3.4 In the light of above mentioned facts and discussion, it is held that expenses related to exempt income are to be disallowed U/s 14A in*

accordance with rule 8D of the IT. Rules. The total disallowance U/s 14 in accordance with rule 8D is worked out as under:-

I. Disallowance in accordance to Rule 8D(2)(iii)	
(a) Value of investment as on first day of the previous year	Rs. 9,24,600/-
(b) Value of investment on the last day of the previous year	Rs. <u>4,94,24,171/-</u>
(c) Total of the above	Rs. <u>5,03,48,717/-</u>
(d) Average value of investment	Rs. <u>2,51,74,359/-</u>
(e) One half percent of the average value of investment	Rs. 1,25,872/-

*Considering the facts of the case that appellant has earned dividend income of Rs.8,82,18,884/- during the year and it has debited expenses to the tune of Rs.5,70,895/-in the P&L A/c after making suo-motu disallowances. It is held that the provisions of section 14A r.w.r. 8D are applicable in the case of the appellant and the disallowance made by the AO as per rule 8D(2)(iii) is as per rule and no interferences called for, therefore, the disallowance made by the AO is upheld.”*

**6.** We noticed that the Assessing Officer has not made any disallowance under Rule 8D(2)(ii) of the Income Tax Rules, 1962 for any interest expenses incurred, and thus, the argument of the assessee of incurring investment out of interest free fund are not relevant. Further, the assessee was engaged in dealing in shares and investment, the claim of the assessee that no expenses were incurred for earning the said dividend income is also not justified. The learned Assessing Officer had recorded his dissatisfaction as to the correctness of the claim of the assessee of no expenses incurred for earning exempted income and accordingly, he invoked Rule 8D of Income Tax Rules. In terms of section 14A of the Act, if the Assessing Officer is not satisfied with the correctness of the claim of the assessee, he is bound to follow the manner of computation of disallowance prescribed under Income Tax Rules, 1962. We do not find any error in the action of the Ld. CIT(A) in sustaining the disallowance made by the Assessing

Officer. Accordingly, we uphold the same. The grounds of appeal of the assessee are dismissed.

**7.** In the result, the appeal of the assessee is dismissed.

***Order is pronounced in the open court on 3<sup>rd</sup> September, 2019.***

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

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

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