

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “B” BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.2051/Del/2018  
Assessment Year : 2014-15**

M/s Competent Software Private Limited, A-188, Okhla Industrial Area, Phase-I, New Delhi-110020	vs	Addl. CIT, Special Range-2, New Delhi
<b>PAN-AAACC2314A</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	Sh. Vijay Jindal, CA
<b>Respondent by</b>	Sh. Jagdish Singh, Sr. DR
<b>Date of Hearing</b>	04.10.2021
<b>Date of Pronouncement</b>	08.10.2021

**ORDER**

**Per Sanjay Garg, Judicial Member :**

The present appeal has been preferred by the assessee against the order dated 18.12.2017 of the Ld. Commissioner of Income Tax (Appeals)-2, New Delhi (hereinafter referred to ‘CIT(A)’) for the Assessment Year 2014-15. The assessee has raised following grounds of appeal:-

*“The learned Assessing Officer as well as CIT(A) have erred in making the addition of Rs.28,85,273/- u/s 14A read with Rule 8D without considering the various judgments and fact that the investments in mutual funds are managed through Portfolio manager Citi bank for which the bank has charged fees of Rs.17,13,110/- for the year & the disallowance of Rs.17,13,287/- has already been made by the assessee company in its return of income. No other expenditure has been incurred by the assessee company in this regard.”*

2. A perusal of the above ground of appeal reveals that the issue raised by the assessee in this appeal is relating to the confirmation of disallowance of Rs. 28,85,273/- made u/s 14A read with Rule 8D (2)(iii) of the Income Tax Rules, 1962 (hereinafter referred to ‘the Rules) on account of disallowance of expenditure incurred to earn tax exempt income.

3. The Assessing Officer during the course of assessment proceedings noted that the assessee during the year had earned the tax exempt dividend income of Rs.84,25,538/-, however the disallowance of expenditure relatable to earning of such income was made by the assessee

of consultancy fee and STT of Rs.17,13,287/- only. The Assessing Officer noted that the expenditure *suo-moto* disallowed by the assessee was very low, he therefore, worked the disallowance as per the provisions of section 14A r.w.r. 8D of the Income Tax Rules. Since, the assessee did not use any interest bearing funds, therefore, no disallowance on account of interest expenditure was made by the Assessing Officer. However, in respect of administrative expenses, the Ld. Assessing Officer worked the disallowance as per formula prescribed under Rule 8D(2)(iii) of the Income Tax Rules, at Rs.28,85,273/-.

4. Being aggrieved by the order of the Assessing Officer, the assessee preferred appeal before the Ld. CIT(A). However, the Ld. CIT(A) has dismissed the appeal of the assessee.

5. Being aggrieved by the order of the Ld. CIT(A), the assessee has come in appeal before the us.

6. We have considered the rival submission and have also gone through the record. The Ld. Counsel for the assessee has brought our attention to the submission made before the

Ld. CIT(A) and submitted that it was brought to the knowledge of the Ld. CIT(A) that during the year, the assessee had made investment in mutual funds only, which were managed through Portfolio manager City bank, which has charged a fees of Rs.17,13,110/- and in addition that STT amounting to Rs.117/- was also paid . It was explained that no other expenditure was incurred by the assessee in respect of investment in mutual funds, therefore, the assessee company rightly disallowed of Rs.17,13,110/- on account of expenditure relatable to earning tax exempt income. The Ld. Counsel for the assessee has also submitted that under similar circumstances, in the previous year, the Ld. CIT(A) has accepted the contention of the assessee and the disallowance was restricted to the fees paid to the Portfolio manager. However, this year, the Ld. CIT(A) did not agree with the order of his predecessor and confirmed the disallowance made by the Assessing Officer.

7. We find that the Ld. CIT(A) did not agree with the contention of the assessee by observing that the assessee might have made some overhead expenses and further that the

investor has to keep an eye on the investment where huge stakes are involved. We are of the view that above observations made by the Ld. CIT(A) are based only on vague assumption. The assessee has already brought on record that the investment in mutual fund were managed through portfolio manager and the charges paid to the portfolio manager had already been *suo-moto* disallowed by the assessee. There is no other evidence on the file that the assessee had incurred any other expenditure except the aforesaid fees paid to portfolio manager. Merely because that the investments were high and that the investor has to keep an eye on investment, that does not mean that the assessee might have incurred much more expenditure in this respect than that has been declared by the assessee. As per provisions of section 14A of the Act, the resort can be made to the formula prescribed under Rule 8D only when the Assessing Officer is not satisfied with the working given by the assessee of the *suo-moto* disallowance. Such satisfaction of the Assessing Officer must be based on some reasoning after consulting the accounts of the assessee. The Hon'ble Delhi High Court in the case of Joint Investment Pvt.

Ltd. vs CIT (372 ITR 694) (Del.) has held that section 14 of the Act or Rule 6D cannot be interpreted so as to mean that the entire tax-exempt income of the assessee is to be disallowed. That the window for disallowance indicated in section 14A is only to the extent of disallowing the expenditure incurred by the assessee in relation to the tax-exempt income. This proportion or portion on the tax exempt income surely cannot swallow the entire amount of tax-exempt income. In the case, in hand, no disallowance is attracted on account of interest expenditure. The only disallowance attracted is in relation to the administrative expenses. The assessee has *suo-moto* disallowed the sufficient amount of Rs.17,13,287/- on account of fees paid to the portfolio manager. In view of this, we do not find justification on the part of the Ld. CIT(A) in confirming the disallowance made by the Assessing Officer by invoking the formula under Rule-8D(2)(iii), merely on assumption basis without recording the satisfaction as to how the *suo-moto* disallowance made by the assessee was not co-relating to the accounts of the assessee vis-à-vis other circumstances. In view of the this, the impugned order of the Ld. CIT(A) is set-aside

and the disallowance u/s 14A is restricted to that has been *suo-moto* made by the assessee.

8. In the result, the appeal of the assessee stands allowed.

Order was pronounced in the Open Court on 08/10/2021.

**Sd/-**  
**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

**Delhi;** Dated:  
07/10/2021.

*Shekhar*

**Sd/-**  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI