

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'F', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHARY, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 4854/Del/2018
(Assessment Year : 2013-14)

Zuari Investments Ltd., Plot No.2, Zamrudpur Community Centre, Kailash Colony Extension, New Delhi-110 048 PAN : AAACZ 0196 R (APPELLANT)	Vs.	ITO Ward – 27(4), New Delhi (RESPONDENT)
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Assessee by	Shri KVSR Krishna, Adv.
Revenue by	Shri Atiq Ahmed, Sr. D.R.

Date of hearing:	27.12.2021
Date of Pronouncement:	05.01.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 30.05.2018 of the Commissioner of Income Tax (Appeals)-9, New Delhi relating to Assessment Year 2013-14.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of dealing in investments, corporate consultancy, depository services etc. Assessee electronically filed its return of income for A.Y. 2013-14 on 29.11.2013 declaring income at Rs. Nil and current year losses to be carried forward to the extent of Rs.1,64,57,059/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 31.03.2016 and the total loss to be carried forward was determined at Rs.1,21,99,195/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 30.05.2018 in Appeal No.87/2016-17 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds:

1. *“The Ld. CIT(A) erred on facts and in law in confirming the disallowance of Rs.18,01,158/- being the indexed cost of interest having direct nexus to the purchase of shares of ANS Construction Ltd. in computing the capital gains from sale of the said shares. The disallowance made is wrong and bad in law and hence deserves to be deleted.*

2. *The Ld. CIT(A) as well as AO had failed to appreciate that interest cost is having direct nexus to the Investment in ANS shares. The complete details of cost as well as interest on the ICDs taken by the assessee for the purpose of said investments in the earlier years duly showing the nexus has been provided to CIT(A) as well as AO. Such interest cost having direct nexus to the investment should be allowed with indexation.*

3. *The Ld. CIT(A) erred on facts and in law in confirming the disallowance of Rs.37,46,362/- u/s 14A by mechanically applying Rule 8D without appreciating the facts of the appellant's case. The addition is wrong and bad in law and should be deleted.*

4. *The Ld. CIT(A) has failed to consider the working wherein the assessee has voluntarily disallowed u/s 14A sum of Rs.4,99,833/- and has given the basis of working. The AO has simply rejected without giving any reasons for not being satisfied with the working and applying Rule 8D. Further, the appellant has not claimed any interest expenditure as noted by the AO himself in the assessment order. Hence, the disallowance u/s 14A should be restricted to Rs.4,99,833/- only.*

5. *Without prejudice, the appellant contends that the working made as per Rule 8D is wrong and excessive. Ld. CIT(A) as well as AO has failed to exclude the investments, while applying Rule 8D, on which no dividend income is received by the appellant during the year under consideration. Therefore the working made as per Rule 8D is wrong and excessive.*

6. *The above grounds are independent and without prejudice to one and another.*

7. *The appellant prays that he may be allowed to add, alter, amend and forgo any of the grounds at the time of hearing."*

4. Before us, Learned AR submitted that Ground No.1 & 2 are interconnected and are with respect to computation of capital gains and Ground No.3 to 5 are interconnected and are with respect to the disallowance u/s 14A of the Act.

We first proceed with Ground No.1 & 2

5. During the course of assessment proceedings, AO noticed that assessee had sold shares of M/s ANS Industries Ltd. (unlisted shares) at Rs.1,01,00,000/- and it had reduced the indexed cost of acquisition of Rs.95,86,498/- and further

Rs.18,01,517/- on account of indexed interest cost. The assessee was asked to justify the claim with the supporting documents. In response to the query of the AO, assessee *inter alia* submitted that during the year assessee had sold shares of ANS Industries Ltd, the aforesaid investment was made in F.Y. 2010-11 out of the interests bearing Inter Corporate Deposits (ICDs) taken by the assessee. It was further submitted that for purchase of shares, on the ICD's the assessee had paid interest of Rs.8,17,867/- and Rs.8,39,883/-. It was further submitted that assessee had identified the interest cost to the investment and had offered the said interest cost in the computation of income of the respective assessment years for taxation by adding it in the computation. It was therefore submitted that the interest cost being part of the cost of acquisition of the investment, at the time of sale of said investments and according to the provisions of Section 48 of the Act, the cost of acquisition, i.e. the basic cost plus the interest cost upto the date of holding of such investments has been indexed and reduced from the gross sale consideration to arrive at the long term capital gain. The submissions of the assessee was not found acceptable to AO. AO *inter alia* noted that though the claim of the assessee to the extent of funds having been received as ICDs is correct but assessee had not placed any material to demonstrate that the ICDs have been only utilized for acquiring the shares of ANS Construction Limited. He was therefore of the view that in the absence of the documents to authenticate the number of shares purchased, date of purchase,

the assessee's claim w.r.t index interest cost amounting to Rs.18,01,518/- remains unverifiable. He accordingly denied the claim of assessee of Rs.18,01,518/- on account of indexed interest cost while computing Capital Gain on sale and held it to be not allowable. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now before us.

6. Before us, Learned AR reiterated the submissions made before the AO and CIT(A) and further submitted that the lower authorities have admitted that the interest expenditure towards the acquisition of shares have not been claimed by the assessee as deduction while computing the business income but has been added to the investments. He submitted that to prove the purchase of shares of ANS constructions Ltd are from borrowed funds before the lower authorities, assessee had provided the copy of the bank account at the time of purchase on 03rd August 2010 wherein the assessee's borrowing of ICDs on 2nd August 2010 was clearly reflected in the statement. The assessee had also filed the copies of the application form and the evidence of the borrowed funds utilized for the purpose of purchase of investments. He further submitted that in each of the earlier assessment years, the assessee had not claimed any deduction on account of interest paid on such borrowing which were used for the purpose of investment in ANS Constructions Ltd's shares. He further placed reliance on the decision of Bombay Tribunal in the

case of **DCIT vs. Shri Fritz Desilva in ITA No.236/Mum/2010 for A.Y. 2005-06, CIT vs. Maithreyi Pai reported in (1985) 152 ITR 247 (Kar.) and CIT vs. Trishul Investments Ltd. (2008) 305 ITR 434 (Mad.)**. He therefore submitted that the ratio of the aforesaid decisions squarely applies to the case of the assessee and therefore indexed cost on account of acquisition be allowed.

7. Learned DR on the other hand supported the order of lower authorities.

8. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance of indexed interest cost while computing capital gains. While computing capital gains, assessee had reduced the indexed interest cost, being interest cost incurred for acquiring the relevant shares, but the same was denied by the lower authorities. Before us, it is assessee's submissions that for acquiring the aforesaid shares in the year 2010, assessee had borrowed money in the form of ICD and interest paid for such borrowings was considered as part of cost of acquisition of shares and the interest was never claimed as deduction from business in any of the earlier years. The aforesaid contention of the assessee has not been controverted by Revenue by placing any material in its support. We find that identical issue arose in the case of Fritz Desilva (supra) before the Co-ordinate Bench of Mumbai Tribunal in ITA No.236/Mum/2010.

The Co-ordinate Bench vide order dated 08.05.2015 for A.Y. 2005-06 and after relying on the decision of Hon'ble Madras High Court in the case of Trishul Investments Ltd. (2008) 305 ITR 434 (Mad.) held that interest paid for acquisition of shares would partake the character of cost of shares and therefore the interest would be considered as cost of acquisition for the purpose of computing of capital gains. We further find that in the case of CIT vs. Maithreyi Pai (supra), the Hon'ble High Court has held that the interest paid on borrowings for the acquisition of a capital asset must fall for deduction under Section 48, if the same sum has not been claimed as deduction under any other heads. Before us, the submissions of the assessee about the interest paid for acquisition of the shares having not been claimed as deduction in any of the earlier years has been found false or has been controverted by Revenue by bringing any contrary material on record. In such a situation, we relying on the aforesaid decisions, are of the view that the interest payable by the assessee for acquisition of shares should be added to the cost of acquisition and therefore be considered while computing capital gains. We therefore direct the AO to allow the indexed cost on account of interest on shares to compute the deduction under capital gains.

Thus the grounds of assessee are allowed.

9. **Ground No. 3 to 5** are with respect to disallowance u/s 14A of the Act.

10. During the course of assessment proceedings, AO noticed that assessee had received dividend of Rs.3,44,17,634/- which was claimed as exempt u/s 10(34) of the Act. He also noticed that assessee had worked out the disallowance of Rs.4,99,833/- u/s 14A r.w.r 8D of the Income Tax Rules. Assessee was asked to provide the working of disallowance u/s 14A of the Act and show-cause as to why the disallowance not be made by following Rule 8D of the I.T. Rules. Assessee *inter alia* submitted that no interest expenditure has been incurred by assessee for earning the aforesaid dividend income and out of the total salary and allowances, it has identified the gross salary of one Sr. Accounts Officer and part of whole time Director's salary for the purpose of supervising the investment to be attributable for the purpose of earning exempt income and accordingly assessee had worked out the disallowance u/s 14A at Rs.4,99,833/-. The submissions of the assessee was not found acceptable to AO. AO thereafter by following the methodology prescribed under Rule 8D worked out the disallowance at Rs.42,44,195/- and after giving the credit of the *suo moto* disallowance of Rs.4,99,833/- made net disallowance of Rs.37,44,362/- u/s 14A of the Act. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who for the reasons noted in the order upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now before us.

11. Before us, Learned AR reiterated the submissions made before AO and CIT(A) and further submitted that dividend which

has been received was only from the shares of Texmaco Rail & Engineering Ltd. and Texmaco Infrastructure & Holding Ltd., the shares being received on demerger of Texmaco Ltd. and that the investments were made in 1996 out of the own free funds. He further submitted that no efforts were made by the assessee to realize the dividend income and assessee had voluntarily added back Rs.4,99,833/- on account of the gross salary of one Sr. Accounts Officers and part of Whole Time director's salary for working out the disallowance. He further submitted that AO has mechanically applied Rule 8D without recording the satisfaction as to why the working given by the assessee for working out the disallowance was not acceptable. He relying on the decision of Hon'ble Delhi High Court in the case of Maxopp Investments Ltd. vs. CIT (2012) 347 ITR 272 (Delhi) submitted that Hon'ble High Court has held that before invoking the disallowance u/s 14A of the Act, AO must record the satisfaction with respect to the correctness of the claim of the assessee in respect of such expenditure and only when the AO is not satisfied with the working of the claim of the assessee, the AO gets jurisdiction to determine the amount of disallowance. He therefore submitted that in the absence of any satisfaction being recorded by the AO about the working of disallowance by the assessee to be incorrect, the disallowance u/s 14A of the Act needs to be deleted. In the alternative, Learned AR submitted that the disallowance u/s 14A of the Act has been worked out considering the total investments made by assessee. He submitted that out of the total investments,

the investments which had yielded dividend amounts to Rs.20,55,16,081/- as on 31.03.2013 and Rs.20,98,25,264/- as on 31.03.2012. He therefore submitted that if the working of the disallowance u/s 14A r.w.r 8D is worked out after considering the investments which have been yielded tax free income, the disallowance would work out to Rs.10,38,358/- and after considering the *suo moto* disallowance, the net disallowance would work out to Rs.5,38,520/-. He submitted that the working of the aforesaid disallowance is reproduced at page 19 of the CIT(A) order. He therefore submitted that in the alternative the disallowance u/s 14A of the Act be restricted to Rs.5,38,520/-.

12. Learned DR on the other hand supported the order of lower authorities.

13. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the disallowance u/s 14A r.w. Rule 8D of the I.T. Rules. As far as the submissions of the assessee of not recording any satisfaction before disallowing u/s 14A r.w Rule 8D is concerned, we do not find much force in the argument of Learned AR as we find that in para 6 of the assessment order, the AO has clearly noted that assessee vide questionnaire dated 2nd December 2015 was asked to provide the details of working of expenses incurred for earning of income, details of disallowance, and why no disallowance should be made as per Rule 8D. The

assessee made the submissions and after considering the submissions of the assessee, AO by invoking the provision of Rule 8D worked out the disallowance u/s 14A of the Act. We find that AO had given detailed reason to discard the assessee's working of disallowance u/s 14A. In such a situation, we are of the view that the requirement of the statute has been satisfied. We therefore do not find any infirmity in the action of AO in invoking the provisions of Rule 8D r.w. Section 14A for working the disallowance is concerned. As far as the alternate submissions of the Learned AR in working the disallowance u/s 14A only after considering the investment which have yielded tax free income is concerned, we find force in the submission of Learned AR. We find that Hon'ble Delhi High Court in the case of **CIT vs. Holcim India Pvt. Ltd. reported in (2014) 90 CCH 81 (Delhi) (HC)**, Hon'ble Gujarat High Court in the case of **CIT vs. Corrtch Engineering Pvt. Ltd. 372 ITR 97 (Gujarat)** and Hon'ble Allahabad High Court in **CIT v. Shivam Motors (P.) Ltd. [2015] 230 Taxman 63 (Allahabad)** has held that Section 14A of the Act cannot be involved when no exempt income was earned. Before us, Learned AR has submitted that out of the total investments which the AO has considered for working of disallowance u/s 14A r.w.r 8D, the investments which had yielded dividend were to the extent of Rs.20,55,16,081/- (as on 31.03.2013) and Rs.20,98,25,264/- (as on 31.03.2012). The contention of the assessee that it has received dividend only from the aforesaid investments has not been controverted by Revenue. In such a

situation, relying on the aforesaid decisions, we are of the view that disallowance u/s 14A needs to be re-worked on the basis of the investments which have yielded tax free income. We therefore direct the AO to work out the disallowance u/s 14A r.w.r 8D on the basis of investments which had yielded dividend. **Thus Ground of assessee is partly allowed.**

14. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 05.01.2022

Sd/-
(NARENDER KUMAR CHOUDHARY)
JUDICIAL MEMBER

Date:- 05.01.2022
*PY**

Copy forwarded to:

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

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
 ITAT NEW DELHI