

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 7331/Del/2017
(Assessment Year: 2014-15)

ACIT(E), Circle-1(1), New Delhi	Vs.	Innus Infrastructure Pvt. Ltd, M-62 & 63, First Floor, Connaught Place, New Delhi PAN: AACCI1776N
(Appellant)		(Respondent)

Revenue by :	Shri Najmi, CIT DR
Assessee by:	Shri Rajhesh Aggarwal, CA
Date of Hearing	03/08/2021
Date of pronouncement	03/08/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by Id AO / DCIT, Circle-11(1), New Delhi against the order of the Id CIT(A)-4, New Delhi dated 27.10.2017 for assessment year 2014-15 wherein the disallowances made by the Id AO of Rs. 4,35,19,612/- u/s 14A read with Rule 8D was deleted. This is the solitary ground of appeal raised by the Id AO.
2. Briefly stated the fact shows that the assessee is a company engaged in the business of development of infrastructure and to purchase and sale of residential or commercial projects including its development. The assessee filed its return of income on 24.09.2014 declaring income of Rs. 640/-. The Id AO questioned the assessee as to why disallowance u/s 14A read with Rule 8D should not be made. The assessee submitted a reply which was considered and rejected. The assessee submitted that it has not earned any income which is exempt on its investment and therefore the provisions of section 14A are not applicable. The AO rejected the same relying on the Circular No. 5 of 2014. Therefore, he computed the disallowance u/s 14A of the Act as per para No. 4 wherein indirect expenditure of interest of Rs. 4,21,13,314/- was computed under Rule 8D(2)(i) and sum of Rs. 2,41,973/- under Rule 8D(2)(iii). Total disallowances was computed at Rs. 4,49,55,321/-. He reduced the suo motto disallowances already made in the computation of total income of Rs. 14,35,709/-. Thus, net

disallowances of Rs. 4,35,19,612/- was made. Consequently, assessment order u/s 143(3) of the act was passed on 30.03.2016 determining the total income of the assessee of Rs. 4,35,20,252/- against the return income of Rs. 640/- only.

3. The assessee preferred an appeal before the Id CIT(A) who noted that the assessee has suo motto disallowed Rs. 14,35,709/- against the exempt income earned of Rs. 14,64,100/- and therefore, he directed to delete the balance disallowance u/s 14A of the Act. He noted that the assessee has an exempt dividend income of Rs. 14,64,100/- therefore the claim of the assessee is that it has not received any exempt income is incorrect. He found that that the assessee has suo motto disallowed Rs. 14,35,709/-. He noted that the has not recorded his satisfaction that the suo motto disallowances of the assessee of Rs. 14,35,309/- is not correct. He further noted that suo motto disallowance is almost equal to the exempt income.
4. The Id AO is aggrieved with the order of the Id CIT(A) and has preferred this appeal on the solitary ground. The Id Sr. DR supported the order of the AO.
5. On behalf of the assessee none appeared despite notice and therefore the issue is decided on the merits of the case.
6. We have carefully considered the contentions of the Id Sr. DR as well as orders of the lower authorities. In the present case the assessee has earned exempt income of Rs. 14,64,100/- suo motto disallowance made by assessee is Rs. 14,35,709/-. On the issue of disallowances, there is no satisfaction recorded by the Id AO that how the disallowance offered by the assessee is not correct. However, the disallowance made by the Id AO is almost equal to the amount of exempt income earned by the assessee. When the learned AO does not record any satisfaction with respect to the correctness of the disallowances offered by the assessee u/s 14A , and proceeded to make disallowances on the basis of provision of Rule 8D, it cannot be sustained. The recording of the satisfaction is the basic condition for invoking the provision of Rule 8D. Hon'ble supreme Court in 402 ITR 640 has categorically held so. Therefore, on this ground the disallowance made by the Id AO is not sustainable. Even otherwise the amount of exempt income earned by the assessee i.e. 14,35,309/- which is almost equal to the disallowance offered by the assessee on its own. Therefore, as the Id AO has not recorded a satisfaction about the correctness of the claim of the assessee of incurring expenditure of Rs. 14,35,309/- for earning exempt income having regard to the books of account of the assessee and thereby straight

away application of the provision of Rule 8D cannot be sustained. Accordingly, we confirm the order of the Id CIT(A) and dismissed the appeal of the learnt AO.

Order pronounced in the open court on 03.08.2021.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 03/08/2021
A K Keot

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

ASSISTANT REGISTRAR
ITAT, New Delhi