

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C" : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA RAGHUNATH KAMBLE,
JUDICIAL MEMBER

ITA No.5891/Del./2018
Assessment Year 2014-15

M/s. Holtec Consulting Pvt. Ltd., 01-0103, C-Block, Imperial Tower, Community Centre, Naraina Vihar, New Delhi – 110 028. PAN AAACH0031M	vs.,	The Addl. CIT, Special Range-4, Central Revenue Building, I.P. Estate, New Delhi – 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri Atul Ninawat, C.A.
For Revenue :	Shri Kumar Padmapani Bora, Sr. DR

Date of Hearing :	18.11.2021
Date of Pronouncement :	13.01.2022

ORDER

PER R.K. PANDA, A.M.

This appeal filed by the assessee is directed against the order dated 30.07.2018 of the Ld. CIT(A)-35, New Delhi, relating to the A.Y. 2014-15.

2. The grounds raised by the assessee are as under :

“1. That on the facts and circumstances of the case and law on the point, the assessment order passed by the Learned Assessing Officer (‘Ld. A.O.’) and upheld by Ld. Commissioner of Income Tax Appeals-35 (‘Ld. CIT(A)’) is bad in law.

1.1. That on the facts and circumstances of the case and law on the point, the Ld.CIT(A) has erred in upholding the disallowance of Rs.1,03,35,000/- made by Ld. AO under Section 14A of Income Tax Act, 1961 (hereinafter referred to as "Act") read with Rule 8D of the Income Tax Rules, 1962 (hereinafter referred to as "Rules") on account of expenditure incurred for earning dividend or other exempt income.

1.2 That the Ld. CIT(A) has erred in facts and in law in confirming the calculation made by Ld. AO without appreciating that investments which did not yield any exempt income were not required to be taken into consideration for purposes of computing the

average value of investment under Rule 8D(2)(iii) of the Rules, for the purposes of making disallowance under section 14A of the Act.

1.3 That on the facts and circumstances of the case and law on the point, the Hon'ble CIT(A) has also erred in adopting and relying upon generic hypothesis in respect of the aforesaid issue of disallowance without correlating it with the facts of the case of the appellant.

1.4 That on the facts and circumstances of the case and law on the point, Hon'ble CIT(A) has erred in law by passing a general and non-speaking order and disregarded detailed submission and arguments placed on record by the appellant company.

2. The above grounds are without prejudice to each other.

3. The Appellant craves to add to, alter, modify, substantiate, delete and/or to rescind all or any of

the grounds of appeal on or before the final hearing, if necessity so arises”.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of technical and management consultancy. It filed its return of income on 30.11.2014 declaring total income of Rs.31,21,65,360/-. During the course of assessment proceedings, the A.O. observed that the assessee has earned following exempt income:-

Exempt Income	Section	Amount
Dividend	10(34) & 10(35)	Rs. 43,67,708
Profit share from LLP	10(2 A)	Rs. 4,62,00,217

2.1. From the perusal of the balance sheet of the assessee company, the A.O. noted that the company has made investments to the tune of Rs.213,66,97,411/- for earning exempt income. From the perusal of the computation of total income filed by the assessee, he noted that an amount of Rs.79,880/- was disallowed u/s 14A of the Income Tax Act, 1961. Since the amount disallowed by

the assessee was not commensurate to the total investment made by the assessee for earning the exempt income earned during the year, the A.O. asked the assessee to explain as to why disallowance under section 14A read with Rule 8D should not be made. Rejecting the various explanations given by the assessee and distinguishing the various decisions cited before him, the A.O. made addition of Rs.1,03,35,000/- to the total income of the assessee under section 14A read with Rule 8D of the I.T. Rules.

2.2. In appeal, the Ld. CIT(A) upheld the action of the A.O. by observing as under :

“4.4.3. A perusal of the balance sheet of the appellant suggests that as on 31/03/2014, an amount of Rs.1,82,46,21,506/- was invested in two LLPs. The appellant has earned exempt income from these two LLPs amounting to Rs.4,62,09,397/- which have been claimed exempt u/s 10(2A). The AO worked out the disallowance u/s. 14A r.w. Rule 8D at Rs.1,04,14,880/-and

after reducing the suo-moto disallowance done by the appellant of Rs.79,880/-, the AO added Rs.1,03,35,000/- to the income of the appellant. The AO has recorded his satisfaction that the appellant had not correctly worked out the expenses attributable to the earning of exempt income and has held that Rule 8D of I.T. Rule 1962 is squarely applicable in this case. Since, the Appellant Company could not justify the method adopted by it for determination of disallowance u/s. 14A, the AO correctly held that the method provided under Rule 8D of I.T. Rule, 1962 is applicable in this case. In view of the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT, New Delhi (civil Appeal nos. 104-109 of 2015) dated 12.02.2018, the addition u/s. 14A r.w. Rule 8D is upheld. The working of disallowance u/s 14A rw Rule 8D at Rs.1,03,35,000/- is upheld. I find no reason to

interfere with the AO's order on this issue.

Therefore, Ground no. 3 is dismissed.”

3. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

3.1. Learned Counsel for the Assessee filed the following chart and submitted that neither the A.O. nor the Ld. CIT(A) have analyzed the nature of investments as to whether the investment is yielding exempt income, taxable income or no income.

Particulars	Average Investment amount	% of total investment	Income earned during the year	
			Taxable	Exempt
Investment in Group Entities	1,76,81,28,517	85.47%	-	462,00,217
Investment in Equity Shares	5,95,690	0.03%	-	38,585
Investment in Dividend Reinvestment- MF's	34,319	0.002%	-	42,43,984
Investment in PMS	3,42,17,314	1.40%	71,52,333	85,139
Investment in Mutual Funds - Debt	25,00,00,000	11.70%	-	-
Investment in Mutual Funds - Equity	3,00,00,000	1.40%	-	“
Total	2,08,29,75,840	100%	71,52,333	5,05,67,925

3.2. Referring to the decision of the Tribunal in assessee's own case for the A.Ys. 2009-10 to 2013-14, he submitted that similar issue has been restored to the file of A.O. by the Tribunal. He submitted that he has no objection for restoring the matter to the file of A.O. in the light of decision of the Tribunal in assessee's own case for the earlier assessment years.

4. The Ld. D.R. on the other hand while supporting the order of the Ld. CIT(A) submitted that he has no objection if the matter is restored to the file of A.O. in the light of the direction of the Tribunal in assessee's own case for the immediately preceding assessment years.

5. We have considered the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the A.O. in the instant case invoking the provisions of Section 14A read with Rule 8D made disallowance of Rs.1,03,35,000/- which has been upheld by the Ld. CIT(A). We find an identical

issue had come-up before the Tribunal in assessee's own case in A.Y. 2012-13, we find the Tribunal vide ITA.No.1773/Del./2018 order dated 31.03.2021 for the A.Y. 2012-13 has restored the issue to the file of A.O. by observing as under :

“5. We have given thoughtful consideration to the orders of the authorities below. We find force in the contentions of the Id. counsel for the assessee. This Tribunal in assessee's own case in ITA No. 7050/DEL/2017 for A.Y 2013-14 vide order dated 23.12.2021, has held as under :

“4. Learned AR submitted that the authorities below failed to analyse the nature of investment as to whether the investment is yielding taxable income, exempt income or no income and that the satisfaction regarding the incorrect amount disallowed by the assessee was not recorded by the Assessing Officer. He, however, submitted that facts & circumstances and questions of law involved this year are identical to the ones involved

for the assessment years 2009-10, 2010-11 and 2011-12, in which years, a coordinate Bench of this Tribunal in ITA.No.4563/ Del/2012 for assessment year 2009-10, 1057/ Del/ 2014 for A. Y. 2010-11 and 2148/Del/2015 for A. Y. 2011-12, restored the issue back to the file of Assessing Officer to consider the issue afresh in the light of observations made in ITA No. 4563/Del/2012 for assessment year 2009-10. Learned AR prayed that this issue for this year may also be restored back to the file of Assessing Officer to consider the same in consonance with the view to be taken for assessment year 2009-10.

5. *In view of the admitted position that the facts and circumstances involved for this year are identical to ones involved in assessment years 2009-10, 2010-11 and 2011-12, in which the issue was restored to the file of Assessing Officer to take a fresh view in the light of directions given in ITA.No. 4563/ Del/2012 for assessment year*

2009-10, we are of the considered opinion that the request of the assessee can be accepted. We accordingly, while setting aside the impugned findings of the authorities below, restore the issue to the file of Assessing Officer to decide the same in the light of the view to be taken for earlier assessment years."

5.1. Since the facts of the case of the impugned appeal are identical to the facts of the case decided by the Tribunal in assessee's own case in the preceding assessment years, therefore, respectfully following the decision of the Tribunal in assessee's own case for the A.Ys. 2009-10 to 2013-14, we restore the issue to the file of A.O. with a direction to decide the issue afresh in the light of decision of the Tribunal in assessee's own case (supra). Needless to say A.O. shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Grounds raised by the assessee are accordingly allowed for statistical purposes.

6. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 13.01.2022.

Sd/-
[Ms. SUCHITRA RAGHUNATH KAMBLE]
JUDICIAL MEMBER

Sd/-
[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated : 13th January, 2022.

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'C' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.