

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 4831/DEL/2017
[A.Y 2013-14]

M/s Indica Industries Pvt. Ltd., Vs. The Income tax Officer
A-4, Greater Kailash, Ward-12(2),
Part-I, New Delhi. New Delhi.

PAN: AAACI 0233 Q

ITA No. 4543/DEL/2017
[A.Y 2013-14]

The Income tax Officer Vs. M/s Indica Industries Pvt. Ltd.,
Ward-12(2), A-4, Greater Kailash,
Part-I, New Delhi. New Delhi.

PAN: AAACI 0233 Q

[Appellant]

[Respondent]

Assessee by : Shri Kapil Goel, Adv

Revenue by : Ms. Indu Saini, Sr. DR

Date of Hearing : 28.10.2020

Date of Pronouncement : 29.10.2020

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above cross appeals by the assessee and the revenue are preferred against the order of the CIT(A)-4, New Delhi dated 01.05.2017 pertaining to A.Y 2013-14. Both these appeals were heard together and are disposed of by the by this common order for the sake of brevity and convenience.

ITA No. 4543/DEL/2017 [Revenue's Appeal]

2. The solitary grievance of the revenue is that the CIT(A) erred in allowing claim of deduction amounting to Rs. 1,33,13,642/- u/s 80IC of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short].

3. A bare perusal of the grounds show that this appeal of the revenue is hit by the CBDT Circular No. 17/2019 dated 08.08.2019 by which the Board has directed the Revenue not to prefer appeals before this Tribunal if the tax effect is less than Rs. 50 lakhs. In light of the above, this appeal of the revenue is dismissed.

ITA No. 4831/DEL/2017 [Assessee's appeal]

4. The solitary grievance of the assessee is that the CIT(A) erred in computing disallowance of Rs. 36,98,984/- made u/s 14A of the Act, 1961 [hereinafter referred to as 'The Act' for short] read with Rule 8D of the ITAT Rules, 1962 by the AO.

5. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has earned dividend income of Rs.1,07,46,824/- which it claimed as exempt. The assessee was asked to furnish why the expenses relevant to earned dividend income should not be disallowed u/s 14A of the Act. The assessee was also asked to furnish working of disallowance in view of Rule 8D of the Rules.

6. In its reply, the assessee stated that it has suo moto disallowed Rs. 9,37,465/- which includes management fees, custody fees, audit fees, portfolio management fees and other expenses.

7. The reply of the assessee did not find any favour with the Assessing Officer who mechanically proceeded to compute the disallowance u/s 14A of the Act and computed total disallowance at Rs. 39,41,031/-.

8. The assessee carried the matter before the CIT(A) but without any success.

9. Before us, the learned counsel for the assessee stated that nowhere the Assessing Officer has recorded any satisfaction for making the impugned disallowance. It is the say of the ld. counsel for the assessee that on identical set of facts, the Tribunal in the immediately preceding A.Y 2012-13 deleted the disallowance.

10. Per contra, the ld.DR strongly supported the findings of the Assessing Officer.

11. We have given thoughtful consideration to the orders of the authorities below. It is true that the Assessing Officer has nowhere recorded any satisfaction in respect of the books of accounts of the assessee qua the exempt income. We find force in the contentions of

the learned AR. On identical set of facts, the Tribunal in assessee's own case in ITA No 1764/DEL/2016 for A.Y 2012-13 has considered a similar disallowance and held as under:

"8. We have heard both the sides and perused the relevant material on record. It is found as an admitted position that the assessee's investments were handled by portfolio managers to whom only a particular sum was paid as fees, which along with other direct expenses, comes to Rs.2,42,047/-, being the amount voluntarily disallowed by the assessee.

9. Sub-section (2) of [section 14A](#) clearly stipulates that the Assessing Officer shall determine the amount of expenditure incurred in relation to exempt income as per Rule 8D if he, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim made by the assessee. The crucial question which looms large before us is whether the Assessing Officer recorded proper satisfaction before venturing to make disallowance as per Rule 8D. It can be seen from the assessment order itself that the Assessing Officer has nowhere recorded any satisfaction about the incorrect claim having been lodged

by the assessee with reference to its accounts. There is no discussion whatsoever about the examination of the assessee's claim about the actual incurring of expenses in relation to the exempt income. It can be seen from the impugned order that the Assessing Officer even did not consider the correct amount offered by the assessee for disallowance at Rs.6.46 lac. In view of the fact that no proper satisfaction was recorded, in our considered opinion, the Assessing Officer did not acquire any valid jurisdiction for computing disallowance u/s 14A. Since the Id. CIT(A) has sustained the amount disallowable u/s 14A at Rs.6,42,120/-, being the amount voluntarily offered by the assessee, we uphold the impugned order to pro tanto."

12. On finding parity in the facts of the case, respectfully following the findings of the coordinate bench, we direct the Assessing Officer to delete the disallowance of Rs. 36,98,984/-.

13. In the result, the appeal of the assessee in ITA No. 4831/DEL/2017 is allowed whereas the appeal of the Revenue in ITA No. 4543/DEL/2017 is dismissed.

The order is pronounced in the open court on 29.10.2020.

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 29th October, 2020

VL/

Copy forwarded to:

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

Asst. 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	.10.2020
Date on which the final order is uploaded on the website of ITAT	.10.2020
Date on which the file goes to the Bench Clerk	.10.2020
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	