

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

**BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No.71/Del/2018  
Assessment Year: 2014-15**

DCIT, Circle 6(2), New Delhi.	vs.	Continental Device India Pvt. Ltd., C-120, Naraina Industrial Area, New Delhi.
(Appellant)		<b>PAN :AAACC1835E</b> (Respondent)

Appellant by :	Sh. Jagdish Singh, Sr. DR
Respondent by	: Sh. Pradeep Dinodia, CA Sh. R.K. Kapoor, C.A

Date of hearing: 13.10.2020  
Date of order : 14.10.2020

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

Challenging the order dated 19/09/2017 passed in appeal No. 10496/16-17-CIT(A)-2 by learned Commissioner of Income Tax (Appeals)-2, New Delhi ("Ld. CIT(A)"), in the case of M/s. Continental Device India Pvt. Ltd. ("the assessee"), Revenue filed this appeal for assessment year 2014-15.

2. Brief facts of the case are that the assessee is a company engaged in the manufacturing and trading of electronic devices. It had filed its return of income on 27.11.2014 at a loss of Rs.53,72,350/-. The

assessment order u/s. 143(3) of the Income-tax Act (for short "the Act") was complete by order dated 19.12.2016 at Rs.2,00,41,657/- by making disallowances of Rs.2,50,00,440/- u/s. 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 ("the Rules") and Rs.4,13,567/- u/s. 36(1)(iii) of the Act.

3. When the assessee preferred appeal, Id. CIT(A) partly allowed the appeal granting relief to the assessee in respect of addition made u/s. 14A read with Rule 8D. Aggrieved by such an order, the Revenue preferred this appeal stating that the Id. CIT(A) ignored the fact that the assessee had incurred huge interest expenses in relation to investments in the instruments income which is exempt.

4. The Id. DR submitted that when the assessee failed to produce documentary evidence to show that the investments were made from out of own funds available with the assessee and for such investments, no borrowed amount was spent, the Assessing Officer is justified in invoking the provisions of Rule 8D(2)(ii) of the Rules. So also, when there is an investment, though a part of it accrued dividend, the other investment does not lose its character as investment and any interest-bearing amount spent for such investments shall be considered for the purpose of Rule 8D(2)(ii) besides such other investments also taking into consideration u/r. 8D(2)(iii) of the Rules.

5. Learned AR submitted that Id. CIT(A) followed the binding precedent of Special Bench of this Tribunal in the case of ACIT vs. Vireet Investment (P) Ltd. (2017) 165 ITD 27(Delhi Tribunal-Special Bench) to the effect that only those investments are to be considered for computing

average value of investment which yielded exempt income during the year and the investments which did not yield any exempt income during the year shall not be considered for the purposes of disallowance under Rule 8D(2)(iii) of the Rules besides considering the fact that the assessee met the investments out of its own funds and therefore, there is no scope of disallowance of interest component u/r. 8D(2)(ii) of the Rules. He brought to our notice that as per audited balance sheet as on 31.03.2014, the share capital of assessee was Rs.103.40 crores whereas investments were only Rs.86.208 crores while the borrowing stood at Rs.24.69 crores. In these circumstances, the Id. AR submitted that there is no ground to interfere with the findings of the Id. CIT(A) on this aspect.

6. We have gone through the material on record in the light of submissions made on either side. The assessment order itself reveals that in so far as the direct expenses u/r. 8D(2)(i) are concerned, the Assessing Officer accepted that no direct expense was incurred by the assessee for earning the exempt income. There is no denial of the fact from the Revenue that as on 31.03.2014, the share capital of the assessee was Rs.103.40 crores which is more than enough to cover the investments of Rs.86.208 crores and therefore, the presumption is that the assessee invested the amounts from out of their own funds and therefore, the question of disallowing the interest component u/r. 8D(2)(ii) does not arise. In so far as consideration of investment which did not yield any dividend income for the purpose of calculating the disallowance u/r. 8D(2)(iii), it is the settled principle of law that only such investments which yielded exempt income during the year have to be considered for computing the average value of investment, and the investments which

did not yield any exempt income shall not be considered. Admittedly, the assessee disallowed a sum of Rs.2,75,113/- by following this calculation. Ld. CIT(A) rightly followed the decision of Special Bench of this Tribunal in the case of ACIT vs. Vireet Investment (P) Ltd. (supra), which is binding precedent on this aspect.

7. For these reasons, we do not find any legal infirmity in the findings of the Id. CIT(A) and therefore, no interference is warranted with the same. We, accordingly, decline to interfere with the impugned order.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 14/10/2020.

Sd/-  
**(B.R.R. KUMAR)**  
ACCOUNTANT MEMBER

Sd/-  
**(K. NARASIMHA CHARY)**  
JUDICIAL MEMBER

Dated: 14 /10/2020

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