

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

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 338/Del/2017  
(Assessment Year: 2012-13)**

Interglobe Enterprises Limited.	Vs.	Dy. Commissioner of Income Tax, Circle 12(2), New Delhi.
<b>PAN No:</b> AACCI1393M		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : Shri Nagesh Kumar Behl, Adv.  
**Revenue by** : Shri Inder Pal Singh Bindra, CIT(DR)

**ORDER**

**PER ANADEE NATH MISSHRA, AM**

**(A)** This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-4, New Delhi, ["Ld. CIT(A)", for short] dated 17.11.2016 for Assessment Year 2012-13. The grounds of appeal are as under:

- " 1. *That on the facts and circumstances of the case and in law, the order passed is bad in law having been passed in violation of the principles of natural justice without affording an opportunity of being heard to the appellant.*
- 1.1 *That the Ld. Commissioner of Income Tax- Appeals [CIT(A)] erred in holding that appellant had intentionally and willfully not cooperated during the proceedings before him and was not interested in taking up the matter and making submissions.*

2. *Without prejudice, the Ld. CIT(A) has erred in confirming the erroneous computation of disallowance by the Ld. Assessing Officer u/s 14A of the Income Tax Act, 1961 ("Act") read with Rule 8D of the Income Tax Rules ("rules"), 1962.*

*The appellant craves leave to add, to alter, amend or vary from the above grounds of appeal at or before the time of hearing."*

**(B)** The Assessment Order U/s 143(3) of the Income Tax Act, 1961 ("I.T. Act" for short) was passed on 23.03.2015 by Assessing Officer ("AO", for short). The relevant portion of the Assessment Order is reproduced as under:

"

The assessee filed its e-return of Income on 25.09.2012 showing total income of Rs.7,22,42,870/- The case was selected for scrutiny under CASS and the notice u/s 143(2) of the I.T Act was issued and served on the assessee on 06.08.2013. Due to change of incumbency, fresh notice u/s 143(2) of the I.T. Act, 1961 along with detailed questionnaire u/s 142(1) dated 12.05.2014 were issued and served upon the assessee. In response to notice u/s 143(2) of the I.T Act, Shri Vinay Sethi, C.A and Authorised representative of the assessee company attended and furnished the details called for.

2. The assessee is a Company engaged in the business of providing management consultancy services to other group companies and it also earns commission from South African Airways for acting as their General Sales Agent (GSA) in India.



**Disallowance U/s 14A of the IT Act.**

3. On perusal of the Balance Sheet as on 31.03.2012, it is noticed that the assessee company has invested its funds in equity shares/Mutual Funds, which stood at Rs.196,48,23,976/- as at the beginning of the year and Rs.465,27,96,039/- as at the end of the year. Further during the year assessee has earned dividend income of Rs.268,42,87,039/- In view of the income tax circular no. 5/2014 and provision of sub-section (1) of Section 14A provides;

*"14A. for the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act."*

- The term "expenditure" occurring in Section 14A would take in its sweep not only direct expenditure but also all forms of expenditure regardless of whether they are fixed, variable, direct, indirect, administrative, managerial or financial.
- As regards the applicability of Rule 8D of the I.T. Rules, the Hon'ble ITAT in the case of **Citicorp Finance (I) Ltd.** Held that ".... It is no longer open to the Assessing Officer to apply his discretion in computing the disallowance or make *ad hoc* disallowance u/s 14A..." as "...sub sections (2) and (3) seek to achieve the underlying objection of section 14A(1) that any expenditure incurred in relation to exempt income should not be allowed deduction....".
- The earning of exempt income is not in the nature of passive activity having no input. In fact in present situation making of investment, maintaining or continuing investment and time of exit from the investments are well informed and well coordinate management decisions involving not only inputs from various source but also acumen of senior management functionaries. Therefore cost is inbuilt into even so called "passive" investment. Incidental expenditures in this regard are bound to be incurred in collection, telephone,

follow-up even directors time and energy etc. Assessee Company's claim that it has not incurred any expenditure is not acceptable as expenditures incurred for earning of exempted income are embedded in indirect expenditures.

- The investments made, being a conscious decision and having deployment of funds clearly brings into picture expenditure by way of cost of funds invested.
- The Hon'ble Bombay High Court, in its judgment delivered on 12.08.2010 in ITXA No. 626/2010 & Writ Petition No. 758/2010 in the case of **Godrej & Boyce Manufacturing Co. Limited, Mumbai vs. Dy. CIT-10(2), Mumbai & others**; has ruled in favour of the Department as regards the applicability of Rule 8D for and from A.Y. 2008-09 onwards.
- The assessee's plea that it has not earned any exempt income on its investments, hence the provision of Section 14A is not applicable to its case, is not acceptable in view of the clear position of law that the nomenclature of the heading before Rule 8D of the Rules, 1962 provides for 'method for determining amount of expenditure in relation to income not includible in total income'. The words used are "income not includible in total income", it is not "income not included in total income". There is a difference between the terms "not includible" and "not included" as such. Moreover, part 'B' of clause (ii) of sub-rule (2) of Rule 8D also prescribes the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year. Thus, the intent of legislature is very much clear from the wordings used in the heading as well as Rule 8D itself so as to cover all the investments which might generate such an income either in the present or even in future, which is not includible in total income of the assessee.

- **Circular No. 5/2014 Ministry of Finance, CBDT states that "the matter has been examined in the Board. It is pertinent to mention that section 14A of the Act was introduced by the Finance Act, 2001 with retrospective effect from 01.04.1962. The purpose for introduction of section 14A with retrospective effect since inception of the Act was clarified vide Circular No. 14 of 2001 as under: "Certain incomes are not includible while computing the total income, as these are exempt under various provisions of the Act. There have been cases where deductions have been claimed in respect of such exempt income. This in effect means that the tax incentive given by way of exemptions to certain categories of income is being used to reduce also the tax payable on the non-exempt income by debiting the expenses incurred to earn the exempt income against taxable income. This is against the basic principles of taxation whereby only the net income, i.e. gross income minus the expenditure, is taxed. On the same analogy, the exemption is also in respect of the net income. Expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income."** Thus, legislative intent is to allow only that expenditure which is relatable to earning of income and it therefore follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance, irrespective of the fact whether any such income has been earned during the financial-year or not. The above position is further clarified by the usage of term 'includible' in the Heading to section 14A of the Act and also the Heading to Rule 8D of IT Rules, 1962 which indicates that it is not necessary that exempt income should necessarily be included in a particular year's income, for disallowance to be triggered. Also, section 14A of the Act does not use the word "income of the year" but "income under the Act". This also indicates that for invoking disallowance under section 14A, it is not material that assessee should have earned such exempt income during the FY under consideration. The above position is further substantiated by the language used in Rule 8D[2(ii) & 8D(2)(ii) of the IT Rules which

are extracted below:- "(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt an amount computed in accordance with the following formula, namely:-  $A \times B / C$  where..... B= the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous years; .....(iii) an amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year." (Emphasis added) thus, in light of above, Central Board of Direct Taxes, in exercise of its powers under section 119 of the Act hereby clarifies that Rule 8D r.w. section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income."

If there is material to establish that there is direct nexus between the expenditure incurred and the income not forming part of total income, disallowance would be justified even where there is no receipt of exempt income u/s 10 in the year under consideration, in view of the latest decision of the Hon'ble Delhi ITAT vide order dated 09.01.2012 for A.Y. 2008-09 in the case of Technopak Advisors Private Limited [2012] 50 SOT 31, wherein it has been held that as per provisions of Section 14A, actual earning of income is not *sine qua non* for deciding deduction of expenditure laid out or expended wholly or exclusively for purpose of such income. The Hon'ble Tribunal adjudicated upon the question of law in affirmative as to whether, where investment had been made in shares, which did not yield any dividend in the year under consideration, expenditure incurred for earning income was deductible notwithstanding the fact that no such income had been earned.

- Hon'ble Supreme Court in the case of CIT Vs. United General Trust Ltd., 200 ITR 488 (SC) has held that expenditure in relation to earning of exempt income are embedded in the indirect expenditures. Accordingly the claim of the assessee that it has not incurred any expenditures in relation to earning of the exempted income is not acceptable.
- The reliance is also placed on the decision of the Hon'ble Special Bench of ITAT, Delhi in the case of *Cheminvest Limited vs. ITO 317 ITR 86 (AT)*, wherein it is held that the disallowance u/s 14A can be made even if no exempt income is actually earned or received during the year from the investments in stock, shares, tax free bonds, tax free schemes of UTI, other mutual funds and agricultural land, investments in 10A/10B eligible units by the main non-eligible units.

Accordingly in background of the above discussion, the disallowance u/s 14A r.w. rule 8D is computed as under:-

Clause	Particulars			Amount
i.	Expenditure directly related to exempt income			NIL
ii.	Disallowance of interest expenditure			
	A. Interest expenditure incurred during the year.	(To the extent claimed )	19,51,133	
	B. Average Value of investment (excluding investment in debt funds, foreign company and Sec 25	(148,59,69,743+ 63,98,52,154)/2	106,29,10,949	

	companies) C. Average of total assets Disallowance = A *B/C	(281,28,91,995+ 571,19,79,694)/2	426,24,35,845	4,86,548/-
iii.	Aggregate of Opening and Closing value of Investment (Average Value of Investment) ½% of above as per Rule 8D	Value of Investment Total for 30.03.2012 & 31.03.2011  Average value of Investment  0.5% of above	(148,59,69,743+ 63,98,52,154)/2  106,29,10,949	53,14,555/-
	Total disallowance [Aggregate of (i), (ii) & (iii)]			58,01,103/-

3.2 Therefore, an amount of Rs. 4,86,548/- (58,01,103 less already disallowed by assessee Rs.53,14,555) is being disallowed and added back to the total income of the assessee u/s 14A read with Rule 8D of I.T. Rules, 1962.

**(Disallowance of Rs.4,86,548/-)**

4. Having regard to disallowances/additions made above, I am satisfied that the assessee has furnished inaccurate particulars of income within the meaning of explanation to section 271(1)(c) of the Act. Penalty proceedings u/s 271(1)(c) read with section 274 of act is separately initiated.

5. Keeping in view the material available on record, total income is computed as under:-

	Amount (Rs.)
Returned Income	7,22,42,870
Add : Disallowance U/s 14A (As discussed in para 3)	4,86,548
<b>Assessed Income</b>	<b>7,27,29,418</b>

7. Thus, the total income of the assessee is assessed at Rs.7,27,29,418/- for the year under consideration. Charge interest u/s 234B and 234C of the I.T. Act. Allow credit of pre-paid tax. Issue demand Notice accordingly.

”

**(B.1)** The Assessee filed appeal before the Ld. CIT(A). As the assessee did not appear before the Ld. CIT(A), the Ld. CIT(A) concluded that the Assessee was not interested in prosecuting its appeal, and he dismissed the Assessee's appeal with the following observations in his aforesaid impugned order dated 17.11.2016:

*"This appeal is filed on 20/04/2015 against the order dated 23/03/2015 passed by Dy. Commissioner of income Tax, Circle 12(2), New Delhi (hereinafter referred to as the "AO") under section 143(3) of the Income Tax Act, 1961 for the Assessment year 2012-13.*

*2. The case was fixed for hearing on 27/06/2016 when an adjournment application dated 27/06/2016 was filed which was signed by some Vikas Walia for Sachin Mehta. It is clear that it was not signed by the authorized representative of the company. After that another application dated 29/06/2016 was filed in the dak on 30/06/2016 signed by Sachin Mehta along with original Power of Attorney in which he was authorized by the company. In this application a time of 15 days was sought to appear. Normally the authorized representative appears seeking another date which is given at the same time. Now in such a situation it is expected that the AR of the appellant would appear himself after the period of time requested by him. In this case nobody appeared so far to present the matter before me. It seems that the appellant is not interested in taking up the matter and make the submissions. Therefore I hereby dismiss the appeal.*

3. *The appeal is dismissed."*

**(C)** The Assessee filed this present appeal in Income Tax Appellate Tribunal ("ITAT", for short), against the impugned order dated 17.11.2016 of the Ld. CIT(A). We find from the perusal of record, that the following grounds of appeal were raised by the Assessee before the Ld. CIT(A).

*"1. That the Ld. Assessing Officer has erred on facts and in law in considering the financial expenses of Rs. 19,51,133 while computing the disallowance u/s 14A of the Income Tax Act ("Act") read with Rule 8D(ii) of the Income tax Rules, 1962.*

*1.1 Without prejudice, the Ld. Assessing Officer has erred on facts and in law in considering the interest cost of Rs. 6,17,357/- while computing the disallowance under Rule 8D(ii) without appreciating that the same was already disallowed by the appellant in its return of income.*

*2. That the Ld. Assessing Officer has erred on facts and in law in computing credit of Minimum Alternate Tax ("MAT") to be set off in terms of provisions of Section 115JAA of the Act at Rs. 1,245,07,560/- as against the amount of Rs. 1,25,65,421.*

*3. That the Ld. Assessing Officer has erred on facts and in law in not allowing credit of prepaid taxes amounting to Rs. 4,46,31,830 claimed in the return of income despite of the same being supported by Form 26AS and TDS certificates.*

*The appellant craves leave to add, to alter, amend or vary from the above grounds of appeal at or before the time of hearing."*

**(C.1)** However, the Ld. CIT(A) in his aforesaid impugned order dated 17.11.2016, has not disposed off various grounds of appeal through a speaking order on merits. In fact, the Ld. CIT(A) has not decided the appeal on merits, and has, instead dismissed assessee's appeal in a summary manner while observing: *"...It seems that the appellant is not interested in taking up the matter and make the submissions."* This is in violation of Section 250(6) of I.T. Act, which requires the Ld. CIT(A) to state the points for determination, and give decision thereon with reasons. The relevant provisions under

I.T. Act regarding procedure in appeal, and powers of the Commissioner [Appeals] are contained in Sections 250 and 251 of I.T. Act, which are reproduced below for ready reference:

*“250. (1) The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preferred.*

*(2) The following shall have the right to be heard at the hearing of the appeal—*

*(a) the appellant either in person or by an authorized representative;*

*(b) the Assessing Officer, either in person or by a representative.*

*(3) The Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.*

*(4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).*

*(5) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.*

*(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*

*[(6A) In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A*

*(7) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.*

*251. (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers—*

*(a) In appeal against an order of assessment, may confirm, reduce, enhance or annual the assessment*

*(aa) In appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the*

*Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;*

*(b) In an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;*

*(c) In any other case, he may pass such orders in the appeal as he thinks fit.*

*(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.*

*Explanation.—In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.”*

**(C.2)** A perusal of the above provisions of law shows that U/s 250(6) of I.T. Act the Ld. CIT(A) was obliged to dispose of the appeal in writing after stating the points for determination and to then pass an order on each of the points which arose for consideration; and the Ld. CIT(A) was further obliged to state the reasons for his decision on each such points which arose for determination. In the present appeal before us, the Ld. CIT(A) has passed a summary order without deciding the issues on merits. This is in violation of Section 250(6) of I.T. Act, which requires the Ld. CIT(A) to state the points for determination, and give decision thereon with reasons. In view of the foregoing and on careful perusal of Section 250(6) r.w.s. 250(4), 250(5), 251(1)(a), 251(1)(b) and Explanation to Section 251(2) of I.T. Act; it is amply clear that Ld. CIT(A) has no power to dismiss appeal in limine for non-prosecution of appeal by the assessee.

**(C.3)** At the time of hearing before us, both sides were in agreement that the impugned order of Ld. CIT(A) may be set aside, and the disputed issues in the present

appeal may be restored to the file of the Ld. CIT(A) for fresh order in compliance of Section 250(6) of I.T. Act; having regard to the fact that the Ld. CIT(A) had not decided the issues on merits.

**(D)** We have heard both sides carefully. We have perused the materials available on record. We are of the view that the Ld. CIT(A) erred in dismissing Assessee's appeal on merits in a summary manner, without giving detailed reasons for his order, on various grounds of appeal before him. We further hold that the Ld. CIT(A) erred in passing a non-speaking order on each of the points which arose for his consideration and he failed in discharging the statutory obligation to state the reasons for his decision on each such points, which arose for determination in assessee's appeal before the Ld. CIT(A). In view of the foregoing, and as both sides have agreed to this at the time of hearing before us, we set aside the impugned order dated 17.11.2016 of Ld. CIT(A); and we direct the Ld. CIT(A) to pass fresh order, a speaking order on merits on the issues in dispute, in accordance with Section 250(6) of I.T. Act.

**(E)** In the result, Assessee's appeal is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 03/01/20.

**Sd/-**  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 03/01/20.  
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	