

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.6904/Del./2017
Assessment Year: 2014-15

Shri Vinay Bhasin, C-14, South Extension, Part-II, New Delhi	Vs.	ACIT, Circle-61(1), New Delhi
PAN :AAAPB3445J		
(Appellant)		(Respondent)

Appellant by	Shri Salil Agarwal, Adv. Shri Shailesh Gupta, CA
Respondent by	Shri Saras Kumar, Sr. DR

Date of hearing	24.08.2020
Date of pronouncement	27.08.2020

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 13/10/2017 passed by the Learned CIT(Appeals)-23, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2014-15, raising following grounds:

1. *That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the disallowance of Rs.8,76,091/- failing to appreciate that aforesaid disallowance has been made*

mechanically applying the provisions of Rule 8D(2)(iii) of the Income Tax Rules, 1962 and without recording a satisfaction vis-a-vis books of the accounts of the assessee as envisaged under the provisions of Sub-sections (2) and (3) of Section 14A of the Act and hence the disallowance made of Rs. 8, 76, 091/- is wholly unsustainable in law and deserves to be deleted.

- 1.1 *That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the disallowance failing to appreciate that while making the aforesaid disallowance learned Assistant Commissioner of Income Tax has not established the nexus between the specific expenditure and the income which does not form part of the total income despite the fact that the appellant has specifically submitted that no expenditure has been earned for earning the exempt income.*
2. *That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining ad-hoc disallowance of Rs. 3,95,539/- on account of alleged personal expenditure with respect to telephone, vehicle, depreciation and travelling expense.*
- 2.1 *That in doing so, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that requisite documents/evidences were filed and explanation were tendered before the learned ACIT explaining the nature and incurrence of aforesaid expenditures, but the learned ACIT based his decision purely on suspicion, surmises and conjectures and as such, the disallowance so sustained, is highly unjust and untenable in law.*
3. *That the learned Commissioner of Income Tax (Appeals) has grossly erred in recording adverse findings which are perverse and have been recorded without considering the factual substratum of the case and hence such findings are vitiated and deserves to be deleted.*

It is therefore prayed that the additions/disallowance made and upheld by the learned Commissioner of Income Tax (Appeals) is not in accordance with law and therefore the additions so made along-with interest levied be kindly deleted and appeal of the appellant be kindly allowed.

2. Briefly stated facts of the case are that the assessee is an individual an advocate by profession. The return of income for the year under consideration, filed on 22/09/2014 declaring income of ₹ 7,39,62,550/-, was selected for scrutiny assessment and

statutory notices were issued and complied with. The assessment under section 143(3) of the Income-tax Act, 1961 (in short 'the Act') was completed on 18/11/2016 after making certain additions/disallowances and total income was assessed at ₹ 7,54,64,840/-. The Ld. CIT(A) partly allowed the appeal filed by the assessee. Aggrieved, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. Before us, the parties appeared through videoconferencing facility. The assessee filed paper-book and other documents electronically.

4. In ground No. 1 to 1.1, the assessee has challenged disallowance of ₹ 8,76,091/- made under section 14A of the Act read with rule 8D(2)(iii) of the Income-tax Rules, 1962 (in short 'the Rules'). Before us, the learned Counsel of the assessee submitted that issue in dispute is squarely covered by the earlier decision of the Tribunal in the case of the assessee himself. He referred to the decision of Tribunal in ITA No. 2273/Del./2017 for assessment year 2012-13. The Learned DR could not controvert this fact, however, he relied on the order of the lower authorities.

5. We have heard rival submission of the parties on the issue in dispute. We find that in the instant case the disallowances has been made by the Assessing Officer for expenses towards earning exempt income in terms of section 14A of the Act. During the year, the assessee shown exempted income of ₹ 10,87,838/-from dividend; income of ₹ 8,26,342/- from interest from tax-free bonds and ₹ 39,36,670/-from long-term capital gain on sale of listed shares. The assessee claimed that no expenditure was incurred and claimed in the books of accounts for earning the

said exempted income. The Assessing Officer was not satisfied with this claim of the assessee and accordingly, he invoked rule 8D of the rules and made addition for 0.5% of the average value of the investment towards administrative expenses for earning exempt income in terms of rule 8D(2)(iii) of the rules. The relevant finding of the Assessing Officer is reproduced as under:

“3.7 The Assessing Officer has to adopt a reasonable basis or method consistent with all the relevant facts and circumstances after furnishing a reasonable opportunity to the assessee to place all germane material on the record. In the instant case, the assessee contended that it had not incurred any expenditure for earning the exempt income and that no disallowance was warranted. The contention of the assessee is not acceptable in view of the fact that the insertion of Section 14A was curative and declaratory. The assessee has not provided any separate account for earning of exempt income. The assessee has made investments for earning exempt income and managing such a large portfolio entail expenses right from diversion of manpower/staff for indulging in investment activities to various activities like visiting banks, use of vehicle and telephone, use of internet if portfolio management is web based, cost computer & its depreciation, computer operator, consequent electricity, use of office premises, fee charged by Mutual Fund agents/bankers (Annual Fee) portfolio record maintenance and its tracking to ensure timely sale/purchase of investments.

3.8 Since no disallowance has been done by the assessee and as per the facts and circumstances of the case, I have reasons to arrive at the satisfaction for disallowance u/s 14A of the Act, r/w Rule 8D of the Rules, that there are expenses relatable to the earning of exempt income by the assessee. Since, the assessee has invested its money for such investment, which is capable to generate income which does not or shall not form part of total income of the assessee and indirect cost in the form of administrative expenditures etc. 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.”

5.1 Before the Ld. CIT(A) the assessee contested that the Assessing Officer has not recorded the dissatisfaction which was required in terms of section 14A(2) for invoking rule 8D of the rules. The Ld. CIT(A) rejected this contention of the assessee and upheld the disallowance made by the Assessing Officer observing as under :

- “6.4 Therefore, the relevant question to be decided is as to whether the AO having regard to the accounts of the assessee was non-satisfied with the correctness of the claim of the assessee (appellant)?*
- 6.5 It is undisputed fact that as per the appellant no expense has been incurred to earn the exempt income. Obviously, it is not the case of the appellant that separate books are maintained for recording the expenses incurred to earn exempt income and it is matter a fact that there is no entry in these books because no expense was actually incurred. It is also not the case of the appellant that though the books of accounts of the appellant maintain separate ledgers for recording the expenses incurred to earn exempt income and it is matter a fact that there is no entry in these ledger accounts because no expense was actually incurred.*
- 6.6 It is also noted that it is not the case of the revenue that AO is not required to be non-satisfied regarding correctness of expenses claimed by the AO. However, the nonsatisfaction can be inferred from facts and circumstances of the case. If non-satisfaction has been recorded, it becomes primary basis of showing non-satisfaction. In this case the very fact that assessee claims that no expenditure has been made to earn exempt income, indicates that any person of ordinary intelligence would be non-satisfied about correctness of appellant's claim because at least some expenses would be incurred indirectly in process of administration, supervision, stationary and accounting etc. in relation to the investment and dividend there-from (may be nil in a particular year).*
- 6.7 The onus is upon the appellant to prove that there was no non-satisfaction of the AO because AO has proceeded to determine the expenditure as per Rule 8D which indicates non-satisfaction of the AO. Since, it is the appellant who alleges the apparent is not real, therefore, the onus lies on the appellant to prove non-satisfaction of the AO was not there. The reliance is placed on the ratio of CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349 (SC).*
- 6.8 The appellant has been trying to justify that it has given money to mutual funds managers who remit net expenses. However, AO*

has given reasoning that such justification of the appellant is not acceptable (ref. para-3.6, 3.7 and 3,8). The ratio of Hon'ble Delhi High Court in case of *Indiabulls Financial Services Ltd. Vs. Deputy Commissioner of Income-tax, Circle -11(1)* [2016] 76 *taxmann.com* 268 (Delhi) is directly applicable. Hon'ble Delhi High Court has held that where the elaborate analysis carried out by the Assessing Officer as indeed the three important steps indicated by him in the order, shows that all these elements were present in his mind, that he did not expressly record his dissatisfaction in these circumstances, would not per se justify this court in concluding that he was not satisfied or did not record cogent reasons for his dissatisfaction to reject the Assessing Officer's conclusion. To insist that the Assessing Officer should pay such lip service regardless of the substantial compliance with the provisions would, in fact, destroy the mandate of section 14A (ref. para-8 of the judgment).

- 6.9 In view of the above, I have no doubt in holding that the AO having regard to the accounts of the assessee was non-satisfied with about the correctness of the claim of the appellant.
- 6.10 Once, there is a non-satisfaction of the AO with/about the correctness of the claim of the appellant, the provisions contained in Rule 8D are triggered and as a consequence the calculation has to be made as per machinery of Rule 8D, Therefore, in this case, in principle, I find no fault in the action of the AO in applying Rule 8D.
- 6.11 The judgment of Hon'ble Delhi High Court in case of *Joint Investments Pvt. Ltd. Vs CIT* [2015] 59 *taxmann.com* 295 (Delhi) has been considered carefully. In para-9, it has observed, "this proportion or portion of the tax exempt income surely cannot swallow the entire amount as happened in this case." I have also carefully considered judgement Honble Delhi High Court in case of *CIT vs. Holcim India Pvt. Ltd.* [2015] 57 *taxmann.com* 28 (Delhi). The Hon'bte High Court in that case considered the question as to whether section 14A can be invoked and disallowance of expenditure can be made even if no dividend income is earned. Hon'ble Delhi High Court referred to various decision of other High Courts including the decisions of the Punjab and Haryana High Court in case of *CIT, Faridabad vs Lakhani Marketing Inc., CIT Vs. Hero Cycles Ltd* ITA No.970/2008. decided on 02.04.2014, *CIT Vs. Hero Cycles Limited*, [2010] 323 ITR 518 and *CIT Vs. Winsome Textile Industries Limited*, [2009] 319 ITR 204 which held that Section 14A cannot be invoked when no exempt income was earned. Hon ble Delhi High Court concurred with the ratio of the decisions mentioned therein.
- 6.12 It is noted that in this case, the following are the items of exempt income,
- i) Dividend income Rs. 10,87,838/-,

ii) Interest income from tax free bonds Rs. 8,26,342/-,
and

iii) Exempt LTCG Rs. 39,36,670/-

The AO has made disallowance of only Rs. 8,76,091/- which is less than the exempt income earned. Therefore, the ratios of above stated judgments are not applicable.”

5.2 Before us, the Learned Counsel submitted that the dissatisfaction recorded by the Assessing Officer is identical to the dissatisfaction, which was recorded by the Assessing Officer in assessment year 2012-13. The Tribunal in assessment year 2012-13, following earlier years, held that the dissatisfaction recorded on the claim of the assessee of no exempted income was not proper and therefore deleted the disallowance. The relevant finding of the Tribunal (Supra) is reproduced as under:

“7. We have heard the rival submissions and perused the material available on record. We find that the assessee has engaged Portfolio Management Service to manage his investments. The amount of exempt income is received after deductions expenses by the Citi Bank. Therefore, the assessee has not claimed any expenditure in relation to exempt income. We, further find that the issue is squarely covered by the decision of Tribunal ITA No.5822/Del/2015 for A.Y. 2011-12 dated 23.04.2019 in the case of assessee wherein the ITAT has given its finding in para 13 to 17 as under:

13. On ground no. 3 assessee challenged the disallowance of Rs. 6.08,180/- u/s 14A of the Act read with Roe 8D(2)(iii) of the Act. The AO noted that assessee has earned income exempt from tax amounting to Rs.21,26,012/- from dividends. The assessee was asked to give details and justify the claim in view of section 14A. read with Rule 8D with reference to the dividend income. The assessee submitted that he has nor claimed any expenses against earning of the sad Income. Therefore, above provisions are not applicable in the case of the assessee. The assessee relied upon the following decisions:

1."CIT vs. Wimco Seedlings - ITA No. 1367/2008, 1368/2008 & ITA No. 1391/2008:

2. *ACIT vs. Sun investments Pvt. Ltd. (2011) 48 SOT 159 (Delhi):*
3. *Relaxo Footwear Ltd. vs. Addl. CIT, Range-15. New Delhi (2012) 50 SOT 102 (Delhi):"*

14. The AO. however, noted that the basic object of section 14A is to disallow the direct and indirect expenditure incurred in relation to income which does not form part of the total income. AO referred to judgment of the Supreme Court in the case of *CIT vs Walfort Share and Stock Brokers P. Ltd. 326 ITR 1*. The AO also noted that AO has to adopt a reasonable basis or method consistent with all the relevant facts and circumstances for making a disallowance. The assessee has not provided any separate amount for earning of exempt income. The assessee has made very heavy investments for earning exempt income throughout the year. The AO. therefore, following section 14A read with Rule 8D disallowed expenditure of Rs. 6,08,180/- which is attributed to the earning of exempt income.

15. The addition was challenged before Ld. CIT,(A). The written submission of the assessee is reproduced in the appellate order in which it was stated that AO has not specified or pointed out any expenses, whatsoever claimed by assessee for earning the said dividend income. The assessee relied upon the decisions of Delhi High Court in the cases of *CIT vs. Taikisha Engineering India Ltd. 275 CTR (Del.) 316* and *Joint investments (P) Ltd. Vs. CIT 275 CTR 471*. The Ld. CIT (A), however confirm the addition and dismiss the appeal of assessee.

16. After considering the rival submissions, we are of the view that addition is wholly unjustified. Ld. Counsel for assessee submitted that similar issue was considered by IT AT Delhi V Bench in the case of assessee for AY 2009-10 vide order dated 15.11.2018 (supra) and similar addition has been deleted. The findings of the Tribunal in para 8 of the order above is reproduced as under:

"8. We have gone through the findings of the Ld. Assessing Officer on this aspect. Ld. Assessing Office, recorded that the assessee made heavy investments for earning of exempt income and being a busy professional, he requires the management of such a portfolio by incurring expenses, diversion of man-power/staff for indulging in investment activities to various activities like visiting banks, use of vehicle and telephone, use of internet if portfolio management is web-

based, cost of computer and its depreciation, computer operator, consequent electricity, use of office premises, fee charged by mutual fund agents/bankers (annual fee), portfolio record maintenance and its tracking to ensure timely sale/purchase of mutual fund units etc. Except making this statement and reading all the possible expenses that involve in investment process, Ld. Assessing Officer is not specific as to what exactly the probable expenditure in this matter the assessee could have incurred. According to the assessee the investment was made in mutual funds and the expenses were already directed by the operators and a certificate to that extent was submitted before the Ld., Assessing Officer. Further, the instructions are that the dividend income will be directly credited to the bank account of the assessee so that no probable expenditure at the end of the assessee for deposit of the dividend in bank could have occurred. Having regard to this set of facts and circumstances involved in this matter, we are of the considered opinion that instead of making a sweeping enumeration of the probable expenses involved in investment process, Ld. Assessing Officer could have taken legal exercise to verify the correctness or otherwise of the certificate that was issued by the asset management companies or the Citibank in this respect. We, therefore, find that there is no proper record of satisfaction as to the expenses incurred by the assessee for earning the exempt income. By following the decision reported in CIT vs. Taikisha Engineering India Ltd. 275 CTR (Del.) 316 and Joint Investments (P) Ltd. vs. CIT 372 ITR 694 (Del.), we are of the opinion that the AO at the first instance should have examined the correctness of the statement made by the assessee that no expenses were incurred for earning the exempt income during the year and if and only if the Ld. AO is not satisfied on this account after making reference to the accounts, he is entitled to adopt the method under Rule 8D of the Rules. We, therefore, while allowing the plea of the assessee direct the Ld. Assessing Officer to delete the addition made on this score also."

Copy of the order is provided to the Ld. DR who did not dispute the same.

17. Considering the facts of the case, in the light of the findings of the Tribunal in AY 2009-10 (supra), we are of the view that the issue is covered in favour of the assessee by the above order of the Tribunal in the case of the same assessee. Following the reasons for the decision of the same, we set aside the orders of the authorities below and delete the addition.

8. Accordingly, considering the above facts and in the light of findings of Tribunal for A.Y. 2011-12 and 2009-10 we are of the view that the issue is covered in favour of the assessee, therefore, the disallowance made by the AO are accordingly deleted, this Ground No.1 of assessee appeal is accordingly allowed.”

5.3 The section 14A(2) of the Act has provided recording of dissatisfaction before invoking Rule 8D as under:

“Expenditure incurred in relation to income not includible in total income.

14A. (1)

(2) 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 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 this Act.”

5.4 Thus, the issue-in-dispute involved in the case is whether the dissatisfaction recorded by the Assessing Officer on the correctness of the claim of expenditure is proper within the requirements of section 14A(2) of the Act.

5.5 We find that the Tribunal in the assessment year 2012-13 has followed the finding of the Tribunal in the case of the assessee for assessment year 2009-10, wherein also the Tribunal has found the dissatisfaction recorded by the Assessing Officer as not proper, which is required under the provisions of the Act. In the assessment year 2009-10, the Assessing Officer recorded that the assessee made heavy investment for earning of the exempt income and expenses for running the exempt income like manpower, vehicle, telephone, use of Internet, computer and its depreciation, electricity etc. must have been incurred by the assessee. But the Tribunal found that the Assessing Officer was

not specific as to what exactly the probable expenditure in the matter. The Tribunal also noted that the expenses in respect of the mutual funds were already deducted by the respective operators. The Tribunal observed that the Assessing Officer would have taken legal exercise to verify the correctness or otherwise of the certificate, that was issued by the asset management companies or Citibank. We find that in the year under consideration also the Assessing Officer has recorded similar dissatisfaction and not made any attempt to carry out the exercise which was proposed by the Tribunal in assessment year 2009-10. In view of the identical dissatisfaction recorded by the Assessing Officer, which has been held as not proper by the Tribunal(supra), we respectfully following the finding of the Tribunal in assessment year 2009-10, delete disallowance in dispute in instant year. The ground Nos. 1 and 1.1 of the appeal are accordingly allowed.

6. The ground No. 2 of the appeal relates to confirmation of the disallowance of ₹ 3,95,539/- on account of the personal expenses out of the vehicles, depreciation, telephone and telex and travelling expenses.

7. The facts qua the issue in dispute are that the Assessing Officer observed expenses of ₹49,61,348/- under various heads like vehicle running and maintenance (Rs.14,52,684/-); the depreciation on car (Rs.12,68,630/-); telephone and telex expenses (Rs.1,81,407/-); travelling expenses (Rs.10,52,670) ; conveyance expenses (Rs.4,45,346/-); Diwali expenses (₹1,81,230/-) and repair and maintenance expenses (Rs.3,79,381/-). The Assessing Officer found that no logbook of

the vehicle was maintained and the assessee could not produce evidences that the car was wholly and exclusively used for the purpose of the business. As possibility of personal use of the expenses was not ruled out, the Assessing Officer made disallowance of 10% of the above expenses, which was worked out to ₹4,96, 135/-. Out of the disallowance of ₹4,96,135/-, the assessee challenged disallowance of ₹3,95,539/- before the CIT(A) and submitted that the disallowance may be restricted to 1/20th of the expenses on those account. The Learned CIT(A) held that some personal expenditure has been accepted by the assessee and thus held that although the appellant had shown non-satisfaction on the estimate made by the Assessing Officer, however there was no sanctity of the estimate proposed by the assessee either and he upheld the disallowance of Rs.3,95,539/-. Before us, the Learned Counsel submitted that identical disallowance have been deleted by the Tribunal in earlier years. The learned DR relied on the order of the lower authorities.

8. We have heard rival submission of the parties on the issue in dispute. The Assessing Officer has made disallowance at the rate of 1/10 of the expenses on estimate basis in view of the nonproduction of the logbook of the vehicles. The Assessing Officer has not pointed out any other defects in the vouchers under other heads of expenditure. We find that the assessee has already admitted 1/20th of the expenses against the disallowance of ₹ 3,95,539/- made under the head vehicle maintenance, depreciation telephone and telex and travelling expenses, therefore we feel it appropriate to restrict the disallowance to 1/20th of the expenses under the heads corresponding to the

disallowance of ₹3,95,539/- which was made by the Assessing Officer. The ground Nos. 2 and 2.1 of the appeal are accordingly partly allowed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 27th August, 2020.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

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

Dated: 27th August, 2020.

RK/-(D.T.D.S.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi