

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.2343/Del/2017
निर्धारणवर्ष/Assessment Year:2012-13**

Samvardhana Motherson International Ltd. F-7, Block B-1, 2nd Floor, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi.	बनाम Vs.	ACIT Circle 22(1), New Delhi.
PAN No. AAICS6115R		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Shri K.M. Gupta, Adv.
राजस्वकीओरसे /Revenue by	Shri S.S. Rana, CIT (DR)

सुनवाईकीतारीख/ Date of hearing:	06.11.2019
उद्घोषणाकीतारीख/Pronouncement on	03.02.2020

आदेश /O R D E R

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 20.01.2017 passed by the Ld. CIT(Appeals)-15, Delhi for the quantum of assessment passed u/s 143(3) of the Act for the AY 2012-13.

1. In revised grounds of appeal, the assessee has raised the following grounds:

1. *“The Ld. CIT(A) erred in confirming the action of the Ld. AO in invoking Rule 8D of the Rules for computing disallowance u/s 14A of the Act without recording satisfaction with respect to the suo moto disallowance made by the Appellant as mandated in Section 14A of the Act.*
2. *The Ld.CIT(A)/AO failed to appreciate that the Appellant has been consistently making the suo moto disallowance u/s 14A of the Act by following the same computational methodology since AY 2008-09 to 2011-12.*
3. *That on the facts and in the circumstances of the case and in law, the Ld. AO/Ld. CIT(A) erred in making/upholding an addition of Rs. 2,26,13,434/- u/s 14A of the Act read with Rule 8D(2)(iii) of the Rules in the impugned assessment order.*
4. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in upholding the action of the Ld. AO of making an addition u/s 14A of the Act by mechanically applying the provision of Rule 8D(2)(iii) which resulted into more disallowances than expenses (non-operational/administrative expenses) claimed by the Appellant during the year.*
5. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the Appellant being an Investment Company who made investments in its subsidiary Companies and Joint Venture Companies to hold business interests and not to earn exempt income and most*

of investments in its subsidiary Companies does not yield exempt income.

6. *That on the facts and in the circumstances of the case and in law, the Ld. AO grossly erred in withdrawing interest u/s 244A of the Act.*
7. *That on the facts and in the circumstances of the case and in law, the Ld. AO grossly erred in initiating penalty proceedings u/s 271(1)(c) of the Act on the purported ground that the Appellant had furnished inaccurate particulars of its income.”*

2. The facts in brief are that the assessee company is engaged in the business of investment and consultancy. During the course of the assessment proceedings, AO noted that assessee has earned exempt dividend income and therefore, disallowance u/s 14A is to be invoked. In response to the show cause notice the assessee submitted that it has made *suo moto* disallowance of Rs. 16,95,69,008/-, the working of which has been incorporated at pages 2 & 3 of the impugned assessment order. The Ld. AO after detailed discussion, held that the working of the disallowance made by the assessee as per Rule 8D(iii) at Rs. 3,53,49,023/- is less than 0.5% of the average value of the investment and the correct figure should be Rs. 5,79,62,456/-.

He, thus, calculated the disallowance as per Rule 8D(2) at Rs. 19,21,82,442/- in the following manner:

<i>Clause</i>	<i>Particular</i>	<i>Calculation</i>	<i>Amount</i>
<i>i.</i>	<i>Expenditure directly related to exempt income</i>	<i>Rs. 1,45,69,045/-</i>	<i>Rs. 1,45,69,045/-</i>
<i>ii.</i>	<i>Disallowance of interest expenditure:</i>	<i>Rs. 12,92,60,080/-</i>	
	<i>A. Interest expenditure incurred during the year.</i>		
	<i>B. Average Value of Investment</i>	<i>(11933238158 + 11251744332)/2 =Rs. 11,59,24,91,245/-</i>	
	<i>C. Average of total assets</i>	<i>(12939869948 + 12107093339)/2 =Rs. 12,52,34,81,644/-</i>	
	<i>Disallowance = A*B/C</i>	<i>(129260080 X 11592491245/2=12523481644 =Rs. 11,96,50,940/-</i>	<i>Rs. 11,96,50,940/-</i>
<i>iii.</i>	<i>Aggregate of Opening & Closing value of Investment (Average Value of Investment) ½% of above as per Rule 8D</i>	<i>Rs. 11,59,24,91,245 X 0.5% =Rs. 5,79,62,457/-</i>	<i>Rs. 5,79,62,457/-</i>
	Total disallowance (i+ii+iii) as per Rule 8D		Rs. 19,21,82,442/-

3. Since, assessee had *suo moto* disallowed Rs. 16,95,69,008/-, therefore, the difference amount of Rs. 2,26,13,434/- was added by the Assessing Officer.

4. Ld. CIT(A) held that though there is no difference in computation of disallowance under Rule 8D(2)(i) & 8D(2)(ii), however, the only dispute is with regard to disallowance computed under Rule 8D(2)(iii). He observed that, out of total expenses of Rs. 48,69,70,574/- claimed by the assessee in the profit and loss account, the assessee has bifurcated the expenses as per the separate chart against operating income and non-operating income at Rs. 12,21,51,889/- and Rs. 36,46,47,858/- respectively and the case of the assessee is that the disallowance under Rule 8D cannot exceed the expenses which against non-operating income. However, the Ld. CIT (A) has confirmed the computation made by the AO.

5. Before us, Ld. Counsel submitted that majority of the shares has been held in the holding company and out of 42 crores of dividend income; Rs. 38 crores has come from the holding company. The assessee itself has given a very detail working for the *suo moto* disallowance of Rs. 16,95,69,008/- and the only dispute is with regard to disallowance under Rule

8D(2)(iii). The assessee has excluded the expenditure relating to interest income, consultancy income and dividend. Our attention was drawn to page 39 of the PB to point out the Revenue from operations and other income and also the financial cost and other expenses debited to the profit and loss account. He also pointed out the expenditure which can be held to be attributable in relation to the earning of dividend income; the working of the same has been placed in the PB at page 26. He further submitted that the methodology adopted by the assessee in bifurcating the streams of income and cost has been accepted by the Department in all the years, whereby the assessee bifurcated the total personal and administrative expenses incurred during the year against the operative income and non-operative income on reasonable basis. Similar basis of identification and bifurcation of expenses were adopted in the AY 2011-12 and the similar computation of the assessee has been accepted by the AO in the order passed u/s 143(3) without any adverse inference on the said methodology. The AO without going through the nature of expenditure debited and having regard to the accounts has mechanically applied Rule 8D (2)(iii) @ 0.5%. He, further, submitted that there is no satisfaction by the AO on the

disallowance made by the assessee and in a very mechanical manner he has provided to make the disallowance.

6. On the other hand, Ld. CIT (DR) submitted that AO has recorded the satisfaction in the following manner as per para 3.2 as under:

“3.2 Since, the assessee company has invested its money for such investment of shares, which is capable to generate income which does not or shall not form part of total income of the Assessee Company and indirect cost in the form of administrative expenditures and interest is involved in this process. There is direct and proximate nexus between the exempted income, which the investments shall generate and the expenditures directly or indirectly involved in earning the said income. Hence, I am fully satisfied to invoke the provisions of section 14A read with Rule 8D to work out disallowance of expenditures.”

Thus, the disallowance made by the AO should be upheld.

7. After considering the rival submissions and on perusal of the relevant finding given in the impugned order as well as the material referred before us, we find that assessee has made disallowance of expenditure in relation to the dividend income in the following manner: -

Expenditure in relation to Dividend Income

S.No.	Particulars	Detail	Amount (in Rupees)
1.	Expenditure Directly relating to Dividend Income	14,569,045	14,569,045
2.	Interest Expense allocated	129,260,080	119,650,940
3.	0.5% of Average Investment	57,962,456	35,349,023
	Total Amount	201,791,581	169,569,008

While working the disallowance of expenses, the assessee has reduced, *firstly*, interest expenses incurred for earning of interest income; *secondly*, expenses for consultancy and others; and *lastly*, expenses as per provision of PGBP which include depreciation, donation, provisions for diminution in the value of investment, RBI penalty, provision for leave encashment, IPO expenses, gratuity provisions etc. The details of such expenses are as under:

Total disallowance	
Total Expenses	486,970,574
Less: Interest Expenses to Earn Interest Income	67,928,110
	419,042,464
Less: Expenses for Consultancy & Others	54,223,779
	364,818,685
Less: Expenses which is disallowed as per provisions of PGBP	
Depreciation	170,827
Donation	1,550,001
Provisions for diminution in the value of Investment	121,500,010

<i>RBI Penalty Paid</i>	1,000,000
<i>Provision for Leave Encashment</i>	207,649
<i>IPO Expenses</i>	75,212,296
<i>Gratuity Provisions</i>	568,799
<i>Interest paid on TDS</i>	-
	<u>200,209,582</u>
	164,609,104
<i>Less: Interest Expenses un allocated</i>	<u>129,260,080</u>
	35,349,023

By way of such methodology of bifurcating the operating and non-operating revenue, expenses which are not connected with earning of the exempt income has been removed. Such methodology has been accepted by the AO in the earlier years. From the bare perusal of the nature of expenses, it can be seen that, none of these expenses are directly or indirectly attributable for earning of exempt income.

8. Section 14A (2) provides that the AO while determining the amount of expenditure incurred in relation to the exempt income, first of all, should examine the claim of the assessee having regard to the accounts maintained by the assessee and then he has to satisfy himself with the correctness of the claim of the assessee in respect of expenditure incurred in relation to the exempt income. If the assessee having regard to the accounts and nature of expenses debited points out that these expenditures are not connected or attributable to earning of exempt income, then

same cannot be roped in for the purpose of disallowance under this section unless Assessing Officer finds something contrary. When the assessee has given a very detailed working, then without pointing out any defect, the AO in a very general manner has held that there is direct and proximate nexus between the expenditure and the exempt income. The satisfaction of the AO should not be mechanical but should *prima facie* indicate his application of mind on the accounts maintained by the assessee and the nature of expenditure debited vis-à-vis its co-relation with the earning of the exempt income. It is a well settled proposition by the Hon'ble Apex Court that satisfaction of the AO is mandatory before resorting to disallowance. The relevant observation of the Hon'ble Supreme Court in the case of **Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT reported in (2017) 81 taxmann.com 111** reads as under:

“We do not see how in the aforesaid fact situation a different view could have been taken for the AY 2002-03. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on

application of the formula prescribed under Rule 8D or in the best judgment of the AO, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable.”

9. Here in this case, as pointed out earlier there is no requisite satisfaction by the AO and he has mechanically applied rule 8D. Under these facts and circumstances as discussed above, the manner in which disallowance under Rule 8D(iii) has been made by the Assessing Officer is not called for and, accordingly, the disallowance made by the AO over and above the *suo moto* disallowance made by the assessee is deleted.

10. In the result, the appeal of the assessee is allowed. Other grounds are general in nature and hence, the same are not adjudicated upon.

11. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 03.02.2020

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

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 03.02.2020

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi