

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 6077/Del/2014  
Asstt. Year: 2007-08

M/s. PepsiCo India Holding Private Ltd. Global Business Park, Tower A, 4 <sup>th</sup> Floor, MG Road Gurgaon 122002 PAN AAACP1272G	Vs.	ACIT Circle-14(1), New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri K.N. Mehta, Advocate
Department by :	Shri Surender Pal, Sr. DR
Date of Hearing	17/09/2019
Date of pronouncement	12/12/2019

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal is preferred by the assessee against order dated 22.7.2014 passed by the Ld. Commissioner of Income Tax (Appeals) – XVII, New Delhi {CIT (A)} and pertains to assessment year 2007-08. The sole issue under consideration is the quantum of disallowance u/s 14A of the Income Tax Act, 1961 (hereinafter

called 'the Act') as the Ld. AR has submitted before the bench that ground Nos. 6 and 7 pertaining to *ad hoc* disallowance of Rs. 66,00,000/- on account of upfront fees are not being pressed.

2. Brief facts of the case are that the assessee company is engaged in the business of production and sale of aerated and non-aerated soft drink beverages, snack food products and export of traded and manufactured goods. During the year under consideration the return of income was filed declaring an income of NIL. The case was selected for scrutiny and the assessment was completed at NIL income after giving set off of brought forward losses from assessment year 2006-07. The book loss u/s 115JB of the Act was computed at Rs. 255,594,191/-. Amongst the various disallowances and additions made, the AO also made a disallowance of Rs. 68,409,311/- under the provisions of section 14A of the Act. This disallowance was upheld by the Ld. CIT (A) and the assessee is now before the Tribunal agitating and challenging this disallowance.

3. At the outset, the Ld. AR submitted that the dividend income during the year was only Rs. 42,701/- on investment of Rs. 361,000/- which was claimed as exempt u/s 10(34) of the

Act. It was also submitted that this dividend had been earned on investment originally acquired by M/s. Gujarat Bottling Company Private Limited in financial year 1995 and subsequently in December 2002 Gujarat Bottling Company Private Limited was amalgamated with Aradhana Beverages and Foods Company Private Limited. It was further submitted that subsequently in 2004, Aradhana Beverages and Foods Company Private Limited got amalgamated with the present assessee. It was thus submitted that no expenditure was incurred for earning this dividend income. It was also submitted that the year under appeal is assessment year 2007-08 when Rule 8 D of the Income Tax Act Rules, 1962 was not in operation. Ld. AR also submitted that on identical facts in assessee's own case for assessment year 2006-07, the Tribunal in ITA No. 3461/Del/2013 had directed that the disallowance u/s 14A should be restricted to the dividend income. A copy of the said order dated 2<sup>nd</sup> June, 2016 was filed. Ld. AR also placed reliance on the judgment of the Hon'ble Delhi High Court in the case of Joint Investments Pvt. Ltd. vs. CIT reported in 372 ITR 694 and on the decision of the Special Bench of the Delhi Tribunal in ACIT vs. Vireet Investment Pvt. Ltd.

4. Per contra, the Ld. DR placed reliance on the concurrent findings of the lower authorities and submitted that the disallowance had been correctly made.

5. We have heard the rival submissions and have also perused the material on record. It is seen that the year under consideration is assessment year 2007-08. Rule 8D was introduced by virtue of notification No. 45/2008 dated 24.3.2008 and the Hon'ble Delhi High Court has held this rule to be prospective in operation in the case of Maxopp Investment Ltd. vs. CIT in 402 ITR 640. The AO has calculated the disallowance u/s 14A by adopting the procedure given in Rule 8D. It is the assessee's plea that the disallowance in any case could not have exceeded the exempt income. We are in total agreement with the contention of the Ld. AR that Rule 8D could not have been applied in assessment year 2007-08. We also concur with the contention of the Ld. AR that disallowance in any case could not have exceeded the exempt income. We also note that ITAT had accepted this plea of the assessee in assessment year 2006-07 also vide order dated 2<sup>nd</sup> June 2016 in ITA No. 3461/Del/2013. Therefore, on the facts of the case and respectfully following the

ratio of the judgement laid down by the Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. vs. CIT (supra) we set aside the order of the Ld. CIT (A) and direct the AO to re-compute the disallowance restricting it to the amount of dividend earned during the year. This issue is restored to the file of the AO for the limited purpose of verification of the dividend income earned by the assessee during the year.

6. In the final result the appeal of the assessee stands partly allowed.

**Order pronounced in the open court on 12<sup>th</sup> December, 2019.**

sd/-

**(N.K. BILLAIYA)  
ACCOUNTANT MEMBER**

sd/-

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 12/12/2019

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi