

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "C": NEW DELHI]**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 4860/Del/2018
(Assessment Year: 2014-15)

M/s. Hero Future Energies (P) Ltd., C/o. M/s. RRA TAXINDIA, D-28, South Extension, Part-I, New Delhi – 110 049. PAN: AADCH0559F	Vs.	DCIT, Circle-11 (1), New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Somit Agarwal, Advocate;
Department by :	Ms. Anima Barnwal, Sr. D. R.;
Date of Hearing	14/09/2021
Date of pronouncement	14/09/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order passed by the Id. Commissioner of Income Tax (Appeals)-35, New Delhi, dated 28.05.2018 for assessment year 2014-15 wherein the appeal filed against the order of assessment passed under Section 143(3) of the Income Tax Act, 1961 (the Act) dated 16.12.2016 by the Dy. Commissioner of Income Tax, Circle 11 (1) New Delhi was partly allowed. The only issue involved in this appeal is the disallowance under Section 14A read with Rule 8D confirmed by the Id. CIT (Appeals) of Rs.85,32,527/-.
2. The assessee is a company engaged in the business of providing consultancy services. It filed its return of income on 29.11.2014 having a loss of Rs.7,80,90,700/-. During the course of assessment proceedings the Assessing Officer noted that assessee has earned tax free income of Rs.1,91,95,592/-. It has an investment of Rs.221,71,85,060/-. Assessee

has disallowed a sum of Rs.1,52,976/- being 1% of total salary paid to CEO of the company. Assessing Officer questioned the assessee about the above disallowance made. Assessee submitted that the amount of disallowance made by it on its own is adequate. Further it was stated that investment made in the subsidiaries are strategic in nature and, therefore, the same should not be considered for disallowance. The Assessing Officer rejected the explanation of the assessee and worked out disallowance under Section 14A applying Rule 8D. For the purpose of disallowance under Rule 8D(2)(i) he picked up the same 1% of the salary of the CEO disallowed by the assessee as expenditure directly related to exempt income. With respect to the disallowance in clause 8D(2) (ii), he picked up interest expenditure incurred of Rs.19,42,456/- and worked out proportionate disallowance of Rs.15,00,827/-. For clause No. 8D (2) (iii), he considered the value of average investment at Rs.140,63,40,030/- and applied 0.5% thereon resulting into Rs.70,31,700/-. Total disallowance was worked out at Rs.86,85,503/- out of which amount already disallowed by the assessee of Rs.1,52,976/- was reduced and the balance sum of Rs.85,32,527/- was disallowed under Section 14A of the Act. Consequent assessment order was passed where the assessed loss of the assessee was determined at Rs.6,81,15,412/-.

3. Assessee aggrieved with that preferred an appeal before the Id. CIT (Appeals), who upheld the disallowance. She held that the disallowance according to Rule 8D is mandatory in view of the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. & Ors. Vs. CIT (2018) 402 ITR 640 (SC) and further working made by the Assessing Officer is correct. Assessee is aggrieved of the order of the Id. CIT (Appeals) and has preferred this appeal.
4. We have heard Shri Somil Agarwal, Advocate, on behalf of the assessee and Ms. Anima Barnwal, Sr. DR. We have also perused the orders of the lower authorities.
5. Apparently in this case the Id. Assessing Officer has correctly invoked the provisions of Rule 8D for making a disallowance under Section 14A of the

Act as assessee has earned exempt income of Rs.1,91,95,592/-. It is not the case of the assessee that it has not incurred any expenditure for earning the exempt income for the reason that assessee itself has disallowed 1% of the total salary paid to the CEO of the company and Rs.1,52,976/- was disallowed suo moto. The assessee could not explain before the Assessing Officer whether the disallowance is proper or not and, therefore, the ld. Assessing Officer applied the provisions of Rule 8D correctly. The ld. AR has also not objected to the applicability of Rule 8D. However, he objected that such rule should be applied in accordance with the provisions of that rule. Though he has raised an argument in his written submission that no satisfaction under Section 14A is recorded, but he did not argue or pressed it at the time of hearing. His main argument is that there was no interest bearing funds used for making the investment, which has resulted into earning of exempt income. He submitted that the total interest expenditure incurred by it is only towards vehicle loan interest and, therefore, same cannot be considered for the purpose of Rule 8D(ii). He referred to the balance sheet wherein Schedule 5 shows that there are only vehicle loan and interest is paid on such loans. Therefore, it clearly shows that there is no indirect interest expenditure which can be attributable for the proportionate disallowance of interest expenditure under Rule 8D(2)(ii). Further with respect to the average value of investments, it was stated that only those investments on which exempt income is earned can be considered for disallowance. For this proposition, he submitted that such investments at the beginning of the year were Rs.23,11,44,552/- and at the end of the year it was 'NIL' and, therefore, the average value of such investment is only Rs.11.55 crores and 0.5% of those investments towards administrative expenditure would be only Rs.5,77,861/-. We find that the contentions of the ld. AR are supported by the decision of Hon'ble Delhi High Court in the case of ACB India Limited Vs. ACIT 374 ITR 108 (Del). In view of this the disallowance could only be made of Rs. 5,77,861/- under Rule 8D out of which the assessee has already disallowed on its own a sum of Rs.1,52,976/-. Therefore, net disallowance could only be restricted to Rs. 4,24,885/-. Therefore, ground Nos. 1 and 2 of the appeal of the assessee are partly allowed holding that disallowance confirmed by the ld. CIT

(Appeals) of Rs. 85,32,527/- under Section 14A of the Act is to be restricted to Rs.4,42,885/-.

6. Appeal of the assessee is partly allowed.

Order pronounced in the open court on : 14/09/2021.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : 14/09/2021

MEHTA

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	14.09.2021
Date on which the typed draft is placed before the dictating member	14.09.2021
Date on which the typed draft is placed before the other member	14.09.2021
Date on which the approved draft comes to the Sr. PS/ PS	14.09.2021
Date on which the fair order is placed before the dictating member for pronouncement	14.09.2021
Date on which the fair order comes back to the Sr. PS/ PS	14.09.2021
Date on which the final order is uploaded on the website of ITAT	14.09.2021
date on which the file goes to the Bench Clerk	14.09.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	