

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.2180/DEL/2018  
Assessment Year: 2014-2015

DCIT, Circle-1(1), Gurgaon.	vs.	DLF Universal Ltd. (formerly known as DLF Retail Developers Ltd.) 3 <sup>rd</sup> Floor, Shopping Mall Arjun Marg, DLF City, Phase-1, Gurgaon.
TAN/PAN: AAACJ1655P (Appellant)		(Respondent)

Appellant by:	Shri Satyajeet Goel, CA		
Respondent by:	Shri J.K. Mishra, CIT-DR		
Date of hearing:	29	09	2021
Date of pronouncement:	29	09	2021

**ORDER**

**PER AMIT SHUKLA, JM**

The aforesaid appeal has been filed by the Revenue against the impugned order dated 22.01.2018, passed by Ld. Commissioner of Income Tax (Appeals)-I, Gurgaon for the quantum of assessment passed u/s.143(3) for the Assessment Year 2016-17. The Revenue has raised the following grounds of appeal.

“1. Ld. CIT(A) has erred on fact and in law in restricting the disallowance to Rs.4,30,621/- from Rs.1,97,67,639/- made by the Assessing Officer under Section 14A of the Income Tax Act, 1961.

2. *Ld. CIT(A) has erred on fact and in law in ignoring CBDT Circular No.5 of 2014 dated 11.02.2014 clarifying that disallowance under Rule 8D read with Section 14A of the Income Tax Act is to be made even where taxpayer in a particular has not earned any exempt income.”*

2. At the outset, we find that, here in this case, the ld. Assessing Officer has made the disallowance u/s.14A read with Rule 8D of Rs.1,97,67,639/- whereas the exempt income itself was Rs.4,30,621/- as admitted by the Assessing Officer in paragraph 3 of its order. The ld. CIT(A) has restricted the disallowance to the extent of exempt income after observing and holding as under:

*“3.3 I have carefully considered the appellant’s submissions. The appellant has contended that the disallowance u/s 14A if any cannot exceed the exempt income in terms of the various judicial decisions submitted by the appellant. I agree with this contention of the appellant. Reference in this regard may be made to the decision of the Hon’ble ITAT Chandigarh in the case of Arti Steel Ltd. V/s DCIT, Circle-5 (Ludhiana) AY 2009-10 in ITA No. 268/Chd./2015 wherein the order of CIT(A) was reversed. In this case, the AO had made a disallowance of Rs. 12,35,568/- under rule 8D read with section 14A of the IT Act. The appellant contended during the course of appellate proceedings before the CIT (A) that the disallowance u/s 14A over and above the amount of tax free income earned is legally not tenable. The CIT (A) observed that the legislation has provided rule 8D for computation of disallowance u/s 14A of the IT Act which does not provide*

*for any such limit. Providing any limitation to the disallowance, in these circumstances, by holding that the disallowance should not exceed the amounts of exempt income would tantamount to amending the provisions of rule 8D. The disallowance made by the AO was accordingly confirmed. The Hon'ble ITAT reversed the decision by relying on the judgment of the Hon'ble Jurisdictional High Court in the case of CIT V/s Mascot Food in ITA No. 67 of 2009 (O&M) dated 02/04/2014 and held that the disallowance made u/s 14A read with rule 8D shall be limited to the amount of tax free income earned by the appellant. Similar issue was also considered by the Hon'ble ITAT Chandigarh in the case of M/s Punjab State Industrial Development Corporation Ltd. In this case the Hon'ble ITAT vide its order dated 10/11/2016 held as under:-*

*“We have heard the rival submissions and perused the relevant material on record. There is no doubt about the recording of satisfaction by the AO in terms of section 14A(2). In so far as the quantum of disallowance is concerned, Rule 8D is admittedly applicable from the assessment year 2008-09, which is the year under consideration. IN that view of the matter, no fault can be found with the AO/CIT(A) resorting to Rule 8D for the purpose of 'king disallowance. This disallowance has been made in two parts. The first is under clause (iii) of Rule 8D(2) towards administrative expenses at the rate of one half percent of the average of the value of investments, income from which does not form part f the*

*total income. The addition to this extent is upheld as the same is in accordance with the statutory mandate.*

*As regards, the disallowance under clause (ii) of Rule 8D(2), we find that the assessee contended before the Ld. CIT(A) that such disallowance was not called for. IN this regard we find that the Hon'ble Bombay High Court in CIT V/s Reliance Utilities and Power Ltd. (209) 313 ITR 340 (Bom) has held that if there are interest free funds available with the assessee sufficient to meet its investment and, at the same time, loan has been raised, it can be presumed that the investments were from interest free funds and, resultantly, no disallowance of interest can be made. In deleting the disallowance of interest, the Hon'ble Bombay High Court relied on the judgment of Hon'ble Supreme Court in East India Pharmaceutical Works V/s CIT (1997) 224 ITR 627 (SC). It is further notices that the Hon'ble Bombay High Court in CIT V/s HDFC Bank Ltd. (2014) 366 ITR 505 (Bom), has held that where assessee's capital, profit, and reserves etc. were higher than the investment in tax free securities, it would have to be presumed that the investment made by the assessee would be out of interest free funds available with the assessee and, consequently, no disallowance could be made u/s 14A of the Act. Similar view has been taken in several cases including Principal CIT V/s India Gelatine & Chemicals Ltd. (2015) 376 ITR 353 (Guj). It, ergo, becomes manifest that the disallowance of interest as per clause (ii) cannot be made straight way without examining the important*

*aspect as has been discussed in the above decision, which the Ld. CIT(A) failed to take note of. As necessary information about the availability of shareholders' fund vis-a-vis the amount invested in shares and other securities yielding exempt income is not available on record, we set aside the impugned order and remit the matter to file of AO for computing the disallowance under clause (i) Rule 8D(2), if any, in consonance with view taken in Reliance Utilities (supra) etc. It is however made clear that in no case, the total amount of disallowance u/s 14A should exceed the amount of exempt income as has been held by the Hon'ble Delhi High Court in Cheminvest Ltd. V/s CIT(2015) 378 ITR (Del) and CIT V/s Holcim India Pvt. Ltd. (2014) 90 CCI081 Del. HC.*

*Both sides are in agreement that the facts and circumstances of the following two years in appeal are mutatis mutandis similar to those of the assessment year 2008-09. Following the view taken hereinabove, we set aside the impugned orders for these two years as well and remit the matter to the file of the AO for computing the disallowance u/s 14A as directed above in relation to the assessment year 2008-09. ”*

*3.4 Similar view has been held by the Hon'ble jurisdictional Punjab and Haryana High Court in the case of PCIT v. Empire Package Pvt. Ltd( 2016) 136 DTR 342/ 286 CTR 457 (P &H) (HC). In the present case the total tax free dividend income earned by the appellant is Rs.4,30,621/-. The disallowance in the appellant's case under Rule 8D read with Section 14A shall therefore be*

*not more than 4,30,621/-. Assessing Officer is directed to re-compute the disallowance accordingly. These grounds of appeal are accordingly partly allowed. ”*

3. The aforesaid decision of the ld. CIT(A) is based on judicial precedents laid down by the Hon'ble Punjab and Haryana High Court in the case of **CIT vs. Mascot Food (supra)** and also in the case of **PCIT vs. Empire Package Pvt. Ltd. (supra)** wherein it has been categorically held that the disallowance u/s.14A cannot be exceeded to the exempt income. Accordingly, we do not find any merits in the grounds raised by the Revenue and the order of the ld. CIT(A) is confirmed.

4. In the result, the appeal of the Revenue is dismissed.

Above decision was announced on conclusion of Virtual Hearing in the presence of both the parties on 29<sup>th</sup> September, 2021

Sd/-

**[PRASHANT MAHARISHI]**  
**[ACCOUNTANT MEMBER]**

DATED: 29/09/2021

PKK:

Sd/-

**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**