

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.3983/Del./2017
(ASSESSMENT YEAR : 2011-12)**

M/s. KDDL Limited, vs. DCIT, Circle 5 (1),
SCIO – 88 -89, Sector 8 – C, New Delhi.
Chandigarh.

(PAN : AAACK1929M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Neeraj Jain, CA
Shri Abhishek Agarwal, CA
REVENUE BY : Shri Sanjay Kumar, Senior DR

Date of Hearing : 21.01.2021

Date of Order : 17.02.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. KDDL Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 16.12.2016 passed by the Commissioner of Income-tax (Appeals)-44, New Delhi qua the assessment year 2011-12 on the grounds inter alia that :-

“1. That the CIT(A) erred on facts and in law in upholding disallowance of Rs.89,45,826 alleging the same to be incurred for earning exempt dividend income invoking provisions of section 14A

of the Income Tax Act, 1961 ('the Act') read with Rule 80 of the Income Tax Rules 1962 (,the Rules').

1.1 That the CIT(A) erred on facts and in law in not appreciating that only expenditure incurred having direct relation to the earning of exempt income could be disallowed under section 14A of the Act.

1.2 That the CIT(A) erred on facts and in law in not appreciating the fact that the investments made by the appellant were out of own funds and therefore, no interest expense were incurred by the appellant for making such investments.

1.3 That the CIT(A) erred on facts and in law in allegedly holding that the appellant has failed to provide the working of suo-motu disallowance of Rs.40,358 made by it in the return of income.

1.4 Without prejudice, the CIT(A) erred on facts and in law in not appreciating that investments made by the appellant were strategic investments in subsidiary companies, for the purpose of promoting its own business and therefore, such investments cannot be held to be made for the purpose of earning exempt income.

1.5 Without prejudice, the CIT(A) erred on facts and in law in making disallowance exceeding the amount of exempt income earned by the appellant during the year.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee company is into the business of manufacturing and sale of high quality watch dials, watch hands, press tools and ornamental packaging. During the year under assessment, Assessing Officer (AO) noticed an investment of Rs.12,97,39,195/- as on 01.04.2010 and Rs.13,62,24,695/- as on 31.03.2011 and shown to have earned dividend income of Rs.2,50,000/-. AO finding suo motu disallowance of Rs.40,358/- u/s 14A of the Income-tax Act, 1961 (for short 'the Act') made by the assessee company proceeded to invoke the provisions of section 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 (for short 'the Rules') and calculated the disallowance under Rule 8D of the Rules as under :-

S. No.	Particulars		Amount
(i)	Expenditure Directly relating to income which does not form part of total income		Nil
(ii)	Expenditure incurred by way of interest (A *B/C)		
	A = Amount of Interest	45214580	
	B = Average Value of Investments	133081945	
	C = Average of Total Assets	723159183	
	A*B/C subject to Maximum of A		8320774
(iii)	One half % of Average value of investment income from which does not form part of total income		
	Average value of investments	133081945	
	One half % of average value of investment		665410
	TOTAL DISALLOWANCE AS PER RULE 8D		8986184

3. Consequently, AO made disallowance of Rs.89,86,184/- minus Rs.40,358/- suo motu disallowance equal to Rs.89,45,826/- u/s 14A of the Act read with Rule 8D of the Rules and made addition thereof to the total income of the assessee.

4. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has confirmed the disallowance by partly allowing the appeal. Feeling aggrieved by the order passed by the Id. CIT (A), the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Undisputedly, assessee company has made investment of Rs.12,97,39,195/- during the year under assessment and has shown dividend income of Rs.2,50,000/- by making suo motu disallowance u/s 14A of the Act to the tune of Rs.40,358/-.

7. First contention raised by the ld. AR for the assessee that during the year under consideration, assessee company has merely made investment of Rs.10,00,000/- and disallowance u/s 14A r/w Rule 8D (3) of the Rules as per computation given at page 2 of the paper book. Ld. AR also drew attention to profit & loss account, available at page 17 of the paper book, showing profit and dividend earned during the year under assessment. He further contended that AO has failed to record his dissatisfaction as to the working given by the assessee company leading to the suo motu disallowance u/s 14A of the Act. However, on the other hand, ld. DR for the Revenue relied upon the impugned order passed by the ld. CIT (A).

8. When undisputedly the assessee company has made investment of Rs.10,00,000/- during the year under assessment qua which it has made suo motu disallowance of Rs.40,358/- i.e. 0.5% of the aforesaid investment under Rule 8D(3) and has merely

earned Rs.2,50,000/- as dividend income, the AO as well as ld. CIT (A) has failed to bring on record controverting this factual position. In the absence of dissatisfaction recorded by the AO that working u/s 14A r/w Rule 8D by the assessee company is not correct, resorting to mechanical disallowance under Rule 8D is not permissible.

9. Even otherwise, only average value of the investment requires to be taken into consideration for the purpose of section 14A r/w Rule 8D which earns exempt dividend income. Ld. AR for the assessee brought on record computation of disallowance of expenses to the tune of Rs.40,358/- which are as under :-

		Amount(Rs.)	
A	Dividend Received	2,50,000	
B	Deduction inadmissible attributable to Dividend Income not forming part of total income shall be aggregate of following :		
	(i) Direct Expenses	-	
	(ii) Interest Expense Proportionate Interest (Interest – Finance charges only Public deposit interest treated as general purpose)	$31,342,607 \times \frac{1,000,000}{886,439,276} = 35,358$	
	(iii) ½% of Average of value of the investments (Rs.)	$1,000,000 \times \frac{1}{2}\% = 5,000$	
	Total (i+ii+iii)	40,358	
		As at 31.03.11 (Rs.)	
		As at 31.03.10 (Rs.)	
	Investments as per balance sheet (before diminution in value of investments)	137,424,695	143,084,630
	Less : Foreign Investments	(24,979,145)	(37,324,580)
	Net Investments as per Balance Sheet	1,000,000	1,000,000
	Total Assets as per balance sheet	942,523,788	830,354,763
	Average of the value of investments	$\frac{1,000,000 + 1,000,000}{2}$	1,000,000
	Average of Total Assets	$\frac{942,523,788 + 886,439,276}{2}$	914,481,532

10. So, in view of the matter, AO is directed to examine the computation of disallowance given by the assessee so as to reach the conclusion as per settled principle of law and the facts and circumstance discussed hereinbefore. Consequently, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in open court on this 17th day of February, 2021.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 17th day of February, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-44 New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**