

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

**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
&
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.-187/Del/2017, A.Y. 2012-13
ITA No.-188/Del/2017, A.Y. 2013-14**

M/s. Paramount Products (P) Ltd., A-55, Okhla Industrial Area, Phase-II, New Delhi-110020 PAN : AAACP1213B	Vs.	DCIT Circle-19(2) New Delhi
Appellant		Respondent

Assessee by : Sh Rajesh Malhotra, CA
Revenue by : Sh. Saras Kumar, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, A.M.:

(A) For the sake of convenience these two appeals are disposed of through this consolidated order as common issue is involved. Grounds of appeal are as under :-

ITA No.-187/Del/2017, A.Y. 2012-13

“1. On the facts and circumstances of the case and in law the authorities below has erred in confirming the disallowance of expense of Rs. 35,46,812/- u/s 14A of the Act. The action of authorities below is wrong,

illegal, misconceived, unjustified and bad at law therefore it should be quashed.

2. The appellant craves the right to add/alter/amend/delete all or any of the ground of appeal at the time of hearing.”

ITA No.-188/Del/2017, A.Y. 2013-14

1. On the facts and in the circumstances of the case and in law the authorities below has erred in confirming the disallowance of expense of Rs. 40,69,447/- u/s 14A of the Act. The action of authorities below is wrong, illegal, misconceived, unjustified and bad at law therefore it should be quashed.

2. The appellant craves the right to add/alter/amend/delete all or any of the ground of appeal at the time of hearing.”

(B) For assessment year 2012-13, assessment order u/s 143(3) dated 10.03.2015 was passed determining total income of the assessee at Rs. 18,16,18,664/- as against returned income of Rs. 17,79,04,610/-. In this assessment order, the total disallowance computed by the Assessing Officer u/s 14A of Income Tax Act read with Rule 8D of Income Tax Rules was Rs. 37,14,054/-, which was in addition to an amount of Rs.88,240/- suo moto disallowed by the assessee. Relevant portion of the assessment order is reproduced as under :-

2. Disallowance u/s 14A

It has been noticed from the audited balance sheet that the assessee company has closing balance of investments to the tune of Rs.88,95,27,320/-. As per the method for allocating expenditure in relation to exempt income which has been prescribed u/s 14A(2) and Rule 8D of Income Tax Rules, 1961, an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing the balance sheet of the assessee, on the first day and the last day of the previous year. The provisions of section 14A(1) are reproduced below:

"For the purpose 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 provisions of Section 14A refers to a category of income, namely the income which as a result of investment made by assessee does not form part of the total income under the Act, in that case, the assessee is not entitled to claim deduction of expenditure incurred in relation to such investment. The allowability of expenditure does not depend upon the actual receipt of income as the expression used in Section 14A is "in relation to income" and it does not contemplate that there must be actual receipt of income. As the expression used in Section 14A are "in relation to income which does not form part of total income under the Act and dividend income is one kind of income which does not form part of total income under the Act, the expenditure incurred in relation to such investment which would result in the dividend income is not liable to be deducted in view of Section 14A of the Income tax Act. Section 14A of the Act does not require that it would operate only if the investment yields positive result by way of positive income.

The intention of statute also becomes clear from the words and expression used in Rule 8D which prescribes the method for determining amount of expenditure in relation to income not includable in total income.

The words used in clause (ii) of sub rule (2) for calculating the average value of investment (B) are "the average value of investment, income from which does not or shall not form part of total income". Similarly, the clause (iii) of sub rule (2) reads "an amount equal to one half percent of the average of value of investment, income from which does not or shall not form part of total income.

Thus, it takes into account all situations whether the income which does not form part of total income (dividend income) is received or not during the P.Y. Therefore, I hold that the provisions of Section 14A of the income tax Act, 1961 are applicable in the case of assessee.

In view of the above a show-caused was given to the assessee vide note sheet dated 24.02.2015 that as to why the proportionate expenses related to the exempted income should not be disallowed u/s 14A read with rule 8D of the Income Tax Act, 1961. In response to the above query the assessee has submitted that reply letter dated 10.03.2015 that:

"The assessee has engaged professional company M/s Bharat, Bhusan & Company who is managing Investment portfolio, for which the assessee is paying a management fee to them and same have been disallowed in their tax computation."

So there is direct nexus between exempt income not forming the part of total income and expenses incurred and the same has already been disallowed by the assessee in their tax computation. So there is no need to go for the calculation for disallowance of the expenses u/s 14A as per Rule 8D of the Income Tax Act, 1961.

*In our support we also would like to further submit as under:
The assessee has incurred management fee as direct expenses to manage the investment portfolio which has been paid to the portfolio manager, other than that there is no expenses incurred for the investment as well as exempt income. As portfolio manager is managing the whole investment.*

The assessee has made the investment out of their own surplus fund, thus the assessee has not borrow any fund to invest. We may further like to inform that the assessee has free reserve of Rs.164.40 crore (approx) out of that the assessee has invested of Rs.88.95 crore (approx) only which is surplus from business. During the financial year 2011-12 the assessee has paid interest of Rs.4.5 lacs on unsecured loan which is not related to the investment as the assessee has not borrowed fund for investments."

I have considered the reply of the assessee, I have opinion that:

It is pertinent to mention that the assessee is having common infrastructure and common personnel for earning income under various heads. Thus, the company is also using its administrative Managerial and infrastructural set up for earning income which does not form part of total income under the Act. The company is incurring expenditure in quality manpower both administrative and managerial which takes the crucial and complicated decisions regarding the investments which have yielded exempt income. It is an act of decision making and consultancy; it should not be seen in terms of actual physical efforts made in making investment and earning income which does not form part of the total income. As such it is held that the expenditure in relation to income not includable in total income is inbuilt in the case of assessee and debited under various head of Profit and Loss account.

In view of the above facts and having regards to the accounts of the assessee, I am not satisfied with the correctness of the claim of the assessee that no expenses were incurred for earning such income. As the disallowance is being worked as per rule 8D it takes care of all direct and indirect expenses relatable to earning of the exempt income.

Thus, as regarding expenditure in relation of income which does not form part of total income is not acceptable and in absence of any better method, the method suggested by Rule 8D of the Income Tax Rules is adopted in determining the expenditure incurred by Assessee Company in relation to income not includable in total income.

Quantum of disallowance

As discussed in the preceding paragraphs that assessee is having common infrastructure and common personnel for earning income under various heads, therefore, income/expenditure cannot be separately attributed to one particular activity.

Rule 8D (2) : The expenditure in relation to income which does not form part the total income shall be the aggregate of following amounts, namely:-

(i). The amount of expenditure directly relating to income which does not form part of total income; Rs.88,240/- already disallowed by the assessee.

(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:-
Where

A=Amount of expenditure by way of interest other than the amount of interest, included in case (i) incurred during the previous year;

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 year;

C= the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

Interest which is not directly attributable
to any particular income or receipt-

$$A \times B / C$$

A = Interest =Rs. 4,50,000/-

B = Average investment* =Rs. 70,93,62,374/-

C = Average total assets =Rs.190,86,85,559/-

Accordingly $\frac{A \times B}{C}$ Rule-8D(ii) =Rs. 1,67,242/-

C

(iii) An amount equal to one-half per cent 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.

Investment as on 31.03.2011 (Opening Balance)	Rs.52,91,97,427/-
Investment as on 31.03.2012 (Closing Balance)	Rs.88,95,27,320/-
Total of both (Opening /closing balance)	Rs. 141,87,24,747/-
Average investment for both the years	Rs. 70,93,62,374/-
Disallowable expenditure u/s 14A read with Rule 8D(2)(iii)	Rs.35,46,812/-
Rule-8D(ii)	Rs. 1,67,242/-
Rule-8D(iii)	Rs.35,46,812/-
	Disallowed u/s 14A Rs.37,14,054/-

Thus, a disallowance of Rs.37,14,054/- is made u/s 14A of the Act, 1961 is made and the amount added to the total income of the assessee.

I am satisfied that the assessee has furnished inaccurate particulars of its income of this issue, therefore, penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 have been initiated separately.

[Addition of Rs.37,14,054/-]

(B.1) The assessee filed appeal against the aforesaid assessment order dated 10.03.2015 for A.Y. 2012-13, before the Ld. CIT(A). Vide impugned appellate order dated 18.11.2016 the Ld. CIT(A) upheld the disallowance u/s 14A read with Rule 8D, to the extent of Rs. 35,46,812/- as against aforesaid Rs. 37,14,054/- computed by the Assessing Officer; and deleted the remaining disallowance amounting to Rs. 1,67,242/-. The relevant portion of the order of the Ld. CIT(A) is reproduced as under :-

3.2. The AO invoked provisions of section 14A read with Rule 8D as the appellant had disclosed investments of Rs.88.95 crores as on 31.03.2012. It is noted that the appellant disclosed dividend income of Rs.70.21 lacs which is claimed as exempt. A suo-moto disallowance of Rs.88,240/- was made by the appellant company for hiring an agency for managing its investment portfolio. The AO however, computed the disallowance under Rule 8D(2)(ii) at Rs.1,67,242/- and 8D(2)(iii) at Rs.35,46,812/- aggregating to Rs.37,14,054/-. Before me, the Ld. AR has stated that the AO has considered interest payment of Rs.4,50,000/- to compute the disallowance under Rule 8D(2)(ii). It is argued that the loans on which the said interest had been paid has not been utilized towards purchase of tax free investments. The Ld. AR has stated that investments of Rs.88.95 crores (approx.) during the year, was sourced out of its own funds which amounted to Rs.160.40 crores as on 31.03.2012. The AO has ignored this aspect and has computed the disallowance under Rule 8D(2)(ii) at Rs.1,67,242/-. It is evident that the appellant company had sufficient funds of its own to fund its tax free investments. In the case of CIT vs. Reliance Utilities and Power Ltd. 313 ITR 340, it is held that if there is sufficient interest free funds available, it can be presumed that the investments were made from such funds.

Similarly, in the case of CIT vs. HDFC Bank Ltd., the Hon'ble Bombay High Court held that in case the assessee's own funds were more than the investments in tax free securities, it would have to be presumed that the investment made by the assessee would be out of

interest free funds available with the assessee. In view of these rulings, the disallowance under Rule 8D(2)(ii) at Rs.1,67,242/- computed by the AO is not in order and is directed to be deleted.

3.3. The AO computed disallowance under Rule 8D(2)(iii) at Rs.35,46,812/- at 0.5% of the average investment disclosed. The Ld. AR has argued that the only expenditure incurred by the appellant against the exempt income of Rs.70.21 lacs is the payment of Rs.88,240/- made to an agency hired for managing its investment portfolio. It is stated that no other expenditure is incurred for earning the exempt income. In appellate proceedings, no evidence is furnished demonstrating the services received from the alleged fund manager. The factum of expenditure incurred is not denied as the appellant has suo moto disallowed what it terms as direct expenses incurred against exempt income. It is noted that during the year investments of Rs.94.05 crores (approx.) is disclosed. The volume of purchase and sale of mutual fund during the year is also substantial as dividend income of more than Rs.62 lacs out of total dividend of Rs.70.21 lacs is earned on these transactions. The appellant has merely stated that no other expenditure can be directly correlated with the exempt income except the payment of Rs.88,240/- made to its fund manager. It is difficult to accept the contention of the Ld. AR that the all investments decisions of the appellant company were outsourced to an agency to whom a paltry payment of Rs.88,240/- is made during the year. Moreover, nothing has been brought on record to substantiate the claim that the management of the company is not associated at all with critical and strategic investment decisions. In view thereof, the proposition that no indirect expense is incurred against the exempt income is without merit.

3.4. Sub-Section (2) of Section 14A provides that the AO shall determine the amount of expenditure incurred in relation to such income (exempt income) which does not form part of the total income in accordance with such method as may be prescribed (Rule 8D), if he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to such income (exempt income). The AO has recorded his satisfaction in the assessment order and therefore, he has rightly applied Rule 8D(2)(iii) to

arrive at disallowance of Rs.35,46,812/-. Since the said disallowance is computed on a percentage basis of investments, the resultant figure is a deemed disallowance out of expenditure incurred by the appellant company. It is not as if the disallowance is exceeding the expenditure debited by the appellant company in the P & L A/c. Since specific and one to one correlation of expenditure in relation to the exempt income is not identifiable, the disallowance has to be computed as per Rule 8D(2)(iii) as has been rightly done by the AO.

3.5. As expenditure claimed cannot be segregated, the only way that expenditure relating to earning of exempt income can be computed, is by the machinery method prescribed in Rule 8D(2)(iii). Once Rule 8D(2)(iii) is applied, the disallowance has to be mandatorily computed as per the formulae prescribed therein. In my view, the AO has correctly invoked the provisions of Section 14A read with Rule 8D(2)(iii) to compute the disallowance with reference to the exempt income of Rs.70.21 lacs. In the light of the above, the disallowance made by the AO as per Rule 8D(2)(iii) is in order and is confirmed. Disallowance u/s 14A is restricted to Rs. Rs.35,46,812/- as against Rs.37,14,054/- computed by the AO in view of deletion of disallowance of Rs.1,67,242/- as per Rule 8D(2)(ii). This ground of appeal is partly ruled against the appellant.

(C) In assessment year 2013-14, assessment order u/s 143(3) of Income Tax Act was passed by the Assessing Officer on 27.01.2016 wherein total income was determined at Rs. 16,26,41,018/- as against returned income of Rs. 15,85,47,480/-. In this assessment order, the disallowance u/s 14A read with Rule 8D of Income Tax Act was computed at Rs. 40,93,538/- which was in addition to Rs. 89,888/- suo moto disallowed by the assessee. The relevant portion of the assessment order is reproduced as under :-

2. Disallowance u/s 14A

It has been noticed from the audited balance sheet that the assessee company has closing balance of investments to the tune of Rs.73,82,51,384/-. As per the method for allocating expenditure in relation to exempt income which has been prescribed u/s 14A(2) and Rule 8D of Income Tax Rules, 1961, an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing the balance sheet of the assessee, on the first day and the last day of the previous year. The provisions of section 14A(1) are reproduced below:

"For the purpose 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 provisions of Section 14A refers to a category of income, namely the income which as a result of investment made by assessee does not form part of the total income under the Act, in that case, the assessee is not entitled to claim deduction of expenditure incurred in relation to such investment. The allowability of expenditure does not depend upon the actual receipt of income as the expression used in Section 14A is "in relation to income" and it does not contemplate that there must be actual receipt of income. As the expression used in Section 14A are "in relation to income which does not form part of total income under the Act and dividend

income is one kind of income which does not form part of total income under the Act, the expenditure incurred in relation to such investment which would result in the dividend income is not liable to be deducted in view of Section 14A of the Income tax Act. Section 14A of the Act does not require that it would operate only if the investment yields positive result by way of positive income.

The intention of statute also becomes clear from the words and expression used in Rule 8D which prescribes the method for determining amount of expenditure in relation to income not includable in total income.

The words used in clause (ii) of sub rule (2) for calculating the average value of investment (B) are "the average value of investment, income from which does not or shall not form part of total income". Similarly, the clause (iii) of sub rule (2) reads "an amount equal to one half percent of the average of value of investment, income from which does not or shall not form part of total income.

Thus, it takes into account all situations whether the income which does not form part of total income (dividend income) is received or not during the P.Y. Therefore, I hold that the provisions of Section 14A of the income tax Act, 1961 are applicable in the case of assessee.

It is pertinent to mention that the assessee is having common infrastructure and common personnel for earning income under various heads. Thus, the company is also using its administrative Managerial and infrastructural set up for earning income which does not form part of total income under the Act. The company is incurring expenditure in quality manpower both administrative and managerial which takes the crucial and complicated decisions regarding the investments which have yielded exempt income. It is an act of decision making and consultancy; it should not be seen in terms of actual physical efforts made in making investment and earning income which does not form part of the total income. As such it is held that the expenditure in relation to income not includable in total income is inbuilt in the case of assessee and debited under various head of Profit and Loss account.

In view of the above facts and having regards to the accounts of the assessee, I am not satisfied with the correctness of the claim of the assessee that no expenses were incurred for earning such income. As the disallowance is being worked as per rule 8D it takes care of all direct and indirect expenses relatable to earning of the exempt income.

Thus, as regarding expenditure in relation of income which does not form part of total income is not acceptable and in absence of any better method, the method suggested by Rule 8D of the Income Tax Rules is adopted in determining the expenditure incurred by Assessee Company in relation to income not includable in total income.

Quantum of disallowance

As discussed in the preceding paragraphs that assessee is having common infrastructure and common personnel for earning income under various heads, therefore, income/expenditure cannot be separately attributed to one particular activity.

Rule 8D (2) : The expenditure in relation to income which does not form part the total income shall be the aggregate of following amounts, namely:-

(i). The amount of expenditure directly relating to income which does not form part of total income; Rs.89,888/- already disallowed by the assessee.

(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:-

Where

A=Amount of expenditure by way of interest other than the amount of interest, included in case (i) incurred during the previous year;

B= the average of value of investment, income from which does not or shall not from 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;

C= the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

Interest which is not directly attributable
to any particular income or receipt-

$$A \times B / C$$

$$A = \text{Interest} \quad = \text{Rs. } 64,110/-$$

$$B = \text{Average investment*} \quad = \text{Rs. } 81,38,89,352/-$$

$$C = \text{Average total assets} \quad = \text{Rs. } 216,58,51,020/-$$

$$\text{Accordingly } \frac{A \times B}{C} \text{ Rule-8D(ii)} \quad = \text{Rs. } 24,091/-$$

(iii) An amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not from 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.

Investment as on 31.03.2012 (Opening Balance) Rs.88,95,27,320/-

Investment as on 31.03.2013 (Closing Balance) Rs.73,82,51,384/-

Total of both (Opening /closing balance) Rs.162,77,78,704/-

Average investment for both the years Rs.81,38,89,352/-

Disallowable expenditure u/s 14A read with Rule 8D(2)(iii) Rs.40,69,447/-

Rule-8D(ii) Rs. 24,091/-

Rule-8D(iii) Rs.40,69,447/- Disallowed u/s 14A Rs.40,93,538/-

Thus, a disallowance of Rs.40,93,538/- is made u/s 14A of the Act, 1961 and the amount added to the total income of the assessee.

I am satisfied that the assessee has furnished inaccurate particulars of its income of this issue, therefore, penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 have been initiated separately.

[Addition of Rs.40,93,538/-]

(C.1) The assessee filed appeal before the Ld. CIT(A) against the aforesaid assessment order dated 27.01.2016 for A.Y.2013-14. Vide impugned separate appellate order, also dated 18.11.2016, the Ld. CIT(A) restricted the disallowance to Rs. 40,69,447/- as against aforesaid Rs. 40,93,538/- computed by the Assessing Officer and deleted the remaining disallowance of Rs. 24,091/-. The relevant portion of the order of the Ld. CIT(A) is reproduced asunder :-

3.2. The AO invoked provisions of section 14A read with Rule 8D as the appellant had disclosed investments of Rs.73.82 crores as on 31.03.2013. It is noted that the appellant disclosed dividend income of Rs.35.92 lacs and long term capital gain of Rs.2.39 crores which is claimed as exempt. A suo-moto disallowance of Rs.89,888/- was made by the appellant company for hiring an agency for managing its investment portfolio. The AO however, computed disallowance under Rule 8D(2)(ii) at Rs.24,091/- and 8D(2)(iii) at Rs.40,69,447/- aggregating to Rs 40,93,538/-. Before me, the Ld. AR has stated that the AO has considered interest payment of Rs.64,110/- to compute disallowance under Rule 8D(2)(ii). It is argued that the loans on which the said interest had been paid has not been utilized towards purchase of tax free investments. The Ld. AR has stated that investments of Rs.98.68 crores (approx.) during the year, was sourced out of its own funds which amounted to Rs.177.75 crores as on 31.03.2013. The AO ignored this aspect and has computed the disallowance under Rule 8D(2)(ii) at Rs 24,091/-. It is evident that the appellant company had sufficient funds of its own to fund its tax free investments. In the case of CIT vs. Reliance Utilities and Power Ltd. 313 ITR 340, it is held that if there is sufficient interest free funds available, it can be presumed that the investments were made from such funds. Similarly, in the case of CIT vs. HDFC Bank Ltd., the Hon'ble Bombay High Court held that in case the assessee's own funds were more than the investments in tax free securities, it would have to be presumed that the investment made by the assessee would be out of interest free funds available with the assessee. In view of these rulings, the disallowance under Rule 8D(2)(ii) at Rs.24,091/- computed by the AO is not in order and is directed to be deleted.

3.3. The AO computed disallowance under Rule 8D(2)(iii) at Rs.40,69,447/- at 0.5% of the average investment disclosed. The Ld. AR has argued that the only expenditure incurred by the appellant against the exempt income is the payment of Rs.89,888/- made to an agency hired for managing its investment portfolio. It is stated that no other expenditure is incurred for earning the exempt income. In appellate proceedings, no evidence is furnished demonstrating the services received from the alleged fund manager. The factum of expenditure incurred is not denied as the appellant has suo moto disallowed what it terms as direct expenses incurred against exempt income. It is noted that during the year investments of Rs.98.68 crores (approx.) is disclosed. In addition, the appellant company made substantial sale and purchase of mutual funds during the year on which dividend income of Rs.35.92 lacs (approx.) was earned. The appellant has also claimed exempt income of Rs.2.39 crores as long term capital gain u/s 10(38) of the Act. The Ld. AR has merely stated that no other expenditure can be directly correlated with the exempt income except the payment of Rs.89,888/- made to its fund manager. In effect, therefore, it is the contention of the Ld. AR that no administrative or managerial expenditure is relatable to the exempt income claimed. Given the volumes involved, it is difficult to accept the contention of the Ld. AR that the all investments decisions of the appellant company were outsourced to an agency to whom a paltry payment of Rs.89,888/- is made during the year. Moreover, nothing has been brought on record to substantiate the claim that the management of the company is not associated at all with the critical and strategic investment decisions. In view thereof, the proposition that no indirect expense is incurred against the exempt income is without merit.

3.4. Sub-Section (2) of Section 14A provides that the AO shall determine the amount of expenditure incurred in relation to such income (exempt income) which does not form part of the total income in accordance with such method as may be prescribed (Rule 8D), if he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to such income (exempt income). The AO has recorded his satisfaction in the assessment order and therefore, he has rightly applied Rule 8D(2)(iii) to arrive at disallowance of Rs.40,69,447/-. Since the said disallowance is computed on a percentage basis of investments, the resultant figure is a deemed disallowance out of expenditure incurred by the appellant company. It is not as if the disallowance is exceeding the expenditure debited by the appellant company in the P & L A/c. Since specific and one to one correlation of expenditure in relation to the exempt income is not identifiable, the disallowance has to be computed as per Rule 8D(2)(iii) as has been rightly done by the AO.

3.5. As expenditure claimed cannot be segregated, the only way that expenditure relating to earning of exempt income can be computed, is by the machinery method prescribed in Rule 8D(2)(ii). Once Rule 8D(2)(iii) is applied, the disallowance has to be mandatorily computed as per the formulae prescribed therein. In my view, the AO has correctly invoked the provisions of Section 14A read with Rule 8D(2)(iii) to compute the disallowance with reference to the exempt income of Rs.35.92 lacs of dividend income and long term capital gains of Rs.2.39 crores. In the light of the above, the disallowance made by the AO as per Rule 8D(2)(iii) is in order and is confirmed. Disallowance u/s 14A is restricted to Rs 40,69,447/- as against Rs.40,93,538/- computed by the AO in view of deletion of disallowance of Rs.24,091/- as per Rule 8D(2)(ii). This ground of appeal is ruled partly against the appellant.

(D) The present appeals before us have been filed by the assessee against the aforesaid two separate impugned appellate orders, each dated 18.11.2016, for assessment years 2012-13 and 2013-14. In the course of appellate proceedings in ITAT, a consolidated paper book containing the following particulars was filed from the assessee side:

S.No.	Particulars
(A) Assessment Year 2013-14	
1.	Copy of acknowledgment of ITR (ITR-V) and Computation of Total Income along with Balance Sheet with its Annexures, Profit & Loss account and Tax Audit Report (Form 3CA/3CD) for the year ended 31.03.2013.
2.	Copy of reply submitted before Id. CIT(A) dated 20.10.2016.
3.	Copy of reply submitted before Ld. AO dated 23.11.2015
(B) Assessment Year 2012-13	
4.	Copy of acknowledgment of ITR (ITR-V) and Computation of Total Income along with Balance Sheet with its Annexures, Profit & Loss account and Tax Audit Report (Form 3CA/3CD) for the year ended 31.03.2012.
5.	Copy of reply submitted before Id. CIT(A) dated 19.08.2016.
6.	Copy of reply submitted before Ld. AO dated 10.03.2015
7.	Copy of reply submitted before Ld. AO dated 09.02.2015.

(D.1) Moreover, two separate compendia of judgments was also filed from the assessee side containing copies of decisions in the following cases :-

S. No.	Particulars
1.	<i>Principal Commissioner of Income-tax, Central-1 Vs. Moonstar Securities Trading and Finance Co. (P.) Ltd. reported at 105 taxmann.com 275 (Hon'ble SC).</i>
2.	<i>Principal Commissioner of Income Tax Vs Hero Corporate Services Ltd. reported at 103 taxmann.com 200 (Hon'ble SC)</i>
3.	<i>H.T Media Ltd. Vs Principal Commissioner of Income Tax-IV, New Delhi reported at 85 taxmann.com 113 (Hon'ble High Court of Delhi)</i>
4.	<i>Associated Law Advisers Vs Income-tax Officer, Ward 37(3), New Delhi reported at 87 taxmann.com 148 (Hon'ble Delhi- Tribunal)</i>
5.	<i>Commissioner of Income-tax, Ludiana Vs. Metalman Auto (P.) Ltd. reported at 1 ltaxmann.com 51 (Hon'ble High Court of Punjab & Haryana)</i>
6.	<i>ACIT 11(2) Vs Iqbal M Chagala. Palloni Mansion reported at ITA No. 877/Mum/2013 (Hon'ble Mumbai - Tribunal)</i>
7.	<i>Principal Commissioner of Income-tax, Central-1 Vs. Moonstar Securities Trading and Finance Co. (P.) Ltd. reported at 105 taxmann.com 275 (Hon'ble Supreme Court of India)</i>
8.	<i>Principal Commissioner of Income-tax Vs. Hero Corporate Service Ltd. reported at 103 taxmann.com 200 (Hon'ble Supreme Court of India)</i>
9.	<i>H.T Media Ltd. Vs Principal Commissioner of Income Tax-IV, New Delhi reported at 85 taxmann.com 113 (Hon'ble High Court of Delhi)</i>
10.	<i>Principal Commissioner of Income-tax-IV, Ahmedabad Vs. Sintex Industries Ltd. reported at 93 taxmann.com 24 (Hon'ble</i>

	<i>Supreme Court of India)</i>
11.	<i>Maxloop Investment Ltd. Vs. Commissioner of Income Tax, New Delhi reported at 91 taxmann.com 154 (Hon'ble Supreme Court of India)</i>

(E) At the time of hearing before us, the Ld. Authorised Representative submitted that u/s 14A(2) of Income Tax Act read with Rule 8D(1) of Income Tax Rules the Assessing Officer is required to record satisfaction for invoking Rule 8D of Income Tax Rules for the purpose of computation of disallowance u/s 14A of IT Act. He contended that although the Assessing Officer has recorded satisfaction in the assessment order for both the years, the satisfaction recorded by the Assessing Officer was in general terms and does not meet the requirements of Section 14A(2) of Income Tax Act read with Rule 8D(1) of Income Tax Rules. He placed strong reliance on H.T. Media Ltd. vs. Pr. CIT (supra) for his contention. The Ld. Authorised Representative, relying on Arnav Gruh Ltd. vs. DCIT, Central Circle-36 [2018] 89 taxmann.com 189 (Mumbai-Trib.) further submitted that the satisfaction recorded by the Assessing Officer in the assessment order cannot be improved upon by the Ld. CIT(A) in appellate proceedings before the Ld. CIT(A). The Ld. Departmental Representative, on the other hand, relied on the orders of the Assessing Officer and the Ld. CIT(A).

(F) We have heard both sides. We have perused the materials on record. We have also considered the judicial

precedents brought to our attention or referred to in the records. On perusal of the assessment orders for both the years, relevant portion of which have already been reproduced in foregoing paragraphs (B) and (C) of this order; we find that the Assessing Officer has recorded detailed satisfaction, in assessment orders for both the assessment year 2012-13 and 2013-14, for invoking Rule 8D of Income Tax Rules for the purpose of computing disallowance u/s 14A of Income Tax Act. In view of detailed satisfaction recorded by the Assessing Officer in assessment orders for both assessment years 2012-13 and 2013-14; we reject the contention made by the Ld. AR that the satisfaction recorded by the Assessing Officer does not meet the requirements of Section 14A(2) of Income Tax Act read with Rule 8D(1) of Income Tax Rules. We are of the view that the satisfaction recorded by the Assessing Officer in both the assessment years 2012-13 and 2013-14 is sufficient compliance of Section 14A(2) of IT Act read with Rule 8D(1) of IT Rules. The reliance placed by the Ld. AR on Arnav Gruh Ltd. vs. DCIT (supra) is of no help to the assessee in view clearly distinguishable facts. In Arnav Gruh Ltd. vs. DCIT (supra) the Assessing Officer had not recorded any satisfaction; whereas in the present appeals before us the Assessing Officer has recorded detailed satisfaction for invoking Rule 8D for the purpose of computing disallowance u/s 14A of Income Tax Act. Similarly the reliance placed by the Ld. AR on Associated Law Advisers vs. ITO (supra) also does not advance the case of the assessee, because of

clearly distinguishable facts. In *Associated Law Advisers vs. ITO (supra)*, the assessee was following cash system of accounting and the Assessing Officer had failed to satisfy himself about correctness of assessee's claim. However, in the present appeals before us, the assessee is following mercantile system of accounting and the Assessing Officer has recorded detailed satisfaction for computing disallowance u/s 14A of Income Tax Act, in accordance with Rule 8D of Income Tax Rules. Though the Ld. AR placed heavy reliance on *H.T.Media Ltd. Vs. Pr. CIT (supra)* for the contention that the satisfaction recorded in the assessment orders was of broad and general nature and did not meet the requirement of Section 14A(2) of Income Tax Act read with Rule 8D of Income Tax Rules; however, in the facts before us, it is our categorical finding of fact, that the satisfaction recorded by the Assessing Officer is not of broad and general nature; but is detailed satisfaction taking into account the specific facts and circumstances of the case; and meets the requirements of Section 14A(2) of I.T.Act read with Rule 8D(1) of IT Rules, for both the assessment years, A.Y. 2012-13 as well as AY 2013-14. Therefore the order in the case of *H T Media Ltd. vs. Pr. CIT (supra)* fails to advance assessee's case.

(F.1) We have further noticed that the Ld. CIT(A), in the aforesaid impugned appellate orders each dated 18.11.2016 has already granted partial relief and has deleted disallowances amounting to Rs. 1,67,242/- in assessment year 2012-13 and Rs. 24,091/- in assessment

year 2013-14 respectively. The Ld. CIT(A) has passed detailed speaking order for partly upholding the disallowances made by the Assessing Officer and partly deleting the remaining portion of the disallowances.

(F.2) In view of the foregoing, we are of view that the impugned appellate orders, each dated 18.11.2016, of the Ld. CIT(A) for assessment years 2012-13 and 2013-14, are just, proper and in accordance with law having regard to specific facts and circumstances of the case. We are also of the view that the satisfaction recorded by the Assessing officer in the assessment orders for assessment year 2012-13 and 2013-14 are sufficient compliance of requirements of Section 14A of I.T. Act, read with Rule 8D of IT Rules. Therefore, we decline to interfere with the impugned appellate orders of the Ld. CIT(A) and dismiss the assessee's appeals for assessment year 2012-13 and 2013-14, both.

(F.2) In the result, both the appeals are dismissed.

Order pronounced in the open court on 16.01.2020.

Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 16.01.2020
BR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	14.01.2020
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	