

**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.157/Del./2018  
Assessment Year: 2014-15

M/s. Nath Bros. Exim International Ltd., 102/A, Bangla Sahib Marg, Gole Market, New Delhi	<b>Vs.</b>	ACIT, Circle-17(2), New Delhi
<b>PAN :AAACN0495R</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri S.K. Sarkar, CA
Respondent by	Ms. Rinku Singh, Sr.DR

Date of hearing	02.03.2021
Date of pronouncement	12.03.2021

**ORDER**

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

This appeal by the assessee is directed against order dated 21/11/2017 passed by the Learned CIT(Appeals)-28, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2014-15 raising following grounds:

- The learned Commissioner of Income Tax (Appeals) and the learned Assistant Commissioner of Income-tax have erred in disallowing Rs.70,643.00 u/s 14A of the Income Tax Act, 1961 by applying Rule 8D of the Income Tax Rules, 1962 without specifying any particular expenditure that may have been incurred.*

2. *The Appellant-Company reserve their right, without prejudice, to add, delete, alter, modify or otherwise present any grounds of appeal either at or before date of hearing of the appeal.*

**2.** Briefly stated facts of the case are that during relevant year the assessee company was engaged in the business of weaving of fabric and manufacturing of ready-made garments and export thereof. For the year under consideration, the assessee filed return of income on 29/11/2014, declaring total income of ₹ 98,81,640/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income Tax Act, 1961 (in short 'the Act') were issued and complied with. During the course of the assessment proceeding, the Assessing Officer observed dividend income of ₹ 5,41,959/- which was claimed by the assessee as exempt and against it, no expenses were disallowed *suo motu* under section 14A of the Act. The Assessing Officer further observed that the assessee had invested in various shares/securities as well as was engaged in trading in shares and securities and the purpose of such investment was to earn dividend income. According to the Assessing Officer, top management might have taken decisions for sale of shares or securities and accounting of the resultant income has been taken care in books of accounts. The Assessing Officer held that all those activities require involvement of assessee's employees and use of the assessee's official machinery. Accordingly, he rejected the contention of the assessee that no expenditure was incurred for earning dividend income. In view of the observations, the Assessing Officer proposed to invoke Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules'). The

Learned AO rejected the contentions of the assessee and invoked Rule 8D of the 'Rules' and computed the disallowance of ₹ 70,643/-.

**2.1** Aggrieved, the assessee filed appeal before the Ld. CIT(A) and contested the finding of the Assessing Officer on following two grounds:

- (i) No objective satisfaction was recorded with regard to the correctness of the claim of the assessee.
- (ii) No nexus has been established between the investments made for earning the exempt income and the expenditure incurred.

**2.2** The Ld. CIT(A) after considering the submission of the assessee upheld the disallowance observing as under:

*"4.2 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 against it and investments made to earn such exempt income. The AO has also discussed the nature of administrative and other expenses which are bound to incur by appellant for earning such exempt income. He has recorded specific reasons rejecting the claim of the assessee in regards to expenditure computed by it for earning such exempt income. Taking into account all these facts and legal position, AO has completed the disallowance u/s 14A and Rule 8D at Rs. 70,643/-. 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 IndiaBulls 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 se 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 read with Rule 8D (2)(i) leaves 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) (i) 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 fact that appellant had made no disallowance against the exempt income earned by it. 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. 70,463/- u/s 14A r.w. Rule 8D of IT Rules and dismiss the grounds taken by appellant."*

**2.3** Aggrieved with the finding of the 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.** Both the parties appeared before us through videoconferencing facility and the assessee filed a paper-book (containing pages 1 to 110) electronically as well as physically.

**4.** The learned Counsel of the assessee referred to page 47 to 49 of the paper-book, which contains list of the investment in shares/securities at the year ending i.e. as on 31/03/2014, having value at cost of ₹ 1,19,01,143/- and market value of ₹ 3,04,07,475/- and submitted that the dividend income earned

has been directly credited in bank account. He submitted that no portfolio manager or any specific person had been posted/employed for making investment or watching the investment. The Learned Counsel referred to page 55 of the paper-book and submitted that only involvement for earning dividend income is by way of filling up of pay in slips and depositing (numbering 43) dividend warrants in the bank. The learned Counsel of the assessee emphasized that no objective satisfaction has been recorded by the Assessing Officer for rejecting the claim of the assessee. He referred to the profit and loss account of the assessee for the year under consideration available on page 30 of the paper-book and submitted that no expenses have been incurred by the assessee for earning the exempt income and thus order of the Ld. CIT(A) should be set aside.

**5.** The Learned DR, on the other hand, relied on the order of the lower authorities and submitted that the Assessing Officer has recorded his dissatisfaction on the claim of the assessee as per the mandate of the Act. She submitted that the assessee has itself admitted incurring of expenditure to the extent of deposit of the slips in banks and still claimed that no expenditure was incurred. According to her, the Learned CIT(A) is justified in upholding the disallowance of ₹ 70,643/- in terms of section 14A of the Act read with Rule 8D of the Rules.

**6.** We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The assessee has earned dividend income of ₹ 5,41,949/- and claimed the same as exempt, however, no expenditure has been

disallowed by the assessee *suo motu* in terms of section 14A of the Act. The Assessing Officer rejected the claim of the assessee and invoked Rule 8D of Rules and made disallowance of ₹ 70,643/-. The claim of the assessee before us is that the Assessing Officer has not complied with the mandatory condition of recording dissatisfaction on the correctness of the claim of the assessee. We find that the Assessing Officer in the impugned assessment order has invoked the Rule 8D after recording dissatisfaction as under:

*“During the year the assessee company has earned exempt incomes on the above investments in the form of equity shares/mutual funds. Further, it cannot be said that no expenditure was regarding management and proper accounting of investment. Investment decisions are important decisions and generally taken by the top management. Investments are to be properly watched and whether a particular investment is to be maintained or to be sold is decided by the senior persons of the company. Income resulted from investment as well as investments themselves or to be properly accounted for in the assessee’s books of accounts. All these activities require involvement of the assessee’s employees and use of assessee official machinery. In view of this it is not acceptable that no expenditure was incurred. Thus, assessee’s contention is rejected in this regard.*

*As the assessee has not made any disallowance of expenses u/s 14A on its own for earning of exempt income, I am satisfied that in view of the reasons as discussed above, the disallowance u/s 14A is required to be computed. Accordingly, disallowance of expenditure is computed in accordance with provisions of Section 14A of the Act as per procedure given under Rule 8D of the Income Tax Rule, 1962. The opening and closing balance of investment in equity shares/mutual funds and also as discussed above were Rs 1,36,53,560 and Rs. 1,46,03,527/- Respectively. Thus average investment of the assessee company comes to Rs. 1,41,28,543/- The disallowance of expenses u/s 14A read with under Rule 8D are computed as under:*

(i)	Direct expenses	Nil
(ii)	Component of Interest expenditure attributable to income which does not form part of the total income	Nil
(iii)	0.5% of average investment (1,41,28,543/-)	Rs.70,643/-
	Total	Rs.70,643/-

6. The Assessing Officer has opined that top management must have taken decision for investment as well as watching of the investment or sale. According to the Assessing Officer part of the expenditure of the top management must be attributable towards the activity of earning exempt income. The Assessing Officer has also mentioned that expenditure and accounting of the exempt income also must have been there as the activities of the management and accounting required involvement of the assessee's employees and use of official machinery, which may include office computers, vehicles et cetera. Thus in our opinion, the claim of the assessee that no dissatisfaction has been recorded on the claim of the assessee, is not correct. The Ld. CIT(A) has relied on the decision of the Hon'ble Jurisdictional High Court in the case of **Indiabulls Financial Services Ltd.** (supra) in support of the contention that even implied dissatisfaction is sufficient to invoke Rule 8D of the Rules and there may not be required expressed dissatisfaction of the Assessing Officer on the correctness of the claim of the assessee. After recording the dissatisfaction on the correctness of the claim of the assessee, the Assessing Officer has invoked rule 8D of the rules and computed the disallowance.

7. We find from page 55 of the paper-book, which is part of submission of the assessee before the Ld. CIT(A), where the assessee has admitted that expenditure was incurred for filling up of pay-in-slips and depositing ( numbering 43) dividend warrant in bank. Also from page 30 of the paper-book, which is profit and loss account for the year under consideration, it is evident that the assessee has debited employee benefit expenses

of ₹ 7,71,33,208/-. Details of these expenses are available on page 42 of the paper-book. The expenses include wages, salaries bonus and other allowance of ₹ 7,02,83,010/-, terminal benefits ₹ 4,22,890; managerial remuneration of Rs.43,03,310/- etc. In such circumstances, it cannot be denied that part of the expenses on managerial remuneration and salary of the office staff was relatable to activity of earning dividend income. Similarly under the head other expenses the assessee has debited expenses of ₹ 7,56,19,679/- which included expenses of ₹ 3,97,29,593/- on administrative selling and other expenses and it cannot be denied that a part of which must have been related to earning of dividend income. The Assessing Officer has disallowed amount of ₹ 70,643/- as per the procedure laid down in provisions of the Act and Rules. No error has been pointed out by the Learned Counsel of the assessee in such computation of the disallowance.

**7.1** In our opinion, there is no infirmity in the order of the Ld. CIT(A) and accordingly we uphold the same. The ground No.1 of the appeal of the assessee is dismissed.

**8.** The ground No.2 of the appeal being general in nature is dismissed as infructuous.

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

***Order pronounced in the open court on 12<sup>th</sup> March, 2021***

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

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

Dated: 12<sup>th</sup> March, 2021.

RK/-(DTS)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi