

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

**BEFORE SHRI G.S. PANNU, PRESIDENT  
AND  
SHRI RAVISH SOOD, JUDICIAL MEMBER**

I.T.A. No.183/DEL/2019  
Assessment Year 2013-14

Addl. CIT, Special Range-3, New Delhi.	vs.	DCM Ltd., 601, Vikrant Tower, Rajendra Place, New Delhi.
PAN: AAACD1012E		
(Appellant)		(Respondent)

I.T.A. No.603/DEL/2019  
Assessment Year 2013-14

DCM Ltd., 601, Vikrant Tower, Rajendra Place, New Delhi.	vs.	Addl. CIT, Special Range-3, New Delhi
TAN/PAN: AAACD1012E		
(Appellant)		(Respondent)

Appellant by:	Shri V.P. Gupta, Advocate a/w Shri Anunav Kumar, Advocate.		
Respondent by:	Ms. Yagyasaini Kakkar, CIT-DR Shri Sumit Kumar Varma, Sr.D.R.		
Date of hearing:	08	12	2021
Date of pronouncement:	31	12	2021

**ORDER**

**PER RAVISH SOOD, JM**

The present cross-appeals are directed against the order passed by the Commissioner of Income Tax (Appeals)-34, New Delhi [for short "CIT(A)"], dated 20.11.2018, which in turn arises

from the order passed by the AO u/s.143(3) of the Income Tax Act, 1961 (for short the 'Act'), dated 14.03.2016 for A.Y 2013-14. The assessee has assailed the impugned order on the following grounds before us.

- “1. That the CIT(A) erred in upholding disallowance of Rs.35.11 lacs u/s 14A read with Rule 8D of income tax Rules in respect of administrative expenses calculated at 0.5% of average amount of investment determined by the AO without appreciating that the AO had not properly recorded satisfaction in this regard and, therefore, he could not determine the disallowance as per Rule 8D of Income-tax Rules disregarding disallowance offered by the appellant company of Rs.4.00 lacs in the return of income.
2. Without prejudice to above the CIT(A) also erred in not: appreciating the legal position enunciated by Hon'ble High Court of Delhi in the case of ACB India Ltd. V. ACIT(2015) 374 ITR 108 that the disallowance as per Rule 8D is to be worked out with reference to average amount of investments on which dividend income was actually received during the year and in the case of the company on the aforesaid basis disallowance worked out was Rs.21.03 lacs and after adjustment of disallowance already made by the company of Rs.4.00 lacs further disallowance could be uphold only of Rs.17.03 lacs.
3. That the order passed by CIT(A) in regard to disallowance on account of administrative expenses u/s 14A of the Act is without fully and properly considering the facts and circumstances of the case and the law.
4. That the CIT(A) erred in upholding the initiation of penalty proceedings u/s 271(1)(c) of the Act in the facts and circumstances of the appellant.
5. That the Appellant Company craves leave to alter, amend, vary and/or add any of the grounds of appeal at any time herein after.”

On the other hand the revenue has challenged the impugned order on the following grounds before us :

- “1. Whether on facts and in circumstances of the case and in law, the CIT(A) has erred in deleting the disallowance of interest on interest free advance of Rs.22,32,000/- made by the Assessing Officer.
2. Whether on facts and in circumstances of the case and in law, the CIT(A) has erred in deleting the addition/disallowance u/s 14A read with rule 8D(i) & (ii) of Rs. 2,56,71,000/- made by the Assessing Officer.

3. Whether on facts and in circumstances of the case and in law, the CIT(A) has erred in deleting the adjustment made by the Assessing Officer in book profit u/s 115JB on account of disallowance u/s 14A read with rule 8D(i) & (ii) amounting to Rs. 2,56,71,000/-.
4. The appellant craves, leave, modify, add or forego in any ground(s) of appeal at any time before or during the hearing of this appeal.”

As the issues raised in the aforementioned appeals are inextricably interlinked, or in fact interwoven, therefore, we shall take up and dispose off the same by way of a consolidated order.

2. Controversy involved in the present appeals primarily hinges around the disallowance made by the AO u/s.14A r.w Rule 8D of the Income-tax Rules, 1962, substituting the amount of disallowance that was on a *suo motto* basis offered by the assessee-company in its return of income. Also, the revenue is aggrieved with the dislodging of the disallowance of Rs. 22.32 lac that was made by the A.O u/s 36(1)(iii) of the Act.

3. Shorn of unnecessary details, the assessee-company had on 28.08.2013 filed its return of income for AY 2013-14, declaring an income of Rs.36,34,22,190/-. Original assessment was framed by the AO vide his order passed u/s.143(3) of the Act, dated 14.03.2016 at an income of Rs.42,26,56,849/-, wherein he had, *inter alia*, determined the disallowance u/s.14A r.w Rule 8D at an amount of Rs.287.82 lac. As is discernible from the record, the assessee company had in its return of income offered a *suo motto* disallowance u/s.14A of Rs.4 lac. On being confronted by the AO that as to why the disallowance u/s.14A may not be worked out by triggering the machinery provision contemplated in Rule 8D of the Income Tax Rules, 1962, it was the claim of the assessee, viz. (i) that in so far the interest expenditure was concerned, no disallowance on the said count was called for in its hands; and (ii).

that as regards the administrative expenses, the disallowance of Rs.4 lac that was offered in the return of income was quite reasonable keeping in view the activity that was carried out as regards the investments made in the exempt income yielding assets during the year under consideration. For the sake of clarity the reply filed by the assessee before the Assessing Officer is reproduced as under :

“In regard to disallowance u/s 14A of the Act, we may submit that In the return of Income, our company has already made disallowance of Rs.4 lacs, which represents 50% of salary of one of the executive of the company who is attending the work relating to investment apart from his other official duties. Further it may be stated that in the facts of the case of the company as have explained in earlier years, there has been no expenditure incurred on account of interest cost. Administrative activities are also meager in connection with the Investments. Accordingly, no disallowance is called for u/s 14A of the Act. The company, however, with a view to avoid any litigation in this regard and to cover up any small expenditure, which might have been incurred on account of administrative activities, has already made an addition of Rs.4 lacs in the return of Income. No further disallowance is called for u/s 14A of the Act.

In this regard we may also submit that as per provisions of Section 14A of the Income Tax Act, any expenditure incurred in relation to income, which does not form part of total income is disallowable. In the facts of the case of our company since no expenditure has been incurred in relation to investments, it is submitted that no disallowance is called for u/s 14A of the Act and Rule 8D of Income Tax Rules, accordingly, has no application.

With regard to disallowance on account of interest, we may specifically submit that during the year company has incurred interest expenditure of Rs.1497.76 lacs which been debited to Profit & Loss Account for the year under assessment. Whole of the interest expenditure is directly related to loans taken for the purpose of business. Details in this regard are given in the statement enclosed herewith as Annexure-I. Since interest debited to Profit & Loss Account is wholly related to loans taken for the purpose of business, no disallowance on proportionate basis as per Rule 8D is to be worked out. In this regard, we may invite your kind attention to language of clause (ii) of Rule 8D(2), which provides that disallowance on account of Interest is to be proportionately determined where the assessee has incurred expenditure by way of interest which is not directly attributable to any particular Income or receipt. Accordingly, disallowance on proportionate basis is to be calculated only with reference to interest expenditure which is not directly attributable to any particular income or receipt. Since whole of the interest expenditure is attributable in the case of our company which income from business activities is chargeable to tax, no disallowance on proportionate basis is to be determined as per clause (ii) of Rule 8D(2) of Income Tax Rules.

Total Investments of the company in shares in the last year have been to the tune of Rs.70.20 cr. During the year, a further small investment of Rs.5 lacs has been made in shares of DCM Data Systems making total investments at the end of year of Rs. 70.25 cr. All the investment in earlier years have been made out of own funds of the company. This position has been duly accepted in appeals before CIT(A) for earlier years and no disallowance on account of interest has been made. We may also add that the company has been having substantial funds of its own in earlier years as well as in current year and, therefore, no investment under reference can be attributed to borrowed funds. As on 31.03.2012, the company was having its own funds in the form of share capital and reserves of Rs.159.57 cr. and own funds of the company as on 31.03.2013 were to the tune of Rs.183.21 cr. As regards small investment of Rs.5 lacs made during the year, we may submit that during the year, company was having profits after tax and other adjustments of Rs.29.01 cr. and, therefore, it cannot be said small investment of Rs.5 lacs has been made out of borrowed funds.

Further, It has been submitted in earlier years that shares of DCM Engineering Ltd., having face value of Rs.4205 lacs, were allotted, to the company pursuant to scheme of arrangement on transfer of running business to above company. No investment as such was made in shares of above company. Accordingly, there is no question of investment in above shares out of borrowed funds. Hence no interest expenditure can be appropriated with reference to above shares. We may submit that this position has been duly accepted In earlier years in appeals by CIT(A).

We may further submit that substantial investments of the company are in subsidiaries and joint venture companies and such investments have to be in any case excluded for the purpose of disallowance u/s 14A of the Act. In this regard your attention is invited to following figures as per the Balance Sheet of the Company.

<i>Particulars</i>	<i>As on 31.03.2012 Rs. in crores</i>	<i>As on 31.03.2013 Rs. in crores</i>
<i>( Total investments</i>	<i>70.20</i>	<i>70.25</i>
<i>Investments in subsidiary/ joint venture company</i>	<i>69.19</i>	<i>69.24</i>
<i>Other Investments</i>	<i>1.01</i>	<i>1.01</i>

In regard to above contentions the references may please be made on the following decisions.

- CIT v. Oriental Structural Engineers Pvt. Ltd. (2013) 216 Taxman 92 Del.
- Dy. CIT v. REI Agro Ltd. ITA No. 1811/Kol./2012 decided on 14.05.2013 - (upheld by High Court In ITA No. 161/2013 decided on 23.12.2013.)
- M/s JM Financial Limited v. Addl. CIT, ITA No. 4521/Mum/2012 decided on 26.03.2014 - ITAT.
- Interglobe Enterprises Ltd. v. DCIT, ITA Nos. 1362 & 1032/Del/2013 and ITA Nos. 1580/Del/2013 decided on 04.04.2014 - ITAT.
- Carware Wall Ropes Ltd. v. ACIT - ITA No. 5408/Mum/2012 dated

15.01.2014

As regards disallowance on account of administrative expenses is concerned, we may submit that during the year our company has received dividend income of Rs.0.50 lacs from SRF Ltd. and Rs.451.50 lacs from DCM Engineering Ltd. (subsidiary of DCM Ltd.) Dividend was directly credited to our company account through ECS. Accordingly, no administrative efforts were involved in collecting the dividend warrants and depositing the same in the company's account. Therefore, no disallowance on account of administrative expenditure is called for. Even if disallowance at 0.5% is calculated with reference to investment other than in subsidiary and group companies, disallowance on investment of Rs.1.01 cr. would be Rs.50,500/-. Since the company has already made addition of Rs.4 lac in the return of income, no further disallowance is called for.”

However, the Assessing Officer not finding favour with the aforesaid claim of the assessee determined the disallowance u/s.14A r.w Rule 8D at an amount of Rs.287.82 lac, which comprised of, viz. (i). disallowance out of interest expenditure under Rule 8D(2)(ii): Rs.256.71 lac; and (ii) disallowance out of administrative expenses: Rs.35.11 lac. Also, the AO disallowed interest expenditure of Rs. 22.32 lac pertaining to the outstanding balance of advance/loan of Rs. 2.79 crore in the name of DCM Employees Welfare Trust. After making the aforesaid disallowances the AO vide his order passed u/s.143(3) of the Act, dated 14.03.2016 assessed the income of the assessee company at Rs.42,26,56,849/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). In so far the disallowance of the interest expenditure made by the Assessing Officer u/s.14A r.w. Rule 8D(2)(ii) of Rs.256.71 lac was concerned, the CIT(A) finding favour with the two fold contentions that were advanced by the assessee to impress upon him that no disallowance of any part of the interest expenditure was called for in its hands,

viz, (i) that as per the details submitted before the AO the interest expenditure was relatable to the specific loans which were taken by the assessee company for the purpose of its business, therefore, no part of the interest expenditure could be attributed to earning of exempt dividend income by the assessee company; and (ii) that as the assessee had sufficient self-owned funds which were substantially more than the investments made in the exempt income yielding assets, therefore, on the said count too no disallowance of any part of the interest expenditure was called for in its hands; thus, vacated the entire amount of disallowance of the interest expenditure of Rs. 256.71 lac that was made by the AO u/s. 14A r.w Rule 8D(2)(ii). As regards the disallowance of administrative expenses made by the A.O, it was observed by the CIT(A) that though the assessee had in its return of income offered a *suo motto* disallowance of Rs.4 lac on the said count, however, in the course of the proceedings before him he had revised the disallowance as per Sec. 14A r.w Rule 8D(2)(iii) at Rs.21.03 lac, i.e., @ 0.5% of the average value of investments that had yielded exempt dividend income during the year under consideration. Observing, that the disallowance of the administrative expenses u/s.14A r.w Rule 8D(2)(iii) was not to be determined on the basis of the 'average value' of the investments that had yielded exempt income during the year, but was to be worked out with reference to the 'average value' of the investments which does not or shall not form part of the total income of the assessee, the CIT(A)

worked out the disallowance u/s.14A r.w Rule 8D(2)(iii) at an amount of Rs.35.11 lac. As the assessee had in its return of income already offered a *suo motto* disallowance of Rs.4 lac u/s.14A of the Act, therefore, the CIT(A) restricted the addition to an amount of Rs.31.11 lac. In so far the claim of the assessee that the Assessing Officer had wrongly considered the disallowance u/s.14A r.w Rule 8D for the purpose of computing the 'book profit' of the assessee company u/s.115JB of the Act, the CIT(A) observed that the said issue was squarely covered by the order of the "Special Bench" of the ITAT, Delhi in the case of ACIT vs. Vireet Investment Ltd. (2017) 58 ITR (Trib.) 313, wherein the Tribunal had observed that no adjustment of the disallowance determined u/s.14A r.w Rule 8D was to be made for the purpose of computing the 'book profit' u/s.115JB of the Act. Accordingly, the CIT(A) following the view taken by the Tribunal in the case of Vireet Investment Ltd. (supra) held, that no adjustment u/s.115JB was called for on account of the disallowance that was determined u/s.14A r.w Rule 8D. As regards the disallowance of interest of Rs.22.32 lac that was made by the AO in respect of the outstanding balance of advance/loan of Rs. 2.79 crore in the name of DCM Employees Welfare Trust, it was observed by the CIT(A) that a similar disallowance that was made by the AO in the preceding years was on appeal vacated by his predecessor, and the latter's order was thereafter upheld by the Tribunal. Accordingly, the CIT(A) following the view taken by the

Tribunal in the assessee's own case for the preceding years vacated the disallowance of interest expenditure of Rs.22.32 lac that was made by the Assessing Officer. Backed by his aforesaid observations the CIT(A) partly allowed the appeal.

5. That both the assessee and the revenue being aggrieved with the order of the CIT(A) have carried the matter in appeal before us.

6. As regards the deletion of the disallowance of the interest expenditure qua the outstanding balance of advance/loan of Rs.2.79 crore in the name of DCM Employee Welfare Trust, we find that a similar disallowance with reference to the aforesaid outstanding amount was vacated by the Tribunal in the assessee's own case for AY 2011-12 and AY 2012-13 in ITA Nos. 6476 & 6477/Del/2016, vide its order dated 22.05.2018. Also, we find that relying on the aforesaid orders for the preceding years the tribunal had while disposing off the revenue's appeal in the case of the assessee for AY 2014-15, had vide its order passed in ITA No.5376/Del/2018, dated 29.07.2021 had upheld the deletion of the aforesaid addition by the CIT(A), observing as under :

"We have heard the rival submission and perused the materials on record. The issue in the present ground is with respect to disallowance of interest on the outstanding loan to the DCM Employees Welfare Trust. We find that CIT(A) following the order of his predecessor for A.Y. 2012-13 had deleted the addition. We further find that identical issue arose before the Co-ordinate Bench of Tribunal in Revenue's appeal for A.Y. 2011-12. The Co-ordinate Bench of Tribunal by following the order of Tribunal in assessee's own case for A.Y. 2010-11 had dismissed the appeal of the Revenue. Before us, no distinguishing feature in facts of the case for the year under consideration and that for earlier years, has been pointed out by the Revenue, We therefore find no reason to

interfere with the order of CIT(A). Thus the ground of Revenue is dismissed.”

As the facts and the issue involved in the present appeal qua the aforesaid issue in question remains the same as were therein involved in the assessee’s own case for the aforementioned preceding and succeeding years, therefore, respectfully following the view therein taken by the Tribunal, we finding no infirmity in the order of the CIT(A) who had rightly vacated the disallowance of interest expenditure of Rs.22.32 lac (supra) made by the A.O, thus, uphold his order to the said extent. The **Ground of appeal no.1** raised by the revenue is dismissed.

7. We shall now advert to the grievance of the revenue that the CIT(A) had erred in deleting the addition/disallowance of the interest expenditure amounting to Rs.256.71 lac that was made by the Assessing Officer U/s 14A by triggering the machinery provision contemplated in Rule 8D(2)(ii) of the Income-tax Rules, 1962. As observed by us hereinabove, the assessee had not offered for disallowance u/s 14A any part of the interest expenditure qua earning of the exempt dividend income during the year under consideration. However, the AO by triggering the machinery provision contemplated in Rule 8D(2)(ii) had determined the disallowance of interest expenditure u/s 14A at an amount of Rs.256.71 lac. On appeal, it was observed by the CIT(A), viz. (i). that as the interest bearing funds were deployed by the assessee for the purpose of its business; and (ii). that the assessee even otherwise had sufficient interest free funds available with it to source the investments in the exempt income

yielding assets, therefore, no part of the disallowance of interest expenditure of Rs.256.71 lac that was made by the AO u/s.14A r.w Rule 8D(2)(ii) could be sustained. On a perusal of the record, we find that the assessee company had made a total investment of Rs.70.20 crore in the immediately preceding year, while for a further investment of Rs.5 lac in the shares of M/s. DCM Data System was made by the assessee during the year under consideration, as a result whereof the total investments in the exempt dividend income yielding shares at the end of the year i.e on 31.03.2013 worked out at Rs.70.25 crore. In so far the investment of Rs.70.25 crore made by the assessee company in the exempt dividend income yielding shares was concerned, it is a matter of fact borne from the record that the assessee was having sufficient self-owned funds in the form of share capital and reserves of Rs.159.57 crore on 31.03.2012 and Rs.183.21 crore on 31.03.2013, which duly explained the source of the aforementioned investments. At this stage, we may herein observe, that in so far the investment of Rs.70.20 crore made by the assessee company in exempt dividend income yielding shares in the preceding years was concerned, the claim of the assessee that the said investments were made out of its self-owned funds was accepted while disposing off the assessee's appeal for the said preceding years by the then CIT(A) and no disallowance of any part of the interest expenditure therein survived. As regards the small investment of Rs.5 lac that was made by the assessee in the shares of M/s. DCM Data System during the year under consideration, the same too can safely be held to have been sourced out of the substantial self-owned

funds that were available with the assessee during the year under consideration. In the backdrop of the aforesaid factual matrix, we are of the considered view, that as no infirmity emerges from the view taken by the CIT(A) that no disallowance of any part of the interest expenditure was called for in the hands of the assessee u/s.14A of the Act, we, therefore, uphold his order to the said extent. Our aforesaid view that in case an assessee has sufficient self-owned funds which are more than the amount of investments made in the exempt income yielding assets, then, no disallowance of any part of the interest expenditure is warranted is supported by the following judicial pronouncements.

- South Indian Bank Ltd. v. CIT, C.A. No. 9606/2011 decided on 09.09.2021 - Supreme Court
- CIT v. Reliance Industries Ltd. (2019) 410 ITR 466 (SC)
- Maxopp Investment Ltd. v. CIT [2018] 402 ITR 640 (SC)
- Godrej & Boyce Manufacturing Co. Ltd. v. Dy.CIT & Anr. (2017) 394 ITR 449 (SC)
- HT Media Ltd. v. Pr. CIT (2017) 399 ITR 576(Del);
- CIT v. Maruti Udyog Ltd. (2018) 407 ITR 159 (Del);
- CIT v. Taikisha Engineering India Ltd. (2015) 370 ITR 338 (Del); CIT Vs. Bharti Televenture Ltd. (2011) 331 ITR 502 (Del.)
- The Nashik Road Deolali Vyapari Sahakari Bank Ltd. v. ACIT, ITA No. 312/2016 decided on 16.09.2021 - ITAT Pune
- DCIT v. Nirshilp Securities Pvt. Ltd, ITA No. 6321/2019 decided on 21.06.2021 - ITAT Mumbai.
- GAIL (India) Ltd. v. ACIT, ITA No. 301/2006 decided on 27.11.2020-ITAT Delhi;
- Vedanta Ltd. v. ACIT, ITA No. 12/2020 decided on 21.09.2020 - ITAT Delhi;

Apart from that, as observed by the CIT(A), and rightly so, as the interest expenditure in question was directly relatable to the loans that were taken by the assessee company for the purpose of its business, therefore, no part of the said interest

expenditure could therein be attributed to the activity of earning of exempt income, and disallowed u/s.14A r.w Rule 8D(2)(ii). Our aforesaid view is supported by the judgment of the Hon'ble High Court of Delhi in the case of ACIT vs. Bharti Overseas Pvt. Ltd. in ITA No.802/2015 dated 17.12.2015. Backed by our aforesaid observations, finding no infirmity in the view taken by the CIT(A), who in our considered view had rightly vacated the disallowance of the interest expenditure of Rs.256.76 lac made by the AO u/s.14A r.w. Rule 8D(2)(ii), we uphold the same. The **Ground of Appeal No.2** raised by the revenue is accordingly dismissed.

8. We shall now advert to the grievance of the revenue that the CIT(A) had erred in vacating the adjustment of the disallowance u/s.14A r.w Rule 8D that was made by the AO for the purpose of determining the "book profit" u/s.115JB of the Act. As is discernible from the order of the CIT(A), we find that he had by drawing support from the order of the "Special Bench" of the ITAT, Delhi in the case of Vireet Investments Pvt. Ltd. (supra), had observed, that no adjustment as regards the disallowance determined u/s.14A r.w Rule 8D could have been made for the purpose of determining the "book profit" u/s.115JB of the Act. In our considered view, as the order passed by CIT(A) on the aforesaid issue does not suffer from any infirmity, therefore, the view therein taken by him is upheld. The **Ground of appeal No. 3** raised by the revenue is dismissed.

9. The **Ground of appeal no.4** raised by the revenue being general in nature is dismissed as not pressed.

10. We shall now advert to the grievance of the assessee that the CIT(A) had erred in upholding the disallowance of Rs. 35.11 lac out of the administrative expenses u/s.14A r.w Rule 8D. Before us the ld. AR had assailed the disallowance sustained by the CIT(A) u/s.14A r.w Rule 8D(2)(iii) on two fold grounds, viz, (i) that as the AO had failed to record his satisfaction as to why the *suo motto* disallowance of Rs.4 lac offered by the assessee u/s.14A was not to be accepted, therefore, he had by mechanically triggering the mechanism contemplated in Rule 8D(2)(iii) invalidly assumed jurisdiction and determined the disallowance at an amount of Rs.35.11 lac; and (ii) that the CIT(A) had erred in concluding that the disallowance of the administrative expenditure u/s.14A r.w. Rule 8D(2)(iii) was to be worked out after considering the 'average value' of such investments which does or shall yield exempt income, and is not to be determined by considering only the 'average value' of such investments on which dividend income was received by the assessee during the year.

11. As regards the claim of the assessee that as the AO had determined the disallowance u/s.14A r.w Rule 8D without recording his satisfaction as to why the *suo motto* disallowance of Rs.4 lac that was offered by the assessee in its return of income was not be accepted, therefore, he had wrongly assumed jurisdiction, we are afraid does not merit acceptance. Although, we are principally in agreement with the contention of the ld. AR that pursuant to the judgment of the Hon'ble Supreme Court in the case of Maxopp Investments Ltd. Vs. CIT (2018) 402 ITR 640 (SC), it is no more *res integra* than an AO prior to dislodging of

the assessee's claim of disallowance u/s.14A of the Act, remains under a statutory obligation to record his satisfaction that as to why the disallowance so offered by the assessee is not to be accepted, however, we find that the facts involved in the case of the assessee before us does not fall within the four corners of the aforesaid settled position of law, and thus, would not assist the case of the assessee before us. As is discernible from the assessment order, we find that the AO had after exhaustively dealing with the contention advanced by the assessee that the disallowance of Rs.4 lac (supra) offered in the return of income was quite reasonable qua the exempt dividend income, had on the basis of elaborate reasons as to why the said claim of the assessee company was not to accepted and the disallowance was required to be determined as per the mechanism provided in Rule 8D, therein, dislodged the *suo motto* disallowance of Rs.4 lac (supra) that was offered by the assessee in its return of income. We, thus, not being persuaded to subscribe to the claim of the Id. AR that the Assessing Officer had failed to record his satisfaction that as to why the assessee's claim for disallowance u/s.14A was not to be accepted, reject the same.

12. We shall now take up the grievance of the assessee in so far the manner of quantification of the disallowance of the administrative expenses attributable to earning of the exempt dividend income as per Section 14A r.w. Rule 8D(2)(iii) is concerned. Controversy qua the aforesaid issue lies in a narrow compass, i.e., as per the assessee the disallowance of the administrative expenses as per Rule 8D(2)(iii) is to be worked out with reference to the 'average value' of the amount of

investments on which dividend income was actually received during the year, while for the CIT(A) was of the view that as per the mandate of law the said disallowance was to be determined with reference to the 'average value' of the investments which does or shall yield exempt income. After deliberating at length on the issue in question, we are of the considered view that there is substance in the claim of the ld. AR that the disallowance out of the administrative expenses u/s.14A r.w Rule 8D(2)(iii) is to be determined with reference to the 'average value' of the investments on which dividend income was actually received by the assessee during the year, and the same cannot be stretched to the extent to bring within its sweep such investments which though had not yielded exempt income during the year, but shall yield such exempt income. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Delhi in the case of PCIT vs. Caraf Builders and Constructions Pvt. Ltd. (2019) 414 ITR 122 (Del). Also, support his drawn from the following orders of the co-ordinate benches of the Tribunal wherein a similar view had been taken :

- Religare Securities Ltd. v. ACIT, ITA no. 6330/2017 decided on 25.02.2021 - ITAT Delhi.
- Century Real Estate Holdings Pvt. Ltd. v. DCIT, ITA No. 1590/2017 decided on 22.09.2021 - ITAT Bangalore.
- NSL Renewable Power Pvt. Ltd. v. DCIT, ITA No. 1024/ 2017 decided on 17.06.2021 - ITAT Hyderabad.
- ACIT v. Caspian Impact Investments (P) Ltd, ITA No. 1080/ 2019 decided on 09.04.2021 - ITAT Hyderabad.

In the backdrop of our aforesaid observations, we are of the considered view that the disallowance offered by the assessee company u/s.14A r.w Rule 8D(2)(iii) qua the administrative expenses i.e after considering the 'average value' of such

investments on which dividend income was actually received during the year, merits acceptance. We, thus, in terms of our aforesaid observations restrict the disallowance of administrative expenses u/s.14A r.w Rule 8D(2)(iii) to an amount of Rs.21.03 lac, as was offered by the assessee in the course of the proceedings before the lower authorities. As the assessee company had already offered a disallowance of Rs.4 lac in reference to the administrative expenses, therefore, we herein direct the AO to restrict the further disallowance to an amount of Rs.17.03 lac. The **Grounds of appeal nos.1 to 3** raised by the assessee are accordingly allowed in terms of our aforesaid observations.

13. As the challenge thrown by the assessee to the initiation of penalty proceedings u/s.271(1)(c) of the Act by the Assessing Officer while framing the assessment, is premature, therefore, the same is dismissed. The **Ground of appeal no.4** of the assessee is dismissed in terms of our aforesaid observations.

14. The **Ground of appeal no.5** raised by the assessee being general in nature is accordingly dismissed as not pressed.

15. Resultantly, while for the appeal filed by the assessee is partly allowed, the appeal filed by the revenue is dismissed in terms of our observations recorded hereinabove.

**Order pronounced in the Open Court on 31<sup>st</sup> December, 2021.**

Sd/-  
[G.S. PANNU]  
[PRESIDENT]

DATED: 31/12/2021

\*Prabhat

Sd/-  
[RAVISH SOOD]  
JUDICIAL MEMBER