

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

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

ITA No.4613/Del/2017
Asstt. Year: 2011-12

Noida Software Technology Park Ltd., Jain Studio Campus, Scindia Villa, Sarojini Nagar, New Delhi. PAN AABCN0137F	Vs.	DCIT, Circle 13 (1) New Delhi
(Appellant)		(Respondent)

Assessee by:	Mr. Mohd. Aadil Khan, Advocate (on behalf of liquidator)
Department by :	Ms. Rinku Singh, Sr. DR
Date of Hearing	04/03/2021
Date of pronouncement	03/06/2021

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the assessee against impugned order dated 6.4.2017, passed by Ld. CIT(Appeals)-38, New Delhi for the quantum of assessment passed u/s 143(3) for the assessment year 2011-12.

2. The only ground raised by the assessee reads as under:-

1. *“On the facts and in the circumstances of the case and in law the Hon’ble Commissioner of Income –tax (Appeals)-38, New Delhi has erred on facts and in law by confirming the disallowance made by Ld. AO of Rs. 9,97,608/- u/s 14A read with Rule 8D.”*

3. The facts, in brief, are that the assessee company is engaged in the business of teleports earth station providing up-linking services, DSNG assembling integration & trading in software and other products. Ld. AO on the perusal of the balance sheet noted that the assessee had opening balance of investment of Rs. 20,45,57,500/- and closing balance at Rs. 19,44,86,000/- in the form of equity shares and mutual funds. The assessee had earned dividend income of Rs. 7,000/- only, during the year under consideration. Since assessee had not attributed any expenditure for the purpose of exempt income, AO proceeded to make disallowance u/s 14A r.w. Rule 8D and made addition of Rs. 9,97,608/- after disallowing 0.5% of average investment under Rule 8D(2)(iii).

4. Ld. CIT (A) noted very peculiar fact that dividend of Rs. 7,000/- shown by the assessee company actually belong to the shares held by Director, Shri Ankur Jain. Despite noting this fact, he has confirmed the said addition. The relevant observation and finding of the Ld. CIT(A) read as under :-

“3.7 It is seen that appellant has not maintained accurate accounts of number of shares held by itself and its Director, Mr. Ankur Jain. It is surprising that when Mr. Ankur Jain allegedly paid Rs.50,000/- to Noble Co-operative Bank Ltd. on 28.07.2007 for purchase of 500 shares of Rs. 100 each, how the dividend of Rs.7000/- on these shares was credited to the account of the appellant company. The appellant has shown this income of Rs.7000/~ as its income in the return of income. Hence, it is not understood on what basis appellant a stating that it has no

objection (emphasis supplied) if the said dividend income of Rs.7000/- is treated to be the income of the appellant as has been done in assessment proceedings. Appellant has relied on numerous judicial pronouncements in support of its contention that disallowance of Rs.9,97,608/- u/s 14A r.w. Rule 8D by assessing officer is wrong and unjustified. However, the facts of the instant case can be distinguished from the case laws relied upon by appellant. The intent of the Legislature is clear from para6 of CBDT circular No.5/2014 dated 11.02.2014 which clarifies that Rule 8D r.w Section 14A of the Act provides for disallowance of expenditure even where tax payer in a particular year has not earned any exempt income. In the absence of accurate accounts maintained by the appellant in respect of exempt income earned by it and failure to submit its own computation of disallowances under u/s 14A r.w.Rule 8D, the action of assessing officer is upheld and this ground of appeal is dismissed.”

5. After considering the observations and finding of the Ld. AO and Ld. CIT(A), we find that it is an undisputed fact that the dividend income shown by the assessee company is only Rs. 7,000/-, whereas disallowance u/s 14A has been made at Rs. 9,97,608/-. Apart from that, another fact which is borne out from the appellate order and the remand report of the AO submitted before the Ld. CIT(A) that the dividend of Rs. 7,000/- was earned on the shares of 'Noble Co-operative Bank Ltd.' which were owned by Shri Ankur Jain and not by the assessee company. Since the dividend was received in the bank account of the assessee company, it was treated as dividend income by mistake by the assessee company. On these facts, first of all, the disallowance could not have been made in excess of the exempt income which was Rs. 7,000/-; and secondly, dividend has not been earned on the shares / investment purchased by the assessee company or reflected in his books of accounts. In such a situation, there cannot be question of triggering any disallowance u/s 14A. It has not been brought on record that any dividend income or exempt

income has been earned on the investment shown in the books of the assessee company. Accordingly, the disallowance /addition made u/s 14A Rule 8D is deleted.

4. In the result appeal of the assessee is allowed.

Order pronounced in the Open Court on 3rd June, 2021.

sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

Dated: /06/2021

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, New Delhi