

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.3577/Del./2017
(Assessment Year : 2009-10)**

Addl.CIT, Special Range 6, vs. M/s. Moser Baer Solar Limited,
New Delhi. 43B, Okhla Industrial Area,
Phase – III,
New Delhi – 110 020.

(PAN : AAECP1955A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Gaurav Pundir, Senior DR

Date of Hearing : 23.09.2021

Date of Order : 13.10.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Addl. CIT, Special Range 6, New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 20.02.2017 passed by the Commissioner of Income - tax (Appeals)-38, New Delhi qua the assessment year 2009-10 on the grounds inter alia that:-

“1. Whether application of Rule 8D of the Tax Rules, 1962 (the Rule) to compute quantum of disallowance u/s 14A of the Income Tax Act, 1961 (the Act) is mandatory?

2. Whether disallowance u/s 14A of the Act has to be limited to the quantum of income not forming part of total income of the assessee even when clear, explicit and unambiguous provisions of section 14A read with Rule 8D of the Rule do not stipulate such restriction?

3. Whether on facts arid in circumstances of the case, the Ld CIT(A) is legally justified in holding that quantum of disallowance u/s 14A of the Act computed under mandatory Rule 8D of the Rule has to be restricted to Rs.2,33,95,428/- i.e. the quantum of dividend income not forming part of total income of the assessee?

4. Whether on facts and in circumstances of the case, the Ld.CIT(A) is legally justified in not upholding the disallowance u/s 14A of the Act r.w. R 8D of the Rule without considering legal principles that allowability/disallowability of expenditure under the Act is not conditional upon the earning of the income as upheld by Hon'ble Supreme Court in case of CIT Vs Rajendra Prasad Moody (1978) 115 ITR 519?”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee company is into the business of manufacturing, marketing and selling of solar cells and modules using thin film technology. During scrutiny proceedings, Assessing Officer (AO) noticed that the assessee has earned dividend income of Rs.2,33,95,428/- and claimed the same as exempt under section 10(34) of the Income-tax Act, 1961 (for short ‘the Act’), without disallowing any expenditure incurred to earn the exempt income. AO by invoking the provisions contained u/s 14A read with Rule 8D of the Income-tax Rules, 1962 (for

short 'the Rules') made a disallowance of Rs.4,43,46,901/- as per working given hereunder :-

S. No.	Particulars		Amount
(i)	Expenditure directly relating to income which does not form part of total income		NIL
(ii)	Expenditure incurred by way of interest (A*B/C)		
	A=Amount of interest	78655443	
	B=Average Value of investments	3236686903	
	Investment as on 01.04.2008	2864482630	
	Investment as on 31.03.2009	3608891176	
	C=Average of Total Assets	9039478284	
	Total Assets as on 01.04.2008	6027405299	
	Total Assets as on 31.03.2009	12051551269	
	A*B/C subject to Maximum of A		28163466
(iii)	One half % of Average value of investment income from which does not form part of total income		
	Average value of investments	3236686903	
	One half % of Average value of investment		16183435
	TOTAL DISALLOWACNE AS PER RULE 8D		4,43,46,901

3. Assessee carried the matter before the Id. CIT (A) by way of filing appeal who has restricted the disallowance to Rs.2,33,95,428/- u/s 14A of the Act by partly allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the Id. DR as well as on the basis of documents available on the file.

5. We have heard the Id. Departmental Representative for the Revenue/appellant to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. We have perused the order passed by the Id. CIT (A) who has decided the issue by following the decision rendered by **Hon'ble Delhi High Court in case of Joint Investments (P.) Ltd. vs. CIT 372 ITR 694 and CIT vs. Taikisha Engineering India Ltd. – 370 ITR 338 (Del.)** by returning following findings :-

“4.3 I have carefully perused the assessment order and the submissions of the appellant on this issue. It is the fact that during the year in appeal appellant has earned dividend income of Rs.2,33,95,428/-, which it has claimed exempt u/s 10(34) of the I.T Act, 1961. In its submission dated 17.02.2017 appellant has submitted that it earned tax free dividend income of Rs.2,33,95,428/- net of fund management fee charged by Mutual Funds. In the statement of facts, Appellant stated that it is engaged in the business of manufacturing, marketing and selling of solar cells and modules using thin film technology. In its submission dated 17.02.2017, appellant also states that dividend income earned from mutual funds was only incidental to the main activity of earning profits on sale of mutual funds.

4.3.1 In ground of appeal 2.4 appellant submits that expenditure on interest on loans amounting to Rs.7,86,55,443/- were incurred by the appellant for specific purpose of the business of the appellant and were not attributed to earning of exempt income .

4.3.2 It appears that appellant not only earns interest on investment in unquoted shares, but also does not want to pay any tax on such income. Following the judgement of jurisdictional Delhi High Court in the case of Joint Investments (P.) vs. CIT : 372 ITR 694, wherein it has been held that disallowance u/s 14A r.w.r. 8D cannot exceed the entire exempt income earned by the assessee during the relevant year, I restrict the disallowance u/s 14A to Rs.2,33,95,428/- which is the tax free dividend earned by

appellant during the year in appeal. These grounds of appeal are partly allowed.”

7. We are of the considered view that Id. CIT (A) has decided the issue in accordance with the law laid down by Hon’ble Delhi High Court that “*Disallowance u/s 14A read with Rule 8D cannot exceed the entire exempt income earned by the assessee during the year under consideration.*” So, when the assessee has undisputedly earned exempt dividend income of Rs.2,33,95,428/- during the year under assessment then how the disallowance of Rs.4,43,46,901/- made by the AO is sustainable. Ld. DR for the Revenue has failed to controvert the law laid down by **Hon’ble Delhi High Court in case of Joint Investments (P.) Ltd. vs. CIT and CIT vs. Taikisha Engineering India Ltd.** (supra) followed by the Id. CIT (A) in passing the impugned order. So, in view of the matter, finding no illegality or infirmity in the impugned findings returned by the Id. CIT (A), present appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 13th day of October, 2021.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Dated the 13th day of October, 2021
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-38, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.