

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER**

I.T.A. No.7807/DEL/2017
Assessment Year 2012-13

Nalwa Sons Investment Ltd., O.P. Jindal Marg, Hisar Haryana.	v.	DCIT, Circle-18(1), New Delhi.
TAN/PAN: AAACJ 2734R		
(Appellant)		(Respondent)

ITA No.420/DEL/2018
Assessment Year 2012-13

ACIT, Circle-17(2), New Delhi.	v.	Nalwa Sons Investment Ltd., O.P. Jindal Marg, Hisar Haryana.
TAN/PAN: AAACJ 2734R		
(Appellant)		(Respondent)

Assessee by:	Shri Ashwani Kumar, CA		
Department by:	Ms. Rinku Singh, Sr.D.R.		
Date of hearing:	02	03	2021
Date of pronouncement:	17	03	2021

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid cross appeals have been filed by the assessee as well as by the Revenue against the impugned order dated 13.10.2017 passed by Commissioner of Income Tax (Appeals)-XXXIII, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2012-13. The Revenue has raised the following grounds of appeal.

“Whether on facts and in circumstances of the case, the Ld.CIT(A) is legally justified in deleting Rs. 52,41,459/- on account accrued interest on advances to M/s Nalwa Metal Alloys Limited, M/s Gagan Trading Company Limited and M/s JSW Steel Limited on the basis of the decision of his predecessor on identical issue in the assessee’s own case by ignoring the fact that principle of res-judicata is not applicable to Income Tax proceedings as each assessment year is a separate year?”

2. *Whether on facts and in circumstances of the case, the Ld.CIT(A) is legally justified in allowing appeal of the assessee by ignoring a fact that Section 145 of the Income Tax Act, 1961 (the Act) is mandatory for every assessee, permits use of one type of accounting system and does not permit hybrid accounting system in a particular year?*

3. *Whether on facts and in circumstances of the case, the Ld. CIT (A) is legally justified in deleting the addition of Rs. 53,56,151/- on account of disallowance u/s 14 A of the Act made while calculating Book Profit u/s 115JB of the Act by ignoring clauses to Explanation 1 to section 115JB(2) of the Act introduced by Finance Act 2006 is applicable to the assessee for the year under consideration?”*

2. At the outset, it was pointed out that the tax effect on the issue raised with Revenue’s Appeal is much below the prescribed monetary limit of Rs.50 lacs in view of the CBDT Circular No. 17/2019 dated 08.08.2019. Further CBDT vide clarification dated 20.08.2019 has clarified that the aforesaid circular will apply to all pending appeals also. Accordingly, the

appeal of the Revenue is dismissed as non maintainable as the tax effect is below Rs.50 lakhs. Thus, the appeal filed by the Revenue is dismissed.

3. In Assessee's appeal the only ground raised by the assessee is with regard to disallowance of Rs.53,56,151/- incurred in relation to earning tax free income by invoking the provision of Section 14A read with Rule 8D.

4. The facts in brief are that the assessee has earned dividend income of Rs.11,04,41,092/- which was claimed as exempt income u/s.10(34). In response to the show cause notice, the assessee submitted that, it has *suo motu* disallowed Rs.33,99,679/- u/s.14A out of expenditure in its computation of income. It was further submitted that these investments were existing since 1985 and no borrowed funds were utilized for making such investments. Further, no one to one of correspondence can be arrived between income and the expenditure incurred for the purpose of Section 14A. However, Id. Assessing Officer held that expenditure incurred by the assessee towards exempt income whether direct income or indirect has to be disallowed in terms of Section 14A read with Rule 8D which has prescribed the method of determining the amount of expenditure to be disallowed u/s.14A. Since there was no expenditure attributable to interest, Assessing Officer made disallowance of indirect expenses under Rule 8D (2)(iii) which worked out at Rs. 87,55,830/-; and after deducting the amount *suo motu* disallowed at Rs.33,99,679/-, he finally made the addition of Rs.53,56,151/-.

5. Before the ld. CIT(A), the assessee submitted that Assessing Officer has not recorded his satisfaction having regard to the account maintained by the assessee and the correctness of the claim and the expenses incurred towards exempt income. It was further submitted that the assessee made disallowance u/s.14A at Rs.33,99,679/- on proportionate basis computed on the proportion of personnel and administrative expenses relatable to earning of exempt income. However, the ld. CIT (A) held that no separate amount of expenses relatable to earning of exempt income has been maintained by the assessee. Further, assessee has failed to explain how the expense has been disallowed on proportionate basis. Accordingly, he confirmed the said disallowance.

6. Before us, the ld. counsel for the assessee submitted that this Tribunal in assessee's own case right from the Assessment Years 2005-06 to 2011-12 had considered similar issue of disallowance made by the Assessing Officer which has been deleted. He drew our attention to paragraphs 7 and 8 of ITAT order dated 16.04.2018. Apart from that, he submitted that no satisfaction has been recorded by the Assessing Officer after the assessee's explanation, and therefore, no disallowance should have been made by the Assessing Officer by invoking Rule 8 D.

7. On the other hand, ld. DR submitted that before the Assessing Officer, the assessee could not give the working in respect of *suo motu* disallowance, and therefore, it cannot be said that onus cast upon the assessee stands discharge and

Assessing Officer then has no option but to compute the disallowance under the prescribed method provided in Rule 8D. Even the ld. CIT (A) has noted that assessee has failed to maintain separate account and the basis for proportionate disallowance. Accordingly, Assessing Officer was justified in making the disallowance under Rule 8D (2)(iii).

8. We have heard the rival contentions and also perused the relevant material placed on record. It is an admitted fact that assessee has earned dividend income on the investment which was made in much earlier years. The assessee had made *suo motu* disallowance of Rs.33,99,679/- on proportionate basis by taking proportion of personnel and administrative expenses which can held to be relatable for earning of the exempt income. Admittedly, no interest expenditure is attributable for earning of exempt income. The only dispute is with regard to indirect expenditure under Rule 8D (2)(iii). Once the investment has been made in the earlier years and only if the dividend amount has been credited, then the only rational basis at the most could be the proportion of salary and administrative expenses. The Assessing Officer thereafter having regard to the accounts maintained by the assessee and the nature of expenses incurred was required to record his satisfaction that expenditure claimed by the assessee for earning of exempt income is incorrect or the expense disallowed by the assessee is not reasonable. It is only after recording of such satisfaction that Assessing Officer can proceed to make a disallowance under the prescribed method of Rule 8D and this is the mandate of Section 14A(2). Here, in this case, the Assessing Officer has mechanically applied Rule 8D by

stating that the expenditure incurred by the assessee towards exempt income, whether direct or indirect has to be disallowed in view of method provided under Rule 8D. There is no specific satisfaction of Assessing Officer as to how the claim made by the assessee is not tenable having regard to the nature of account maintained by the assessee and the nature of expenditure debited in the P&L account, especially when the dividend has come from old investments and not fresh investment. Exactly on the same reasoning, this Tribunal in assessee's own case for all the earlier years right from Assessment Years 2005-06 to 2011-12 has deleted the disallowance made under Rule 8D(2)(iii). Thus, respectfully following the precedent in assessee's own case for the earlier years, we do not find any reason to sustain the disallowance which has been made by the Assessing Officer by mechanically applying Rule 8D. Accordingly, the appeal of the assessee is allowed.

9. In the result, the appeal of the assessee is allowed and Revenue's appeal is dismissed.

Order pronounced in the open Court on 17th March, 2021.

Sd/-

[O.P. KANT]

ACCOUNTANT MEMBER

DATED: 17th March, 2021

PKK:

Sd/-

[AMIT SHUKLA]

JUDICIAL MEMBER