

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

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.339/Del/2017
Assessment Year: 2012-13

M/s. DLF Projects Ltd.(formerly known as DT Project Ltd.), 3 rd Floor, Shopping Mall, Arjun Marg, DLF City, Phase-1, Gurgaon.	Vs.	DCIT, Circle-1(1), Gurgaon
PAN :AACCD3093R		
(Appellant)		(Respondent)

Appellant by	Shri R.S. Singhvi, CA
Respondent by	Ms. Ashima Neb, Sr.DR

Date of hearing	17.10.2019
Date of pronouncement	31.10.2019

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 08/11/2016 passed by the learned Commissioner of Income-tax (Appeals)-1, Gurgaon [in short 'the Ld. CIT(A)'] for assessment year 2012-13 raising following grounds:

- 1. In law and in the facts and circumstances of the Appellant's case, the learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance to the extent of Rs.6,56,264/- u/s 14A read with rule 8D(2)(iii) of*

the Income Tax Act, 1961, disregarding the factual position supported by judicial decisions, submitted by the appellant during the course of appellate proceedings. Accordingly, the impugned addition needs to be deleted.

2. *That the appellant craves, leave to add, alter, amend, forgo, substitute, any or all the ground(s) of appeal before or at the time of hearing.”*

2. Briefly stated facts of the case are that the assessee filed return of income on 29/09/2012 declaring loss of ₹ 53,58,69,434/-. The case was selected for the scrutiny and the scrutiny assessment was completed on 27/03/2015 under section 143(3) of the Income-tax Act, 1961 (in short ‘the Act’) after making certain addition/disallowances. The assessee preferred appeal before the learned CIT(A), who partly allowed the appeal of the assessee. Aggrieved, the assessee is in appeal before the Tribunal raising the sole ground of the appeal, challenging the disallowance under section 14A read with rule 8D(2)(iii) of the Income-tax Rules, 1962 (in short ‘the Rules’).

3. Before us, the Ld. counsel of the assessee submitted that while upholding the disallowance under rule 8D(2)(iii) of Rules, the lower authorities have not considered that there was no opening or closing stock of the value of the exempted investment and thus the average value of the investment for the purpose of rule 8D(2)(iii) of the Rules, being nil, no disallowance was warranted. In support of the contention, the Ld. counsel relied on the decision of the Hon’ble High Court of Delhi in the case of ACB India Ltd Vs ACIT reported in (2015) 62 taxmann.com 71 (Delhi).

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

5. We have heard the rival submissions and perused the relevant material on record. The only dispute is regarding amount of disallowance computed under rule 8D(2)(iii) of the Rules. The contention of the assessee that average value of the exempted investment for the purpose of the rule 8D(2)(iii) of the Rules is nil as there was no opening and closing stock of such exempted investment in the case of the assessee. According to the assessee, in view of the decision in the case of ACB India Ltd (supra), no disallowance under rule 8D(2)(iii) of the Rules is warranted. The finding of the Hon'ble Delhi High Court in the case of ACB India Ltd (supra) is reproduce as under:

“8. The Assessing Officer, instead of adopting the average value of investment of which income is not part of total income, i.e., the value of tax exempt investment, chose to factor in the total investment itself. Even though the Commissioner of Income Tax (Appeals) notices the exact value of the investment which yielded taxable income he did not correct the error but chose to apply his own equity. Given the record that had to be done so to substitute to figure of Rs.38,61,09,287/- with the figure of Rs.3,53,26,800/- and, thereafter, arrive at the exact disallowance of .05 per cent.”

6. As far as the above decision of the Hon'ble Delhi High Court is concerned, that being a binding precedent, Income-tax authorities in the jurisdiction of the Hon'ble Delhi High Court are bound to follow. But in the case of the assessee, the contention of the assessee that, the average value of the investment, income from which shall not form part of the total income is nil, need verification by the Assessing Officer, in absence of any such information filed before us. In view of the above, we feel it appropriate to restore the matter to the Assessing Officer with the direction to compute the disallowance under rule 8D(2)(iii) of the Rules in accordance with law after verification of the opening and

closing value of the investment (income from which does not/shall not form part of the total income) as appearing in the balance sheet of the assessee on the first day and on the last day of the previous year. The ground of the appeal of the assessee is accordingly allowed for statistical purposes.

7. In result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 31st October, 2019.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 31st October, 2019.

RK/-(D.T.D.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi