

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

**Before Sh. H. S. Sidhu, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 4158/Del/2017 : Asstt. Year : 2012-13**

Deputy Commissioner of Income Tax, Circle-7(1), New Delhi	Vs	M/s DLF Southern Towns Pvt. Ltd., 1-E, Naaz Cinema Complex, Jhandewalan Extension, New Delhi-55
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AADCP9107F</b>		

**Assessee by : Sh. R. S. Singhvi, CA  
Revenue by : Ms. Ashima Neb, Sr. DR**

**Date of Hearing: 10.12.2019**

**Date of Pronouncement: 16.12.2019**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the revenue against the order dated 16.03.2017 of the Id. CIT (A)-3, Delhi.

2. Following grounds have been raised by the revenue:

*"1. The Id. CIT (A) erred in deleting the addition u/s 14A read with Rule 8D amounting to Rs.49,44,992/- relying upon the decision of Hon'ble Delhi Court in the case of M/s Maxxop Investment Ltd. and Ors Vs Commissioner of Income Tax reported in (2012) 247 CTR (Del) 162. The issue of disallowance is 14A is pending for adjudication in the Hon'ble Supreme Court."*

3. The financial position of the company relevant to the issue is as under:

	<i>31.03.12</i>
<i>Share Capital</i>	<i>2.70</i>
<i>Reserves &amp; Surplus</i>	<i>34,307.92</i>

<i>Total interest free funds available</i>	<i>34,310.62</i>
<i>Investments:</i>	
<i>-Mutual Funds on which exempted income is generated</i>	<i>164.84</i>
<i>Total Investments</i>	<i>164.84</i>

4. From the above, it is clear that the investments made by the assessee are far less than the own funds available with the assessee. Further, it is found from the record that the assessee has disallowed Rs.3,45,654/- on account of disallowance u/s 14A. Before us it was argued by the Id. AR that the Assessing Officer has not mentioned anything about dissatisfaction regarding the disallowance made by the assessee in accordance with the provisions of Section 14A(2) and the Id. CIT (A) deleted the addition owing to non-adherence in accordance with the provisions of Section 14A(2). The Id. DR on the other hand, supported the order of the Assessing Officer and argued that to invoke Rule 8D(2), no satisfaction is required as it is an automatic provision for determining the disallowance.

5. Heard the arguments of both the parties and perused the material available on record. We have gone through the reasons given by the Id. CIT (A) in deleting the addition. The addition was deleted following the judgment of the jurisdictional High Court in the case of Maxxop Investment Ltd. & Ors. 247 CTR 162 (Del.). The relevant portion is as under:

*"Sub-section (2) of Section 14 A of the said Act provides the manner in which the Assessing Officer is to determine the amount of expenditure incurred in relation to income which does not form part of the total income. However, if we examine the provision carefully, we would find that the Assessing Officer is required to determine the amount of such expenditure only if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under the said Act. In other words, the requirement of the Assessing Officer embarking upon*

*a determination of the amount of expenditure incurred in relation to exempt income would be triggered only if the Assessing Officer returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Therefore, the condition precedent for the Assessing Officer entering upon a determination of the amount of the expenditure incurred in relation to exempt income is that the Assessing Officer must record that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Sub-section (3) is nothing but an offshoot of sub-section (2) of Section 14A. Sub-section (3) applies to cases where the assessee claims that no expenditure has been incurred in relation to income which does not form part of the total income under the said Act. In other words, sub-section (2) deals with cases where the assessee specifies a positive amount of expenditure in relation to income which does not form part of the total income under the said Act and sub-section (3) applies to cases where the assessee asserts that no expenditure had been incurred in relation to exempt income. In both cases, the Assessing Officer, if satisfied with the correctness of the claim of the assessee in respect of such expenditure or no expenditure, as the case may be, cannot embark upon a determination of the amount of expenditure in accordance with any prescribed method, as mentioned in sub-section (2) of Section 14A of the said Act. It is only if the Assessing Officer is not satisfied with the correctness of the claim of the assessee, in both cases, that the Assessing Officer gets jurisdiction to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the said Act in accordance with the prescribed method. The prescribed method being the method stipulated in Rule 8D of the said Rules. While rejecting the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, in relation to exempt income, the Assessing Officer would have to indicate cogent reasons for the same.*

**Rule 8D**

30. *As we have already noticed, sub-section (2) of Section 14A of the said Act refers to the method of determination of the amount of expenditure incurred in relation to exempt income. The expression used is - "such method as may be prescribed". We have already mentioned above that by virtue of Notification No.45/2008 dated 24/03/2008, the Central Board of Direct Taxes introduced Rule 8D in the said Rules. The said Rule 8D also makes it clear that where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with (a) the correctness of the claim of expenditure made by the*

*assessee; or (b) the claim made by the assessee that no expenditure has been incurred in relation to income which does not form part of the total income under the said Act for such previous year, the Assessing Officer shall determine the amount of the expenditure in relation to such income in accordance with the provisions of sub-rule (2) of Rule 8D. We may observe that Rule 8D(1) places the provisions of Section 14A(2) and (3) in the correct perspective. As we have already seen, while discussing the provisions of Sub-sections (2) and (3) of Section 14A, the condition precedent for the Assessing Officer to himself determine the amount of expenditure is that he must record his dissatisfaction with the correctness of the claim of expenditure made by the assessee or with the correctness of the claim made by the assessee that no expenditure has been incurred. It is only when this condition precedent is satisfied that the Assessing Officer is required to determine the amount of expenditure in relation to income not includable in total income in the manner indicated in sub-rule (2) of Rule 8D of the said Rules.*

*31. It is, therefore, clear that determination of the amount of expenditure in relation to exempt income under Rule 8D would only come into play when the Assessing Officer rejects the claim of the assessee in this regard. If one examines sub-rule (2) of Rule 8D, we find that the method for determining the expenditure in relation to exempt income has three components. The first component being the amount of expenditure directly relating to income which does not form part of the total income. The second component being computed on the basis of the formula given therein in a case where the assessee incurs expenditure by way of interest which is not directly attributable to any particular income or receipt. The formula essentially apportions the amount of expenditure by way of interest [other than the amount of interest included in clause (i)] incurred during the previous year in the ratio of the average value of investment, income from which does not or shall not form part of the total income, to the average of the total assets of the assessee. The third component is an artificial figure - one half percent of the average value of the investment, income from which does not or shall not form part of the total income, as appearing in the balance sheets of the assessee, on the first day and the last day of the previous year. It is the aggregate of these three components which would constitute the expenditure in relation to exempt income and it is this amount of expenditure which would be disallowed under Section 14A of the said Act. It is, therefore, clear that in terms of the said Rule, the amount of expenditure in relation to exempt income has two aspects - (a) direct and (b)*

*indirect. The direct expenditure is straightaway taken into account by virtue of clause (i) of sub-rule (2) of Rule 8D. The indirect expenditure, where it is by way of interest, is computed through the principle of apportionment, as indicated above. And, in cases where the indirect expenditure is not by way of interest, a rule of thumb figure of one half percent of the average value of the investment, income from which does not or shall not form part of the total income, is taken."*

*3.3 I find that section 14A(2) provides that the Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with correctness of the claim of the assessee in respect ,of such expenditure in relation to income which does not form part of the total income under this Act and section 14A(3) provides that, "the provisions of sub section (2) shall apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act". While a lot of emphasis is placed by the counsel on wordings of section 14A(2) which refer to the need of Assessing Officer's satisfaction to the effect that the claim made by the assessee is incorrect, it simply overlooks the provisions of section 14A(3) which state that a disallowance u/s 14A(2) can also be made in a case in which assessee claims that no expenditure has been incurred for earning the tax exempt income. Therefore, a plain reading of the statutory provisions of section 14A(2) and (3) shows that when assessee offers a disallowance u/s 14A, the provisions of section 14A(2) read with Rule 8D cannot be invoked unless the Assessing Officer is satisfied about incorrectness of the disallowance so offered, but when assessee does not offer any disallowance u/s 14A on his own, the provisions of section 14A(2) read with Rule 8D can be invoked without there being any need to express satisfaction about the incorrectness of such a claim.*

*In the instant case, the appellant had made a suo-moto disallowance of Rs.3,45,654/- and the Assessing Officer has not recorded the dissatisfaction about the disallowance suo-moto made by the appellant and has not identified any expenditure which can be considered to be expended in connection with the investment activity. The appellant has own funds of Rs.34,310.62. lacs which are far more than the investments of Rs.164.84 lacs. The plain reading of the statutory provisions of section 14A(2) and 14A(3) shows that when the assessee offered*

*the disallowance u/s 14A, the provisions of Section 14A(2) read with Rule 8D cannot be invoked unless the Assessing Officer is dissatisfied about the correctness of the disallowance so offered.*

*In view of the above, the disallowance of Rs. 49,44,992/- made by the Assessing Officer under Rule 8D(2)(ii)&(iii) read with Section 14A, is deleted."*

6. Since, the decision of the Id. CIT (A) is based on the judgment of the jurisdictional High Court which is squarely applicable to the facts of the instant case, we hereby decline to interfere with the reasoned order of the Id. CIT (A).

7. In the result, the appeal of the revenue is dismissed  
Order Pronounced in the Open Court on 16/12/2019.

Sd/-

**(H. S. Sidhu)**  
**Judicial Member**

**Dated: 16/12/2019**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**