IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI

BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.-3131/Del/2018
(Assessment Year: 2013-14)

Hero Future Energies Pvt. Ltd., C/o RRA TaxIndia, D-28, South Extension Part-1, New Delhi.	**Vs.**	DCIT, Circle 11(1), New Delhi

PAN No. AACCA3104G

Appellant	**Respondent**

Assessee by Sh. Somil Agarwal, CA
Revenue by Ms. Anima, Sr. DR

Date of hearing: 27/07/2021
Pronouncement on 27/07/2021

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved by the order dated 23/3/2018 in appeal No. 652/16-17 passed by the learned Commissioner of Income Tax (Appeals)-35, New Delhi ("Ld. CIT(A)"), in the case of Hero Future Energies Private Limited ("the assessee"), for the assessment year 2013-14, assessee preferred this appeal challenging the addition made under section 14A of the Income Tax Act, 1961 (for short "the Act") read with Rule 8D of the Income Tax Rules1962 ("the Rules").

2. Brief facts of the case are that the assessee is engaged in the business of providing consultancy services. For the assessment year 2013-14 they have filed their return of income on 28/9/2013 declaring a loss of Rs. 84, 76, 092/-. Assessment under section 143(3) of the Act was complete, however, by making certain additions on account of capitalisation of brokerage and commission expenses, capitalisation of training and recruitment expenses and disallowance under section 14A of the Act read with Rule 8D of the Rules.

3. In appeal, Ld. CIT(A) deleted the additions made on account of capitalisation of brokerage and commission expenses as well as training and recruitment expenses, but sustained the addition made on account of 14A of the Act read with Rule 8D of the Rules. Assessee is therefore aggrieved by such an action of the Ld. CIT(A) and file this appeal.

4. It could be seen from the record that during the relevant financial year the assessee earned the dividend income to the tune of Rs.8,44,551/-and made suo moto disallowance of Rs. 6,41,077/-under section 14A being the expenses pertaining to the tax-free income. Learned Assessing Officer however computed the disallowance as per the formula under Rule 8D of the Rules and it determined it at Rs.20,66,599/-. After excluding the suo moto disallowance of Rs. 6,41,077/-, learned Assessing Officer made an addition of Rs. 14,25,522/-, which was confirmed by the Ld. CIT(A).

5. Only plea taken by the assessee before us at the time of argument is that in view of the decision of the jurisdictional High Court in the case of Joint Investments P. Ltd. vs. CIT (2015) 372 ITR 694 disallowance of expenditure u/s 14A of the Act cannot exceed the amount of tax-exempt

income, and therefore, the disallowance should be restricted to the difference between the tax-free income and the disallowance made by the assessee. In view of this binding precedent rendered by the Hon'ble jurisdictional High Court, we are of the considered opinion that the request made by the assessee has to be accepted. We accordingly, direct the learned Assessing Officer to restrict the disallowance to the difference between the tax-free income earned and the suo moto disallowance made by the assessee. Subject to this observation, appeal of the assessee is allowed.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this the 27th day of July, 2021 immediately after the conclusion of the hearing or virtual mode.

Sd/-	Sd/-
(N.K.BILLAIYA)	**(K. NARSIMHA CHARY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 27/07/2021