

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
and  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.3797/Del./2015  
(ASSESSMENT YEAR : 2010-12)**

M/s. ACE Insurance Brokers Pvt. Ltd., vs. ACIT, Circle 1,  
B – 17, Ashadeep Building, New Delhi.  
9, Hailey Road,  
New Delhi – 110 001.

**(PAN : AADCA9488L)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri D.C. Aggarwal, Advocate  
REVENUE BY : Ms. Naina Soin Kapil, Senior DR

Date of Hearing : 21.08.2019

Date of Order : 11.09.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, M/s. ACE Insurance Brokers Pvt. Ltd. (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 18.03.2015 passed by the Commissioner of Income - tax ( Appeals ) - I, New Delhi qua the assessment year 2010-11 on the grounds inter alia that :-

*“1. The impugned order passed by the Learned Commissioner (Appeals) to the extent it confirms disallowance of Rs.2,18,970.00 under section 14A is bad in law on facts and has been passed in a mechanical order on the basis of conjectures and surmises.*

*2. The learned Commissioner (appeals) has erred in disallowing expenses under section 14A without appreciating that the learned A.O had applied rule 8D for purpose of disallowance u/s 14A without arriving at satisfaction or complying with mandatory requirement of section 14A(2) of rule 8D (1).”*

2. Briefly stated the facts necessary for adjudication of the issue at hand are : During the year under assessment, assessee company has shown dividend income of Rs.1,91,750/- from shares and claimed the same as exempt income under section 10 of the Income-tax Act, 1961 (for short ‘the Act’). Assessing Officer (AO) by invoking the provisions contained u/s 14A read with Rule 8D proceeded to make disallowance to the tune of Rs.2,18,970/- on the ground that the expenses connected with exempt income have to be disallowed and computed the same as under:-

**“Calculation of disallowance under Rule 8D**

- i. The amount of expenditure incurred during the year directly relating to exempt income - Nil*
- ii. The interest on borrowings made for investment in mutual funds - NIL*
- iii. 0.5% of average value of investment income from which does not form part of total income on the first & last day' of the previous year- Applicable*

*Accordingly, the disallowance upto 0.5% of the average of the value of investments u/s 14A read with Rule 8D is calculated as under:*

<i>Opening Investment (a)</i>	<i>:</i>	<i>Rs.2,77,89,926/-</i>
<i>Closing Investment (b)</i>	<i>:</i>	<i>Rs.5,97,98,313/-</i>
<i>Average Investment</i>	<i>:</i>	<i>Rs.4,37,94,119/- ((a)+(b))/2</i>
<i>0.5% of Average Investment</i>	<i>:</i>	<i>Rs.2,18,970/- (0.5% of Rs. 4,37,94,119/-)</i>

*Accordingly, an amount of Rs.2,18,970/- is hereby disallowed in view of the provision of section 14A of the IT Act, 1961 and is added back to the income of the assessee.  
(Addition of Rs.2,18,970/-)”*

3. Assessee carried the matter by way of an appeal before the ld. CIT (A) who has confirmed the addition by partly allowing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, assessee has earned dividend income to the tune of Rs.1,91,750/- during the year under assessment and claimed the same as exempt income u/s 10 of the Act. It is also not in dispute that the assessee has filed categorical reply before AO as well as ld. CIT (A) to the show-cause notice that the company had not incurred any expenditure for earning the dividend income.

6. When we examine the aforesaid undisputed facts and circumstances of the case in the light of the settled principle of law that without recording his dissatisfaction as to the working out made by the assessee that no expenses have been incurred, provisions contained u/s 14A read with Rule 8D are not attracted. In the instant case, the AO has merely recorded the general principle that the assessee has himself taken

the decision to invest in shares for which Board Resolution in this regard has been passed and necessary formalities are required to be performed and for all these activities, assessee must have used some experts entailing some expenditure. However, a word has not been minced by the AO that the evidence brought on record by the assessee wherein it is mentioned that no expenditure has been incurred to earn the exempt income is incorrect in his satisfaction rather mechanically proceeded to invoke the provisions contained under Rule 8D of the Act.

7. Hon'ble Delhi High Court in the case of ***Maxopp Investment Ltd. vs. CIT – (2012) 347 ITR 272 (Del.)*** while deciding the identical issue has held as under :-

*“Section 14A even prior to the introduction of sub-sections (2) and (3) would require the Assessing Officer to first reject the claim of the assessee with regard to the extent of such expenditure and such rejection must be for disclosed cogent reasons. It is then that the question of determination of such expenditure by the Assessing Officer would arise. The requirement of adopting a specific method of determining such expenditure has been introduced by virtue of sub-section (2) of section 14A . Prior to that, the assessee was free to adopt any reasonable and acceptable method. So, even for the pre-rule 80 period, whenever the issue of section 14A arises before an Assessing Officer, he has, first of all, to ascertain the correctness of the claim of the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income under the Act. Even where the assessee claims that no expenditure has been incurred in' relation to income which does not form part of the total income, the Assessing Officer will have to verify the correctness of such claim. In case, the Assessing Officer is satisfied with the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, the Assessing Officer is to accept the claim of the assessee in so far as the quantum of disallowance under section 14A is concerned. In such eventuality, the Assessing Officer cannot embark upon a determination of the amount of expenditure for the purposes of section 14A(1). In case, the Assessing*

*Officer is not, on the basis of the objective criteria and after giving the assessee a reasonable opportunity, satisfied with the correctness of the claim of the assessee, he shall have to reject the claim and state the reasons for doing so. Having done so, the Assessing Officer will have to determine the amount of expenditure incurred in relation to income which does not form part of the total income under the Act. He is required to do so on the basis of a reasonable and acceptable method of apportionment.”*

8. Moreover, before Id. CIT (A), the assessee has come up with specific plea that it has not paid any sitting fee to the Board Members so as to decide and making investment in shares but this contention of the assessee has also not been taken into account by the Id. CIT (A). So, when the AO has failed to prove on record material to show that such and such expenditure has been incurred by the assessee to earn exempt income, disallowance u/s 14A read with Rule 8D is not permissible.

9. Hon’ble High Court of Punjab & Haryana in case of *CIT vs. Hero Cycles Ltd. - 323 ITR 518* held that disallowance u/s 14A is not permissible where there is no nexus between expenditure incurred and income generated by returning following findings :-

*“Held, dismissing the appeal, that the expenditure on interest was set off against the income from interest and the investment in the shares and funds were out of the dividend proceeds. In view of this finding of fact, disallowance under section 14A was not sustainable. Whether, in a given situation, any expenditure was incurred which was to be disallowed, was a question of fact. The contention of the Revenue that directly or indirectly some expenditure was always incurred which must be disallowed under section 14A and the impact of expenditure so incurred could not be allowed to be set off against the business income which may nullify the mandate of section 14A, could not be*

*accepted. Disallowance under section 14A required finding of incurring of expenditure and where it was found that for earning exempted income no expenditure had been incurred, disallowance under section 14A could not stand. Consequently, the disallowance was not permissible.”*

10. In view of what has been discussed above, we are of the considered view that the Id. CIT (A) has erred in confirming the disallowance made by the AO u/s 14A read with Rule 8D, hence disallowance made by the AO and confirmed by the Id. CIT (A) is ordered to be deleted. Consequently, appeal filed by the assessee is hereby allowed.

**Order pronounced in open court on this 11<sup>th</sup> day of September, 2019.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 11<sup>th</sup> day of September, 2019  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-I, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**