

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos.683 & 684/Del/2017  
Assessment Years: 2009-10 & 2010-11

Addl. CIT, Special Range-7, New Delhi	<b>Vs.</b>	M/s. Power Grid Corp. of India Ltd., B-9, Qutub Institutional Area, Katwaria Sarai, New Delhi
		<b>PAN :AAACP0252G</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by	Smt. Sulekha Verma, CIT(DR)
Assessee by	Shri S.C. Malhotra, CA

Date of hearing	03.09.2019
Date of pronouncement	06.09.2019

**ORDER**

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

These two appeals by the Revenue are directed against two separate orders, each dated 22.11.2016 passed by the Ld. Commissioner of Income-tax (Appeals)-7, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2009-10 & 2010-11 respectively, in relation to penalty levied by the Assessing Officer for furnishing inaccurate particulars of the income. Since similar issue of penalty is involved in both the appeals, same were heard together and disposed off by way of this consolidated order. For the sake of brevity, the ground of appeal raised in ITA No. 683/Del/2017, is reproduced as under:

*“1. Whether CIT(A) was correct in law in deleting the penalty levied u/s 271(1)(c) of Rs.2,83,74,440/- without going into the merit of the case that, assessee has furnished inaccurate particulars of its income.”*

**2.** Briefly stated facts of the case are that the assessee Company is a Central Transmission utility of Government of India and undertakes transmission of energy through Inter State Transmission Systems. The assessee filed return of income on 22nd September, 2009 declaring Book Profit of Rs.27,38,46,82,141/- under section 115JB of the Income-tax Act, 1961 (in short ‘the Act’). Thereafter, it filed Revised Return of Income on 31st March, 2011 to claim credit of TDS which was not claimed in the original return. The Income-tax assessment has been framed by the Assessing Officer vide order dated 13th December, 2011 under section 143(3) of the Act determining Book Profit at Rs.27,46,81,60,925/-. The Assessing Officer made addition of Rs.8,72,79,000/- under section 14A while passing the assessment order, under normal computation of income as well as in determining Book Profit as against Rs.38,00,216/- added by the assessee both in computation of normal income as well as book profit. The net addition made is of Rs.8,34,78,784/- i.e. after deducting the addition of the assessee. A penalty of Rs.2,83,74,440/- has been imposed under section 271(1) (c) of the Income- tax Act, 1961 vide order dated 30th March, 2015 on Rs.8,34,78,784/- holding that Explanation -1 of the said section is attracted.

**3.** At the outset, the learned counsel of the assessee submitted that the disallowances in respect of which the penalty was levied by the Assessing Officer has been deleted by the Tribunal vide

order dated 06.10.2016 in ITA No. 2397 & 2398/Del/2014 for assessment year 2009-10 & 2010-11 and, thus, he requested that the penalty sustained by the Ld. CIT(A) cannot survive.

**4.** The learned DR also could not controvert the contention of the learned counsel.

**5.** We have heard the rival submissions and perused the relevant material on record. The Assessing Officer levied penalty of Rs.2,83,74,440/- under Section 271(1)(c) for furnishing inaccurate particulars of income. The Assessing Officer held that the Explanation –I to section 271(1)(c) of the Act is attracted. The Tribunal vide order dated 06.10.2016 in ITA No. 2397 & 2398/Del/2014 for assessment year 2009-10 & 2010-11 respectively deleted the quantum addition observing as under:

*“6.3 We have heard the rival submission and perused the material on record. We find that the issue in question has been adjudicated in the assessee’s own case in ITA No. 5577/Del/2011 (supra), where in the addition made by the Assessing Officer on account of alleged expenses incurred in earning exempt income under Section 14A of the Act was directed to be deleted. The relevant findings of the Tribunal are as under:*

*“10. We have considered the submission of the learned Authorized Representative as well as learned Departmental Representative. We have also perused the assessment order and the order passed by the learned CIT(A). The issue as rightly pointed out by both the parties is disallowance under section 14A. It is an admitted position by both that no disallowance has been made on account of interest as owned funds of the assessee company are much more than the amount invested in the tax free - investments. The dispute is limited to disallowance of the administrative expenses. The assessee has computed a disallowance of Rs.20,81,729/-. This disallowance has been computed on the basis of the salary of the 2 employees and other office and maintenance expenses allocated to the Bonds Section. As against this, the AO has invoked provisions of Rule 8D and in terms of clause 8(2)(iii) has - computed 0.5% of the average investments, an amount of Rs.9,74,22,250/- and after giving credit of the amount disallowance by the assessee Rs.20,81,729/- further made a disallowance of Rs.9,53,90,521/-.*

10.1 Now the issue is as to whether the AO was justified in invoking the provisions of Rule 8D. On going through the facts of the case we note that the assessee has computed an amount of Rs.20,81,729/-. This figure has also been certified by the tax auditor in its tax audit report which reads as under:-

*"In our opinion and in accordance to the information and explanation given to us direct and indirect expenses of Rs. 20,81,729/- has been incurred in relation to income being exempted u/s and 10(34) of the Income Tax Act, 1961 (i.e. interest on tax free Securitized Bond/Loan and Dividend)."*

10.2 The AO has rejected the same on the ground that there would have been certain expenditure towards administrative establishment for proper accounting of these investments and income there on. There cannot be any quarrel with this proposition but the moot question is whether the amount computed by the assessee is not sufficient enough and if so the reasons for insufficiency. On going through the assessment order we note that the AO has simply made a general remark that the assessee is required to incur certain expenses to supervise and account these income and it is not acceptable that investment has been made and no expenditure- could be attributable. It is not a case of no expenditure. From the facts it is clear that the assessee has itself added back a sum of Rs.20,81,729/-. In case the AO was not satisfied with this amount then he is required to demonstrate that why this expenditure is insufficient. From the assessment order and from the order passed by the CIT(A), we note that there is .no^whisper whatsoever about the insufficiency of such expenditure. The AO has nowhere even commended upon the activities in relation to investments and the income from such investments which would have required expenditure and such expenditure would have been much more than the expenditure disallowed by the assessee voluntarily.

*From the order of the CIT(A) also we observe that the CIT(A) having posed the question whether disallowance made by the appellant in its computation statement is to be accepted or 14A disallowance is to be made as per Rule 8D(2)(iii) has not given any justification regarding the insufficiency of the expenditure suo-motto added back by the assessee. The CIT(A) simply has observed that the appellant was not able to satisfactorily explain that they have correctly disallowed the expenditure in relation to the income. The CIT(A) has not referred to any facts of the case nor accounts of the assessee so as to reach its satisfaction that the expenditure has not been correctly disallowed by the assessee itself.*

*On going through the facts of the assessee's case we note that assessee has received tax free interest in respect of the investments in bonds. It is an admitted fact that these bonds were issued way back in the year 2001 on conversion of the debts by the Government of India. The assessee company thereafter has been receiving interest on these bonds. These bonds' are getting also matured and a part of the redemption amount is being received. Thus during the*

*year only activity relating to bonds is receipt of the interest and the redemption amount.*

*As regards dividend income though the assessee has received dividend of Rs.5.39 Crores but this dividend amount has been received from two companies, namely Powerlink Transmission Ltd. Rs.4.19Crores and Rs.1.20 Crores from PTC India Ltd. From the annual accounts of the assessee company we note that there is no change in the investments in these two companies during the year, investments in the Powerlink Transmission Ltd. in the preceding year were Rs.229.32 Crores which continued at Rs.229.32 Crores during the year. Similarly in PTC India Ltd. the investment in the preceding year was Rs.12 Crores which continued at Rs.12 Crores during the year under consideration. The dividend received from these two companies has been credited to the bank account.*

*Thus the exempt income received by the assessee company during the year is by way of tax free interest on the bonds and dividend from these two companies. As regards the investments we note from the Annual accounts that there is a small addition by way of further contribution to existing trade investments. It is not a case where there are regular activities in respect of investments or income which is tax free. Assessee Company is not engaged in investment activity by way of frequent purchase and sale of such investments. Can on the basis of these activities it be said, that the expenditure of Rs.20,81,729/- added back by the assessee company is insufficient. The AO and the CIT(A) has not brought any material to even demonstrate that this expenditure is insufficient. The learned DR also during the course of his argument could not point out or give any reason why this expenditure of Rs.20,81,729/- is insufficient considering the above facts of the assessee's case. It may also be relevant to refer to the past history of the assessee's case whereby following disallowances were made in the preceding assessment years by the AO:-*

<i>AY.</i>	<i>Expenses disallowed by AO</i>	<i>CiT(A)</i>	<i>ITAT order</i>
<i>2002-03</i>	<i>2,00,00,000/-</i>	<i>Deleted by CIT(A)</i>	<i>Deletion confirmed by ITAT</i>
<i>2003-04</i>	<i>2,31,57,500/-</i>	<i>Deleted by CIT(A)</i>	<i>Deletion confirmed by ITAT</i>
<i>2004-05</i>	<i>2,83,00,000/-</i>	<i>Deleted by CIT(A)</i>	<i>Deletion confirmed by ITAT</i>
<i>2005-06</i>	<i>2,58,00,000/-</i>	<i>Deleted by CIT(A)</i>	<i>Appeal of revenue was dismissed</i>

2006-07	9,00,00,000/-	Deleted by CIT(A)	Deletion confirmed by ITAT
2007-08	9,67,49,250/-	Deleted by CIT(A)	Deletion confirmed by ITAT

*The disallowances made in each of the above years were deleted by the CIT(A) and such deletion were upheld by the ITAT as well. The addition made by the AO in the assessment year 2007-08 was Rs.9,67,49,250/- which is almost similar to the addition made in the year under consideration. We also note from the annual accounts that the facts of this year are not much different than that of earlier years.*

10.3 *Though the learned DR is correct in its contention that Rule 8D was not applicable in A.Y. 2007-08 but that does not mean that simply Rule 8D is applicable for the year under consideration, the disallowance can be made by applying Rule 8D. The learned DR could not point out how the facts of this year are different than of earlier years where addition made on this account have been deleted. As rightly contended by the learned AR, Rule 8D is not automatic. The AO has to give a cogent reason taking into account the accounts of the assessee for rejecting the explanation of the assessee and thereafter only he can apply Rule 8D. In the present case, from the facts stated hereinabove, it is quite clear that firstly the AO has not given any reason nor he has considered the accounts of the assessee for recording its satisfaction and secondly the AO has not been able to point out the insufficiency in the disallowance computed by the assessee. The assessee having computed the disallowance, it was incumbent on the AO to bring material to discredit the computation done by the assessee so as to demonstrate that the administrative expenses incurred for earning the exempt income are far more than the amount computed by the assessee. It is a settled position of law that for invoking Rule 8D the AO has to give cogent reasons. It is not by simply stating that he is not satisfied by the explanation given by the assessee that the AO can invoke Rule 8D.*

10.4 *The Hon'ble jurisdictional Delhi High Court had occasion to consider this issue in the case of CIT vs. Taikisha Engineering India Ltd. (2015) 370 ITR 338 (Del) and has held that under section 14A(2), the AO is required to examine the accounts of the assessee and only when he is not satisfied with the correctness of the claim of the assessee, the AO can determine the amount of expenditure which should be disallowed in accordance with Rule 8D. The AO itself at the first instance must examine the disallowance made by the assessee or the claim of the assessee that no expenditure was incurred to earn the exempt income. If the AO is not satisfied on this count after making reference to the accounts the AO is entitled to adopt and apply Rule 8D. Thus the requirement of the law is that the AO is required to examine the accounts of the assessee and if he not satisfied after making reference to the account only then he could*

make disallowance applying Rule 8D. The relevant observation of the Court is as under:-

*"Section 14A of the Act postulates and states that no deduction shall be allowed in respect of expenditure incurred by an assessee in relation to income which does not form part of the total income under the Act. Under sub Section (2) to Section 14A of the Act, the Assessing Officer is required to examine the accounts of the assessee and only when he is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to exempt income, the Assessing Officer can determine the amount of expenditure which should be disallowed in accordance with such method as prescribed, i.e. Rule 8D of the Rules (quoted and elucidated below). Therefore, the Assessing Officer at the first instance must examine the disallowance made by the assessee or the claim of the assessee that no expenditure was incurred to earn the exempt income. If and only if the Assessing Officer is not satisfied on this count after making reference to the accounts, that he is entitled to adopt the method as prescribed i.e. Rule 8D of the Rules. Thus, Rule 8D is not attracted and applicable to all assessee who have exempt income and it is not compulsory and necessary that an assessee must voluntarily compute disallowance as per Rule 8D of the Rules. Where the disallowance or "nil" disallowance made by the assessee is found to be unsatisfactory on examination of accounts, the assessing officer is entitled and authorized to compute the deduction under Rule 8D of the Rules."*

*In the case of Kalyani Steel Ltd. vs. ACIT, ITA No. 1733/PN/2012, dt. 30.01.2014 a similar issue has come up whereby the ITAT, Pune Bench has held as under-*

*"10. In the aforesaid background, now, we may examine the facts of the present case. In this case, assessee has earned by way of dividends a sum of Rs. 5,45,58,685/-, which is exempt u/s 10(38) of the Act and thus the same does not form part of the total income under the Act. In the computation of income, assessee having regard to section 14A of the Act, determined the amount of expenditure incurred in relation to such income at Rs.5,00,000/-. The Assessing Officer has not found it acceptable and has instead determined the amount of expenditure in relation to such income by applying rule 8D of the Rules. Ostensibly, the action of the Assessing Officer cannot be upheld unless he has complied with the pre-requisite of invoking rule 8D of the Rules, namely, recording of an objective satisfaction with regard to the claim of the assessee that an expenditure of Rs. 5,00,000/- has been incurred in relation to the exempt income, is incorrect. In order to examine the aforesaid compliance with the pre-condition, we have perused the para 4 to 4.2 of the assessment order and find that no reasons have been advanced as to why the disallowance determined by the assessee was found to be incorrect, having regard to the accounts of the assessee. The only point made by the Assessing Officer is to the effect that "the said disallowance was not acceptable". In-fact, we find that the*

*assessee made detailed submissions to the Assessing Officer, which have been reproduced by the CIT(A) in para 3.2.1 of his order. As per the assessee, the determination of disallowance u/s 14A of the Act of Rs.5,00,000/- was based on the employee costs and other costs involved in carrying out this activity. Further assessee also explained that the shares which have yielded exempt income were acquired long back out of own funds and no borrowings were utilized. The mutual fund investments were claimed to be also made out of surplus funds. It was specifically claimed that no fresh investments have been made during the year under consideration in shares. yie exempt income. All the aforesaid points raised by the assessee have not been addressed by the Assessing Officer and the same have been brushed aside by making a bland statement that the disallowance is "not acceptable". Therefore, in our view, in the present case, the Assessing Officer has not recorded any objective satisfaction in regard to the correctness of the claim of the assessee, which is mandatorily required in terms of section 14A(2) of the Act and therefore his action of invoking rule 8D of the Rules to compute the impugned disallowance is untenable. Accordingly, the orders of the authorities below are set-aside on this aspect and, the Assessing Officer is directed to retain the disallowance u/s 14A of the Act to the extent of Rs. 5,00,000/-,as returned by the assessee."*

*The Coordinate Delhi Bench of the ITAT had also occasion to consider this issue in the case of M/s Minda Capital Ltd. vs DCIT, ITA No. 568/Del/2013 dated 25.03.2015 and has held as under: -*

*"In the present case also, the A.O. vide questionnaire dated 22.10.2010 had asked the assessee to explain as to why disallowance in accordance with the provisions of Section 14A should not be made and thereafter holding that reply of the assessee was not satisfactory he proceeded to disallow the amount as calculated as per provisions of Rule 8D. The A.O. did not record as to how the explanation submitted by assessee was not satisfactory. The A.O. should have examined the claim of assessee and then he should have recorded his satisfaction as to why the reply of assessee was unsatisfactory. Therefore, respectfully following the order of Hon'ble High Court in the se of Taikisha Engineering India Ltd. (supra), we delete the disallowance confirmed by Ld. CIT(A)."*

*10.5 The Bangalore Bench of the ITAT in the case of Chaitanya Properties Pvt. Ltd. vs. JCIT (OSD) ITA No. 52/Bang/2013, S.P. NO. 148/Bang/2014, ITA No. 125/Bang/2013 dated 27.03.2015 had occasion to consider a similar issue with reference to judgment of the jurisdictional Delhi High Court in the case of Maxopp Investments Ltd. vs. CIT [2011 (11) TMI 267 - Delhi High Court] and has held as under:-*

*"The Hon'ble Delhi High Court in the case of Maxopp Investments Ltd. V. CIT [2011 (11) TMI 267 - Delhi High Court] has held that by virtue of the provisions of sub-section (2) and (3) of Section 14A of*

the Act, if the Assessing Officer is not satisfied by the correctness of the claim of the assessee in respect of such expenditure or no expenditure, as the case may be, cannot embark upon the determination of the amount of expenditure in accordance with Rule 8D. While rejecting the claim of the assessee, the Assessing Officer has to render cogent reasons for the same. In a case where the assessee states that no expenditure has been incurred by it to earn exempt income, the Assessing Officer has to verify the correctness of the assessee's claim having regard to the accounts of the assessee. In the case on hand, we find that the Assessing Officer has not given any cogent reason in the order of assessment for disbelieving the contention of the assessee that it has incurred no expenditure to earn the exempt income of Rs.18,400 but has proceeded to apply the provisions of Rule 8D to arrive at the disallowance of Rs.1,93,730 as the expenditure deemed to be incurred for earning exempt income.

Further as contented by the learned Authorized Representative, the judicial pronouncements relied on by the assessee i.e. J.M. Financial Ltd (2014 (4) TMI 752 - ITAT MUMBAI), apply to the factual matrix of the case on hand and in this view of the matter, it cannot be said that the assessee was incurring expenditure to maintain and / or monitor its long term investments of Rs.3,87,00,000 in its sister / associate concern M/s. Trichy Steel Rolling Mills P. Ltd. and Rs.46,000 invested in the shares of Andhra Bank. Thus we delete the disallowance of Rs.1,93,730 made by the Assessing Officer under Section 14A r.w. Rule 8D."

10.6 In view of the above facts and the position of the law we are of the view that the disallowance made by the AO and as confirmed by the CIT(A) by invoking the provisions of Rule 8D is not sustainable and accordingly the addition made by the AO on this account is directed to be deleted. Ground No.2 is allowed."

6.4 Further, the aforesaid finding of the Tribunal has also been upheld by the Hon'ble Jurisdictional High Court in the assessee's own case in ITA No. 218/2016 (supra). The relevant part of the order of Hon'ble High Court is reproduced as under:

"4. Having perused the impugned order of the ITAT the Court notes that a thorough analysis of the factual situation has been made by the ITAT. It is in particular noted as under:

"As regards dividend income though the assessee has received dividend of Rs.5.39 Crores but this dividend amount has been received from two companies, namely Powerlink Transmission Ltd. Rs.4.19Crores and Rs.1.20 Crores from PTC India Ltd. From the annual accounts of the assessee company we note that there is no change in the investments in these two companies during the year. Investments in the Powerlink Transmission Ltd. in the preceding year were Rs.229.32 Crores which continued at Rs.229.32 Crores during the year. Similarly in PTC India Ltd. the investment in the preceding year was RS.12 Crores which continued at RS.12 Crores during the

year under consideration. The dividend received from these two companies has been credited to the bank account.”

5. Considering that it is not case where regular activities were undertaken by the Assessee in respect of the investments to earn income therefrom, there was no basis for the AO to hold that the expenditure as disclosed by the Assessee towards earning exempt income was insufficient. The Court finds no legal infirmity in the impugned order of the ITAT. No substantial question of law arises for consideration.

6. Accordingly, the appeal is dismissed.”

6.5 Hence, respectfully following the above findings of ITAT and the Hon'ble Jurisdictional High Court in the assessee's case (supra), we allow ground no. 2 of appeal of the assessee.

7. Ground no. 3 is regarding the addition made by the Assessing Officer while computing book profit under Section 115JB of the Act.

7.1 Learned Authorized Representative submitted that this issue has also been adjudicated by ITAT and confirmed by the Hon'ble Jurisdictional High Court.

7.2 On the other hand, the learned CIT(DR) placed reliance on the orders of the lower authorities.

7.3 We have heard both the parties and perused the material on record. We find that the issue in question has been decided by ITAT in ITA No. 5577/Del/2011(supra) which was later confirmed by the Hon'ble Jurisdictional High Court. The relevant findings of the Tribunal are as under:

“11. Ground no. 3 and 4 are regarding addition of Rs.9,74,22,250/- made by the AO while computing book profit under section 115JB of the Income Tax Act. In view of our decision regarding ground no.2 whereby we have upheld the disallowance under section 14A of Rs.20,81,729/- made by the assessee as against Rs.9,74,22,250/- computed by the AO by invoking Rule 8D these grounds become consequential in nature. The AO is directed to restrict the disallowance while computing book profit under section 115JB to Rs 20,81,729/- as computed by the assessee. These grounds of appeal are accordingly disposed of.”

7.5 Thus, respectfully following the above findings of the Tribunal in ITA No. 5577/Del/2011(supra), we allow this ground of appeal. “

**5.** We find that the Tribunal has already deleted the addition in relation to which the penalty u/s 271(1)(c) of the Act was levied.

In view of the above facts and circumstances, when the quantum addition has already been deleted, the penalty levied by the Assessing Officer and sustained by the Ld. CIT(A), cannot survive. Accordingly, we cancel the same. The grounds of the appeal for both assessment years 2009-10 and 2010-11 are accordingly dismissed.

- 6.** In the result, both the appeals of the Revenue are dismissed  
***Order is pronounced in the open court on 6<sup>th</sup> September, 2019.***

Sd/-  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

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

Dated: 6<sup>th</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