

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2120/Del./2014
(Assessment Year : 2007-08)**

**ITA No.969/Del./2014
(Assessment Year : 2008-09)**

**ITA No.2353/Del./2013
(Assessment Year : 2009-10)**

M/s. Interarch Building Products Pvt. Ltd., vs. Addl.CIT,
B – 30, Sector 57, Range 11,
Noida – 201 301. New Delhi.

(PAN : AAACI0106J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri M.P. Rastogi, Advocate
REVENUE BY : Ms. Sunita Singh, CIT DR

Date of Hearing : 29.09.2021

Date of Order : 16.11.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, M/s. Interarch Building Products Pvt. Ltd.

(hereinafter referred to as 'the assessee') by filing the present

appeals sought to set aside the impugned orders dated 31.01.2014
29.11.2013 & 29.05.2018 passed by the Commissioner of Income -
tax (Appeals)-XV, (Appeals)-XI & (Appeals)-XV, New Delhi qua
the Assessment Years 2007-08, 2008-09 & 2009-10 respectively
on the grounds inter alia that:-

“ITA No.2120/Del/2014 (AY 2007-08)

1.1 The Learned CIT (A) has erred in holding that the Hon’ble ITAT had set aside the order dated 5.6.2012 by CIT (A) the ground regarding disallowance of Rs.33,46,523/- made in terms of Rule 8D read with section 14A of the Income Tax Act, 1961.

1.2 The Learned CIT (A) has erred in confirming the disallowance of Rs.28.20 lacs out of interest despite there being no nexus between borrowed funds and investments.

1.3 The Learned CIT (A) has erred in ignoring the decisions of various High Courts with regard to allocation of interest – when no borrowings are utilized for making investments.

2. The disallowance u/s 94, of Rs.4,086 out of short-term capital loss – without establishing any motive of tax avoidance despite the company earning a net short-term capital gain of Rs.20.97 lacs.

3. That the above grounds are independent and without prejudice to each other.”

“ITA No.969/Del/2014 (AY 2008-09)

1.1 The Learned CIT (A) has erred in not accepting the workings of allocation of administrative overheads at Rs.5,11,512/- made on the basis accepted in earlier years and confirming the disallowance of Rs.14,19,305/- made by the AO in terms of Rule 8D read with section 14A of the Income Tax Act, 1961.

1.2 The Learned CIT (A) has erred in ignoring the decision of the jurisdictional High Court of Delhi (in Maxoop Investments Ltd.) and the Mumbai High Court (in Godrej Boyce Mfg. Co. Ltd.) on the applicability of the Rule 8D and its application.

1.3 The Learned CIT (A) has erred in not accepting the workings of allocation of administrative overheads at Rs.5,11,512/- made by the company on the basis accepted in earlier years without pointing out any specific defect in them.

2. That the above grounds are independent and without prejudice to each other.”

“ITA No.2353/Del/2013 (AY 2009-10)

1.1 The Learned CIT (A) has erred in confirming u/s 14A an additional sum of Rs.77.05 lakhs without establishing any nexus of expenses incurred to earning of the exempt income.

2.1 The Learned CIT (A) has erred in confirming the allocation of interest of Rs.66.06 lacs on the basis of/in terms of Rule 8D read with section 14A when no borrowings were utilized for making investments.

2.2 The Learned CIT (A) has erred in ignoring the decisions of various High Courts with regard to allocation of interest – when no borrowings are utilized for making investments.

3. The learned CIT (A) has erred in confirming the allocation of administrative overheads of Rs.11.70 lacs on the basis of /in terms of Rule 8D read with section 14A in a mechanical manner without considering the additional workings submitted before the learned AO as per the decision of High Courts of Bombay and Delhi.

4. The above grounds are independent and without prejudice to each other.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee company is into the business of manufacturing of false ceiling, roof & wall cladding and pre-engineered metal building. During the scrutiny proceedings, Assessing Officer (AO) noticed that assessee has income from dividend to the tune of Rs.88,93,534/-, Rs.133,55,581/- & Rs.64,05,386/- in Assessment Years 2007-08, 2008-09 & 2009-10

respectively. In AY 2007-08, assessee company has made suo motu disallowance of Rs.94,600/- @ 1% of dividend earned. In AYs 2008-09 & 2009-10, assessee company has made suo motu disallowance of Rs.1,40,156/- & Rs.70,654/- respectively u/s 14A of the Income-tax Act, 1961 (for short 'the Act') without applying Rule 8D of the Income-tax Rules, 1962.

4. AO by declining the contentions raised by the assessee as to incurring no other expenses to earn the dividend income in AY 2007-08 and finding suo motu disallowance made in AYs 2007-08, 2008-09 & 2009-10 not in accordance with section 14A of the Act read with Rule 8D proceeded to invoke the provisions contained under section 14A read with Rule 8D and thereby made a disallowance of Rs.33,46,523/-, Rs.1,00,03,387/- & Rs.77,76,103/- for Assessment Years 2007-08, 2008-09 & 2009-10 respectively.

5. Consequently, AO framed the assessment at a total income of Rs.40,52,46,482/-, Rs.21,79,91,020/- & Rs.20,29,74,150/- in AYs 2007-08, 2008-09 & 2009-10 respectively.

6. Assessee carried the matter before the Id. CIT (A) by way of filing the appeals who has partly allowed the same. Feeling aggrieved by the orders passed by the Id. CIT (A), the assessee has come up before the Tribunal by way of filing the present appeals.

7. We have heard the ld. Authorized Representatives of the parties 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.

ITA NO.2120/DEL/2014 (AY 2007-08)
GROUNDS NO.1.1, 1.2 & 1.3

8. This is second round of litigation because earlier coordinate Bench of the Tribunal has remanded the case back to ld. CIT (A) to decide afresh vide order dated 09.11.2012.

9. Undisputedly, assessee company has earned dividend income of Rs.88,93,534/- and claimed the same exempt u/s 10(34) of the Act. It is also not in dispute that assessee has made suo motu disallowance of Rs.94,600/-. It is also not in dispute that for AY 2007-08, provisions contained under Rule 8D are not applicable.

10. Ld. AR for the assessee contended that AO has made disallowance in this case in accordance with Rule 8D which was not applicable qua the year under assessment i.e. AY 2007-08 and ld. CIT (A) without examining this fact sustained the disallowance made u/s 14A read with Rule 8D of Rs.33,89,111/- as confirmed in the original appellate order dated 05.06.2012.

11. It is settled principle of law that prior to introduction of Rule 8D in the statute book, the disallowance u/s 14A needs to be made on a reasonable basis and that expenses can be apportioned as held by **Hon'ble Bombay High Court in case of Godrej & Boyce Mfg. Co. Ltd. vs. DCIT 328 ITR 81 (Bom.)**. Ld. AR for the assessee contended that in AYs 2004-05 & 2005-06, ld. CIT (A) has made disallowance of administrative expenses and overall expenses at 15% of the total expenses and at 1% against receipt of dividend income etc., which decision has been accepted by the Revenue, Department having not been challenged further.

12. On the other hand, ld. DR for the Revenue contended that now the only dispute qua disallowance u/s 14A is on account of interest component only which cannot be relooked because the Tribunal has remitted the case back for limited purpose i.e. to apply law laid down by **Hon'ble Delhi High Court in case of Maxopp Investments Ltd. vs. CIT (2011) 203 taxman 364** and **Hon'ble Bombay High Court in case of Godrej & Boyce Mfg. Co. Ltd. 328 ITR 81 (Bom.)** while deciding the issue as to making disallowance u/s 14A of the Act.

13. We are of the considered view that this contention of the ld. DR for the Revenue is misconceived because while applying the

law laid down by **Hon'ble Delhi High Court in case of Maxopp Investments Ltd.** (supra), all the parameters lay down in the said judgment that only actual expenditure and not an imagined expenditure is to be considered; that AO has to record his dissatisfaction qua the correctness of the claim of the assessee; that prior to the enactment of Rule 8D, AO will have to adopt a reasonable method on the basis of objective criteria to determine the expenditure; hence the issue was required to be decided afresh by thrashing all these facts.

14. Ld. CIT (A) restricted the disallowance made u/s 14A to Rs.33.89 lacs from Rs34.41 lacs, detailed as under :-

(a)	Proportionate disallowance of interest by deeming the total financial expenses of Rs.206.39 lakhs as interest	Rs.28.20 lakhs
(b)	Towards Administrative overheads at 15% of expenses of Rs.37.93 lakhs	Rs. 5.69 lakhs
(c)	Total	Rs.33.89 lakhs

15. Ld. AR for the assessee challenged the proportioned disallowance of interest to the tune of Rs.28.20 lakhs made by ld. CIT(A) deeming the total financial expenses of Rs.206.39 lakhs as interest on the ground that since assessee had surplus own capital and free reserves during the period under investment, no disallowance can be made on account of interest.

16. Perusal of the financials of the assessee shows that it has surplus capital and free reserves more than investment made during the year under assessment which are tabulated as under :-

		As on 31.03.2006 Rs.lakhs	As on 31.03.2007 Rs.lakhs
(i)	Capital & Reserves	5,257.45	7,056.94
(ii)	Investments	1,108.19	1,375.75

17. **Hon'ble Delhi High Court in case of CIT vs. Taikisha Engg. India Ltd. – (2015) 370 ITR 338** held that, “*when the assessee has sufficient funds for making investment in shares and mutual funds to earn the dividend income, no disallowance on account of interest is sustainable.*” In the instant case as against the investment of Rs.1,108.19 lakhs & Rs.1,375.75 lakhs as on 31.03.2006 & 31.03.2007 respectively, assessee had capital & reserves of Rs.5,257.45 lakhs & Rs.7,056.94 lakhs as on 31.03.2006 & 31.03.2007 respectively. So, in these circumstances, there is no question of disallowance of interest u/s 14A read with Rule 8D(ii) qua the investment made in such securities by the assessee. Accordingly, proportionate disallowance of interest to the tune of Rs.28.20 lakhs is not sustainable, hence ordered to be deleted subject to the verification of assessee's financials by the AO.

18. Now, since the assessee has earned dividend income of Rs.88,93,534/-, reasonable expenses on account of administrative overheads are to be made. When undisputedly in AYs 2004-05 & 2005-06, Revenue has accepted the disallowance @15% of the administrative expenses made by the Id. CIT (A) and 1% of the dividend income as has been done by the assessee by making suo motu disallowance of Rs.94,600/-, the rule of consistency is required to be followed as has been held by **Hon'ble Supreme Court in case of Radhasoami Satsang vs. CIT (1992) 193 ITR 321 (SC)** as there is no change in the facts and circumstances of the case at hand. So, AO is directed to verify the financials of the assessee as to the capital & reserves available with the assessee as on date of investment and then computed the disallowance by following AYs 2004-05, 2005-06 & 2006-07. Consequently, grounds no.1.1, 1.2 & 1.3 are determined in favour of the assessee.

ITA NO.2120/DEL/2014 (AY 2007-08)

GROUND NO.2

19. Ground No.2 is dismissed having not been pressed during the course of arguments.

ITA NO.2120/DEL/2014 (AY 2007-08)

GROUND NO.3

20. Ground No.3 needs no finding being general in nature.

ITA NO.969/DEL/2014 (AY 2008-09)
GROUNDS NO.1.1, 1.2 & 1.3

21. During the scrutiny proceedings, AO noticed that assessee has earned exempt income of Rs.5,56,59,775/- during the year under assessment and made a suo motu disallowance of Rs.1,40,156/-. However, declining the contentions raised by the assessee that apart from the suo motu disallowances, no other expenses have been incurred to earn the exempt income, AO invoked the provisions contained u/s 14A read with Rule 8D and made a disallowance of Rs.1,00,03,367/- computed as under :-

Clause	Particulars			Amount
i.	Expenditure directly related to exempt income	NIL	NIL	NIL
ii.	Disallowance of interest expenditure			
	A. Interest expenditure incurred during the year	Rs. 6,87,97,217		
	B. Average value of investment	Rs.28,38,61,000		
	C. Average of total assets			
		Rs.227,50,07,005		
	Disallowance = A * B/C			85,84,082
iii.	Aggregate of Opening and Closing value of Investment (Average value of Investment) ½% of above as per Rule 8D			Average value of investment 28,38,61,000 0.5% 14,19,305
	Total disallowance [Aggregate of (i), (ii) & (iii)]			1,00,03,387

22. However, Id. CIT (A) deleted the disallowance of Rs.85.84 lakhs on account of interest made under Rule 8D (ii) by partly allowing the appeal.

23. Now, issue before the Tribunal is as to whether disallowance of Rs.14.19 lakhs on account of administrative overheads under Rule 8D(iii) made by the AO and sustained by the Id. CIT (A) is sustainable in the eyes of law.

24. Undisputedly, assessee has made a suo motu disallowance u/s 14A to the tune of Rs.1,40,156/- by following the precedents laid down in earlier years when Rule 8D was not in existence. We are of the considered view that disallowance made in the earlier years when Rule 8D was not in existence, cannot be applied while making disallowance because for the year under consideration disallowance, if any, is to be made in accordance with section 14A read with Rule 8D only.

25. Assessee has not brought on record the basis of suo motu disallowance made in this case nor has prepared any separate account to work out the expenses incurred for earning dividend income.

26. Ld. AR for the assessee by relying upon the judgments of **Hon'ble Delhi High Court in HT Media Limited vs. Pr. CIT in**

ITA No.548/2015 dated 23.08.2017 and Maxopp Investments

Ltd. (supra) contended that AO has mechanically proceeded to invoke the provisions contained u/s 14A read with Rule 8D without recording his dissatisfaction as to the working made by the assessee. But we are of the considered view that this argument is not sustainable because when assessee has himself not brought on record any evidence as to incurring expenses to earn the dividend income even generic satisfaction recorded by the AO is sufficient to invoke the provisions contained under Rule 8D (iii) as has been held by **Hon'ble Delhi High Court in case of Indiabulls Financial Services Ltd. vs. DCIT 76 taxmann.com 268 (Delhi)**. So, in these circumstances, we are of the considered view that disallowance to the tune of Rs.14,19,305/-made by the AO and sustained by the Id. CIT (A) under Rule 8D(iii) calls for no interference, hence upheld. Consequently, grounds no.1.1, 1.2 & 1.3 are determined against the assessee.

ITA NO.969/DEL/2014 (AY 2008-09)
GROUND NO.2

27. Ground No.3 needs no finding being general in nature.

ITA NO.2353/DEL/2013 (AY 2009-10)
GROUND NO.1.1, 2.1, 2.2, 3 & 4

28. Assessee claimed exempt income to the tune of Rs.70,65,386/- during the year under assessment and made suo motu made disallowance of Rs.70,654/- @ 1% of the dividend and tax free interest on account of administrative overheads in earlier years orders in its own case. However, declining the contentions raised by the assessee that no other expenses have been incurred, AO invoked the provisions contained u/s 14A read with Rule 8D and thereby made disallowance of RS.77,76,103/- [Rs.66,05,916 & Rs.11,70,183/- under Rule 8D(ii) & 8D(iii)].

29. Undisputedly, AO by invoking the provision contained u/s 14A read with Rule 8D computed the disallowance as under :-

Clause	Particulars		Amount
i.	Expenditure directly related to exempt income	NIL	NIL
ii.	Disallowance of interest expenditure		
	A. Interest expenditure incurred during the year	Rs. 7,93,14,778	
	B. Average value of investment	Rs.23,40,37,420	
	C. Average of total assets		
	Disallowance = A * B/C	Rs.281,00,00,000	Rs.66,05,916
iii.	Aggregate of Opening and Closing value of Investment (Average value of Investment) 1/2% of above as per Rule 8D		Average value of investment Rs.23,40,37,420 0.5% Rs.11,70,187
	Total disallowance [Aggregate of (i), (ii) & (iii)]		Rs.77,76,103

30. Assessee has suo moto made disallowance of Rs.70,654/- u/s 14A i.e. @ 1% of the dividend earned without complying with the provisions contained under Rule 8D.

31. Ld. AR for the assessee challenged the impugned addition made by the AO under section 14A read with Rule 8D (ii) on the ground that since assessee was having sufficient interest free own funds, no disallowance is called for.

32. On the other hand, Id. DR for the Revenue contended that now the only dispute qua disallowance u/s 14A is on account of interest component only which cannot be relooked because the Tribunal has remitted the case back for limited purpose i.e. to apply law laid down by **Hon'ble Delhi High Court in case of Maxopp Investments Ltd. vs. CIT (2011) 203 taxman 364 and Hon'ble Bombay High Court in case of Godrej & Boyce Mfg. Co. Ltd. 328 ITR 81 (Bom.)** while deciding the issue as to making disallowance u/s 14A of the Act.

33. Perusal of the financials of the assessee shows that it has surplus capital and free reserves more than investment made during the year under assessment which are tabulated as under :-

		As on 31.03.2006 Rs.lakhs	As on 31.03.2007 Rs.lakhs
(i)	Capital & Reserves	18,906.76	18,146.71
(ii)	Investments	4,301.47	379.27

34. **Hon'ble Delhi High Court in case of CIT vs. Taikisha Engg. India Ltd. – (2015) 370 ITR 338** held that, *“when the assessee has sufficient funds for making investment in shares and mutual funds to earn the dividend income, no disallowance on account of interest is sustainable.”* In the instant case as against the investment of Rs.4,301.47 lakhs & Rs.379.27 lakhs as on 31.03.2006 & 31.03.2007 respectively, assessee had capital & reserves of Rs.18,906.76 lakhs & Rs.18,146.71 lakhs as on 31.03.2006 & 31.03.2007 respectively. So, in these circumstances, there is no question of disallowance of interest u/s 14A read with Rule 8D(ii) qua the investment made in such securities by the assessee. Accordingly, proportionate disallowance of interest to the tune of Rs.66.06 lakhs is not sustainable, hence ordered to be deleted subject to the verification of assessee's financials by the AO.

35. So far as question of making disallowance of Rs.11,70,187/- under Rule 8D(iii) by the AO and upheld by Id. CIT (A) is concerned, when the assessee has earned dividend income of Rs.70,65,386/- expenses on account of administrative overheads

are to be made not on the basis of reasonableness as done in earlier years for AYs 2004-05, 2005-06 & 2006-07 but in accordance with the provisions contained u/s 14A read with Rule 8D (iii) because for AY 2009-10, Rule 8D is applicable.

36. Ld. AR for the assessee by relying upon the judgments of **Hon'ble Delhi High Court in HT Media Limited vs. Pr. CIT in ITA No.548/2015 dated 23.08.2017 and Maxopp Investments Ltd.** (supra) contended that AO has mechanically proceeded to invoke the provisions contained u/s 14A read with Rule 8D without recording his dissatisfaction as to the working made by the assessee. But we are of the considered view that this argument is not sustainable because when assessee has himself not brought on record any evidence as to incurring expenses to earn the dividend income rather made suo moto disallowance @ 1% of dividend income earned on estimated basis even generic satisfaction recorded by the AO is sufficient to invoke the provisions contained under Rule 8D (iii) as has been held by **Hon'ble Delhi High Court in case of Indiabulls Financial Services Ltd. vs. DCIT 76 taxmann.com 268 (Delhi)**. So, in these circumstances, we are of the considered view that disallowance to the tune of Rs.14,19,305/- made by the AO and sustained by the ld. CIT (A) under

Rule 8D(iii) calls for no interference, hence upheld. Consequently, grounds no.1.1, 1.2 & 1.3 are partly allowed in favour of the assessee.

37. Resultantly, the ITA Nos.2120/Del/2014 & 2353/Del/2013 for AYs 2007-08 & 2009-10 are partly allowed and ITA No.969/Del/2014 for AY 2008-09 is dismissed.

Order pronounced in open court on this 16th day of November, 2021.

**Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 16th day of November, 2021
TS**

Copy forwarded to:

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

AR, ITAT
NEW DELHI.