

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**I.T.A No.6902/Del/2017
(ASSESSMENT YEAR 2014-15)**

GEBR Pfeiffer (India) Pvt. Ltd. F.No.1B, 1001B, Tenth Floor, District Centre Vishwadeep Janak Puri, New Delhi-110 058 PAN-AABCG 3002E	Vs.	Addl. CIT, Special Range-04, New Delhi-110002
(Appellant)		(Respondent)

Appellant By	Sh. Madhur Aggarwal, Adv. Sh. Anil Makhija, Adv.
Respondent by	Sh. Apoorva Bhardwaj, Sr-DR
Date of Hearing	07.07.2021
Date of Pronouncement	07.07.2021

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee against order dated 04.08.2017 passed by the Learned Commissioner of Income Tax (Appeals)-35, New Delhi {CIT(A)} for Assessment Year 2014-15 and the sole issue being raised by the assessee is disallowance of

Rs.3,03,857/- u/s 14A of the Income Tax Act, 1961 (herein after called 'the Act').

2.0 The brief facts of the case are that the assessee company is engaged in the business of engineering & supply of grinding machinery for cement plants. The return of income was filed declaring an income of Rs.8,87,97,510/- and the assessment u/s 143(3) of the Act was completed at an income of Rs.8,91,01,367/- after making a disallowance of Rs.3,03,857/- u/s 14A of the Act. While making the disallowance u/s 14A of the Act, the Assessing Officer (AO) noted that the assessee has made investments in mutual funds at Rs.3,47,28,114/- and had earned dividend income of Rs.28,53,014/- during the year under consideration. The Assessing Officer further noted that the assessee has not made any *suo moto* disallowance u/s 14A of the Act in relation to expenditure pertaining to earning tax free income. The assessee was issued a show cause notice in this regard. It was the response of the assessee that the investments had been made out of interest free funds available with the assessee company and further no expenditure had been incurred for earning any exempt income.

The Assessing Officer was of the opinion that the assessee's claim of not having incurred any expenditure in respect of management of investments was not acceptable. He proceeded to disallow an amount of Rs.3,03,857/- in terms of Rule-8D(iii) of the Income Tax Rules, 1962.

2.1 The assessee's appeal before the Ld. CIT(A) was dismissed and now the assessee has approached this Tribunal challenging the upholding of disallowance by raising the following grounds of appeal:

"That the impugned order dated 04.08.2017 received on 18.09.2017 is being challenged on the following amongst other ground of which may be taken into consideration while adjudication the said appeal.

1. *That the Learned Commissioner of Income Tax (Appeals) has grossly erred both on facts and law before passing the impugned order.*

2. *That the Learned Commissioner of Income Tax (Appeals) has grossly erred in confirming the addition made by the assessing officer of Rs.3,03,857/-by invoking the provisions of Rule 8D read with section 14A of the Income Tax Act, 1961 with*

respect to dividend income earned during the year by the Appellant Company by investing in “Mutual Fund”.

3. *That the Learned Commissioner of Income Tax (Appeals) has grossly erred in not appreciating the fact that the provision of Rule 8D are not applicable to the facts and circumstances in the case of the Appellant as the assessee had not incurred any expenses for earning the exempt income which was purely from dividend income out of investment in Mutual Funds and no expenses had been incurred.*

4. *That the Learned Commissioner of Income Tax (Appeals) has grossly erred in not appreciating the fact that before any disallowance can be made under section 14A there should be nexus between the expenses debited and the exempted income and no adhoc disallowance of any expense without nexus is allowed or permissible as per scheme under the Indian Income Tax Act, 1961.*

5. *That the Learned Commissioner of Income Tax (Appeals) has grossly erred in not appreciating the fact that the investments in mutual funds are made by the appellate on the basis of services given by Deutsche Bank (Investment Advisors) [for which there is no charge to Appellant Company] and the bank receive a commission on sale of Mutual fund from the Mutual Fund Company and not from Appellant Company.*

6. *That the Learned Commissioner of Income Tax (Appeals) has grossly erred in reading and interpreting the provisions of section 14A of the Income Tax Act, 1961 to the extent that the recordings of satisfaction is an essence with respect to correctness of the claim of the assessee and such recording of satisfaction is missing in the case of the Appellant Company nor any steps were taken during the assessment proceedings by the Learned Assessing Officer the provisions of section 14A read with Rule 8D of the Income Tax Rules, 1962 could not have been invoked.*

7. *That the appellant seeks to alter, modify and add any of the ground as the case may be.”*

3.0 The Ld. Authorized Representative (AR) submitted that identical issue has arisen in assessee's own case in Assessment Year 2011-12 also and the Tribunal had allowed the assessee's appeal on the issue and had deleted the disallowance for the reason that when no actual expenditure had been incurred by the assessee on account of administrative expenses to earn interest free dividend income, no disallowance could have been made u/s 14A read with Rule 8D. A copy of the said order was placed on record.

4.0 Per contra, the Ld. Sr. Departmental Representative (DR) placed reliance on the order of the Lower Authorities.

5.0 We have heard the rival submissions and have also perused the material on record. We have gone through the findings of the Assessing Officer in this regard and it is seen that the Assessing Officer has only observed that the assessee's claim that it had not incurred any expenses in respect of management of investment affairs was not acceptable. The Assessing Officer has also observed that the earning of exempt income is not in nature of passive activity having no input. The relevant observation of the Assessing Officer are contained in paragraph-5 of the assessment order which are reproduced herein under:

"5. The submissions advanced by the assessee company have been duly considered. The assessee's claim that it has not incurred any expenses in respect of management of investment affairs is not acceptable. The earning of exempt income is not in the nature of passive activity having no input. In fact, in present situation making of investment, maintaining or continuing investment and time of exit from investment are well informed and well coordinated management decisions involving not only inputs from various sources but also acumen of senior

management functionaries. Therefore, cost is inbuilt into even so called “passive” investment. There are incidental expenditure of collection, telephone, follow up etc. in addition to application of mind, time and energy by the management & concerned persons. Since in the present case, out of total funds available/ raised by the assessee, a substantial portion of it amounting to Rs.3,47,28,114/- has been invested in Shares and Mutual Funds, therefore, it can be held that expenditure in relation to earning of exempt dividend income are embedded in indirect expenses. Further, the assessee has incurred huge personnel and administrative expenses for maintenance of books and day to day look after work regarding huge investments in shares and mutual funds. Thus, the claim of the assessee that no expense has been incurred in connection to earn tax free income does not have any substance.”

5.1 It was the assessee’s submission before the Assessing Officer that the exempt income was only in the form of dividend from mutual funds and further that there was no buying and selling of such funds frequently or on regular basis and it was only on maturity of old funds that new investments were made. It was also the assessee’s submission before the Assessing Officer that the assessee company had made investments in mutual funds on the

basis of advisory services given by the Deutsche Bank investment advisors which was offered free of cost to all institutional buyers since they received a commission on the sale of mutual funds from the Mutual Fund Company. However, as reproduced herein above, the Assessing Officer rejected the submission of the assessee.

5.2 We note that an identical issue had arisen before the Co-ordinate Bench in the case of Sh. Vinay Bhasin vs. Jt. CIT in ITA No.5608/Del/2015 vide order dated 15.11.2018 and pertaining to Assessment Year 2009-10 wherein the Co-ordinate Bench had deleted the disallowance made u/s 14A by observing as under:

“8. We have gone through the findings of the learned Assessing Officer on this aspect. Learned Assessing Officer recorded that the assessee made heavy investments for earning of exempt income and being a busy professional, he requires the management of such a portfolio by incurring expenses, diversion of manpower/staff for indulging in investment activities to various activities like visiting banks, use of vehicle and telephone, use of Internet if portfolio management is web-based, cost of computer and its depreciation, computer operator, consequent electricity, use of office premises, fee charged by mutual fund agents/bankers (annual fee), portfolio record

maintenance and its tracking to ensure timely sale/purchase of mutual fund units etc. Except making this statement and reading all the possible expenses that involve in investment process, learned Assessing Officer is not specific as to what exactly the probable expenditure in this matter the assessee could have incurred. According to the assessee the investment was made in mutual funds and the expenses were already directed by the operators and a certificate to that extent was submitted before the learner Assessing Officer. Further, the instructions are that the dividend income will be directly credited to the bank account of the assessee so that no probable expenditure at the end of the assessee for deposit of the dividend in bank could have occurred. Having regard to this set of facts and circumstances involved in this matter, we are of the considered opinion that instead of making a sweeping enumeration of the probable expenses involved in investment process, learned Assessing Officer could have taken legal exercise to verify the correctness or otherwise of the certificate that was issued by the asset management companies or the Citibank in this respect. We, therefore, find that there is no proper record of satisfaction as to the expenses incurred by the assessee for earning the exempt income. By following the decision reported in CIT versus Taikisha Engineering India Ltd 275 CTR (Del.) 316 and Joint Investments (P) Ltd versus CIT 372 ITR 694 (Del), we are of the opinion that the AO at the first

instance should have examined the correctness of the statement made by the assessee that no expenses were incurred for earning the exempt income during the year and if and only if the learned AO is not satisfied on this account after making reference to the accounts, he is entitled to adopt the method under rule 8D of the rules. We, therefore, while allowing the plea of the assessee direct the learned Assessing Officer to delete the addition made on this score also.”

5.3 Similarly, we also note that in assessee’s own case for Assessment Year 2011-12 in ITA No.4909/Del/2015 vide order dated 27.04.2018 disallowance u/s 14A of the Act had been deleted. The relevant observation of the Co-ordinate Bench of the Tribunal is as under:

“8. *It is settled principle of law that when no actual expenses have been incurred by the assessee on account of administrative expenses to earn the interest free dividend income, no disallowance can be made u/s 14A read with Rule 8D. Reliance in this regard may be placed on the decision of Hon’ble Supreme Court in case of Godrej & Boyce Manufacturing Company Ltd. vs. DCIT – 394 ITR 449 (SC) and the Hon’ble Supreme Court observed as under:*

“37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable.”

So, finding no illegality or perversity in the findings returned by the ld. CIT(A), ground no.1 raised by the Revenue is hereby dismissed.”

5.4 Thus, on the facts of the present case, it is our considered opinion that the Assessing Officer could not have made the

impugned disallowance when it was the assessee's claim that no expenditure had been incurred in relation to earning of exempt income specially because the assessee had duly explained that no expenditure was incurred in managing investments in the mutual funds which was based on free advice given by Deutsche Bank Investment Advisor. Accordingly, we set aside the order of the Ld. CIT(A) and direct the Assessing Officer to delete the impugned disallowance.

6.0 In the final result, the appeal of the assessee stands allowed.

Above decision was announced on conclusion of Virtual Hearing on 7th July, 2021

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated:07/07/2021

PK/PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT DEHRADUN