

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER  
[Through Video Conferencing]**

ITA No.6503/Del./2017  
Assessment Year: 2014-15

M/s. Minda Projects Ltd., B-64/1, Wazirpur Industrial Area, Delhi	<b>Vs.</b>	DCIT, Circle-16(2), New Delhi
<b>PAN :AAACM8440R</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	None
Respondent by	Ms. Rinku Singh, Sr.DR

Date of hearing	01.03.2021
Date of pronouncement	11.03.2021

**ORDER**

**PER O.P. KANT, AM**

This appeal by the assessee is directed against the order dated 23<sup>rd</sup> August, 2017 passed by the learned Commissioner of Income-tax (Appeals)-28, New Delhi, [in short 'the learned CIT(A)] for assessment year 2014-15, raising following grounds:

1. *On the facts and in circumstances of the case, learned CIT(A) has erred in law and on facts in confirming the action of Learned Assessing Officer in disallowing Rs.2105899/- under Section 14A of the Act as against amount of Rs.17500/- already made in*

*returned income and thus there is further disallowance of Rs.2088399/-*

2. *Without prejudice to above, learned CIT(A) has not given any finding on the computation of disallowance under Rule 8D of the Income Tax Rules provided at Rs.210590/- before CIT(A) during the appellate proceeding as against disallowance of Rs.2105899/- computed by the assessing officer.*
3. *The impugned disallowance is arbitrarily, unlawful, unjustified and against facts and record of the case.*
4. *That the appellant craves the leave to add, modify, amend or delete the grounds of appeal at the time of hearing.*

**2.** The facts in brief of the case are that the assessee was engaged in the business of contract, finance and investment. For the year under consideration, the assessee filed return of income on 07.11.2017, declaring total income of Rs.1,92,62,687/-. The return filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. The assessment under Section 143(3) of the Act was completed on 28<sup>th</sup> December, 2016, after making certain disallowances.

**2.1** Aggrieved, the assessee filed appeal before the learned CIT(A), however, only part relief was allowed to the assessee. Being aggrieved with the order of learned CIT(A), the assessee is in appeal before the Income Tax Appellate Tribunal (in short 'the Tribunal), raising the grounds as reproduced above.

**3.** Despite notifying, neither any one appeared, nor any adjournment application has been filed on behalf of the assessee. On earlier date, i.e., 04.01.2021, also none appeared on behalf of the assessee, and therefore, the assessee was issued notice through registered post. It is seen from the record that this notice dated 04.01.2021 issued by the Registry for hearing on

01.03.2021 did not return back. Thus, it is assumed that this notice was duly served upon the assessee and no compliance has been made on the part of the assessee. In such circumstances, we feel it appropriate to decide the appeal *ex-parte*. Accordingly, after hearing the argument of the learned DR, we proceeded to decide the appeal.

**4.** The facts in brief in issue is that the assessee earned dividend income of Rs.3,49,926/- and against the said dividend income, the assessee disallowed a sum of Rs.17,500/- under Section 14A of the Act. The *suo motu* disallowance by the assessee was on estimate of 5% of the dividend income earned. The Assessing Officer being dissatisfied with the correctness of the claim of disallowance made by the assessee, show-caused to the assessee, as to why the Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules') might not be invoked. The assessee contended that the investment in shares was made for strategic purpose in the sister concerns with no motive of earning dividend income. The learned Assessing Officer rejected the contention of the assessee and made disallowance invoking Rule 8D as under:

i. Rule 8D(2)(i)	Nil
ii. Rule 8D(2)(ii)	Rs.2,10,590
iii. Rule 8D(2)(iii)	<u>Rs.18,95,309</u>
Total	Rs.21,05,899/-
Less: already disallowed in computation	Rs.17,500/-
<b>Balance to be disallowed:</b>	<b>Rs.20,88,399/-</b>

**4.1** Before the learned CIT(A), the assessee filed detailed submissions and contested that no objective satisfaction were recorded by the Assessing Officer for invoking Rule 8D of the Rules. The assessee also contested that the investment was made in the sister concern for holding/controlling stake and not for earning any income from out of the investment. The learned CIT(A), however, rejected the contention of the assessee observing as under:

*“6. I have considered the facts of the case, basis of disallowance made by the AO and submissions of appellant. As it is clear from assessment order that the AO has analyzed the facts and figures of the exempt income earned by appellant, expenses claimed by appellant against it and investments made by appellant on such exempt income. The AO has also discussed the decision of Hon'ble Supreme Court in the case Rajendra Prasad Moody and CBDT Circular No. 5/2014, dated 11.02.2014 wherein it is clarified that Rule 8D r.w. Section 14A of the Act provides for disallowance of expenditure even taxpayer in a particular case has not earned any exempt income. Taking into account all these facts and legal position, AO has completed the disallowance u/s 14A and Rule 8D at Rs, 21,05,899/-. The objection raised by appellant that AO has not recorded any objective satisfaction in regard to the correctness of claim of the assessee has no force as recently in the case India Bulls Financial Services Ltd. Vs. DCIT 395 ITR 242, Hon'ble Jurisdictional Court has held that if the AO has carried elaborate analysis out of facts and the issue but did not expressly record his dissatisfaction, would not per say justify that he was not satisfied or did not record cogent reasons for his dissatisfaction. It has been further held by Hon'ble Court to insist that the AO should pay such lip service regardless of substantial compliance with a provision would, in fact, destroy the mandate Section 14A of the Act. So far as the computation of disallowance under 8D rule of the Act is concerned, Hon'ble Court has further held that 'Undoubtedly, the language of Section 14A presupposes that the AO has to adduce some reasons if he is not satisfied with the amount offered by way of disallowance by the assessee. At the same time, Section 14A (2) as indeed Ruled 8D (2)(i) leave the AO equally with no choice in the matter inasmuch as the statute in both these provisions mandates that the particular methodology enacted should be followed. In other words, the AO is under a mandate to apply the formulae as it were under Rule 8D because of Section 14A(2). If in a given case, therefore, the AO is confronted with a figure which, prima facie, is not in accord with*

*what should approximately be the figure on a fair working out of the provisions, he is but bound to reject it. In such circumstances the AO ordinarily would express his opinion by rejecting the disallowance offered and then proceed to work out the methodology enacted.' Thus, the Hon'ble Court also holds that if the AO is not satisfied with the amount offered by way of disallowance by the assessee, he has no choice except to follow the particular methodology enacted as per provisions of 14A(2) r.w. Rule 8D (2) (1) of IT Rules. Hon'ble Court clearly says that the AO Is under mandate to apply the formula as per aforesaid provisions in such cases. In the case of appellant, AO was not satisfied with the disallowance of Rs. 17,500/- made by appellant against the exempt income earned by it. The appellant itself is not sure of disallowance made by it as during the appellate proceedings, it has worked out the disallowance at 2,10,590/- against the disallowance of Rs. 17,500/- made by it in the computation of income. In such situation, the AO was justified in computing the disallowance as per Rule 8D of the Act after analyzing the amounts of investments made by appellant, exempt income shown and expenses claimed against it by appellant. The AO has also applied the legal provisions to the situation and also the Circular issued by the CBDT, New Delhi in this regard which is mandatory on his part. In view of this, I uphold the disallowance made by AO at Rs.20,88,399/- u/s 14A r.w. Rule 8D of IT Rules and dismiss the grounds taken by appellant.”*

**4.2** We have heard the submission of learned DR who appeared through Video Conferencing facility and also perused the relevant material available on record. We find that before the learned CIT(A), the assessee mainly submitted as under:

- (i) that the investment has been made by the assessee in the group concerns with the primary object of investment in holding/controlling stake in the group concerns and not for income out of the investment.
- (ii) that the investment was made out of the shareholders own fund.
- (iii) that all the investments were for long term and no decision was required in making the investment or disinvestment on regular basis, because those

investments were strategic in nature on long term basis.

- (iv) that the dividend income was directly linked with demat account and credited to the bank account of the assessee company, hence, no expenditure has been incurred in relating to the exempt income, thus the principle of apportionment embedded in Section 14A is not applicable.

**4.3** We find that the issue of the strategic investment in group concern has already been adjudicated by the Hon'ble Supreme Court in the case of **Maxopp Investment Ltd. & Ors. Vs. CIT, 402 ITR 640 (SC)**. The Hon'ble High Court held that "*such strategic investment is also subject to the disallowance under Section 14A of the Act*". The relevant finding of the Hon'ble Supreme Court is reproduced as under:

*"34. Having clarified the aforesaid position, the first and foremost issue that falls for consideration is as to whether the dominant purpose test, which is pressed into service by the assessees would apply while interpreting Section 14A of the Act or we have to go by the theory of apportionment. We are of the opinion that the dominant purpose for which the investment into shares is made by an assessee may not be relevant. No doubt, the assessee like Maxopp Investment Limited may have made the investment in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind Section 14A of the Act in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in Section 14A of the Act. This is so held in Walfort Share and Stock Brokers P Ltd., relevant passage whereof is already reproduced above, for the sake of*

continuity of discussion, we would like to quote the following few lines therefrom.

"The next phrase is, "in relation to income which does not form part of total income under the Act". It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of section 14A.

XXX XXX XXX

The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14A."

35. The Delhi High Court, therefore, correctly observed that prior to introduction of Section 14A of the Act, the law was that when an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. The principle of apportionment was made available only where the business was divisible. It is to find a cure to the aforesaid problem that the Legislature has not only inserted Section 14A by the Finance (Amendment) Act, 2001 but also made it retrospective, i.e., 1962 when the Income Tax Act itself came into force. The aforesaid intent was expressed loudly and clearly in the Memorandum explaining the provisions of the Finance Bill, 2001. We, thus, agree with the view taken by the Delhi High Court, and are not inclined to accept the opinion of Punjab & Haryana High Court which went by dominant purpose theory. The aforesaid reasoning would be applicable in cases where shares are held as investment in the investee company, may be for the purpose of having controlling interest therein. On that reasoning, appeals of Maxopp Investment Limited as well as similar cases where shares were purchased by the assesseees to have controlling interest in the investee companies have to fail and are, therefore, dismissed."

**4.4** Further, we find that the objection of the assessee on the absence of dissatisfaction for invoking Rule 8D of the Rules, have already been dealt with by the learned CIT(A). The learned CIT(A) has referred the decision of the Hon'ble Jurisdictional High Court in the case of **India Bulls Financial Services Ltd. Vs. DCIT, 395 ITR 242**, wherein it has held that "if the Assessing Officer has

*carried out elaborated analysis out of the facts and the issue but did not expressly record his dissatisfaction, would not per se justify that he has not recorded cogent reason for his dissatisfaction".* In our opinion, the learned CIT(A) has dealt with all the objections of the assessee, therefore, we do not find any infirmity in the same. Accordingly, we uphold the findings of the learned CIT(A) on the issue in dispute. The grounds of appeal of the assessee are accordingly dismissed.

**5.** In the result, the appeal of the assessee is dismissed.

***Order pronounced in the open court on 11<sup>th</sup> March, 2021***

***Sd/-***  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

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

Dated: 11<sup>th</sup> March, 2021.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi