

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : F : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No.2086/Del/2018  
Assessment Year: 2014-15

Ratna Commercial Enterprises Pvt. Vs Addl. CIT,  
Ltd., Range-21,  
4<sup>th</sup> Floor, Punjabi Bhawan, New Delhi.  
10, Rouse Avenue,  
New Delhi.

PAN: AAACR0354B

(Appellant)

(Respondent)

Assessee by	:	Shri M.P. Rastogi, Advocate
Revenue by	:	Shri N.K. Bansal, Sr. DR
Date of Hearing	:	29.11.2021
Date of Pronouncement	:	28.01.2022

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 23<sup>rd</sup> January, 2018 of the CIT(A)-7, New Delhi, relating to assessment year 2014-15.

2. The grounds of appeal No. 1 and 2 raised by the assessee are as under:-

õ1. That both the Ld. CIT(A) and Ld. AO erred in law and in facts in disallowance of Rs.1,08,69,547/- u/s 14A in a mechanical way without appreciating the facts that the assessee himself has disallowed Rs 2.41 lakhs and that there cannot be any further disallowance u/s 14A without a cogent reason.

2. That both the Ld. CIT(A) and Ld. AO erred in law and in facts in appreciating that strategic investments in Dabur India Limited as the promoter shareholder, would not form part of disallowance u/s 14A.ö

3. Facts of the case, in brief, are that the assessee company is an NBFC company and engaged in trading of units of various mutual funds and conducting investment activities in shares and fixed maturity plans. It filed its return of income on 28.11.2014 declaring the total income at Rs.7,39,47,480/-. During the course of assessment proceedings, the AO observed from the Profit & Loss Account that the assessee has shown the following receipts as income from operation in the Profit & Loss Account:-

Profit from Current Investment	Rs. 2,14,52,062
Dividend	Rs. 27,02,35,558
Interest received	Rs. 10,02,67,524
Interest on tax free bond	Rs. 1,94,76,306
Profit on AOP (claimed exempt)	Rs. 3,25,81,549
Income from sale of Long term Investment	<u>Rs. 41,084</u>
Income from operations	Rs. 44,40,54,084

4. He noted that the income from sale of long-term investment includes long-term capital gain of Rs.2,68,26,245/- on sale of shares which has been claimed as exempt and the balance amount of income has been claimed as business loss as arising out of sale of investment held for short-term period. Therefore, the total income which has been claimed as exempt by the assessee comes to the following:-

<u>Income claimed as exempt</u>	
Dividend	Rs. 27,02,35,558
Interest on tax free bond	Rs. 1,94,76,306
Long-term capital gains on shares (STT paid)	<u>Rs. 2,68,26,245</u>
	Rs. 31,65,38,109

5. He noted that the assessee has shown two types of investments in the balance sheet. As on 31.02.2014, current investments were at Rs.39,63,29,523/- and non-current investment at Rs. 2,67,52,24,025 including investment of Rs. 31,57,59,224 in tax free bonds. He noted that the profits arising out of sale of securities in current investment are offered as business income. Profits arising out of sale of securities in non-current investment are offered under two heads. In case of income arising from sale of securities held for short term, the same is offered as business income while in case of income arising from sale of securities held for long term the same is offered under the head Capital Gains. He observed that the company has an investment of Rs.307.15 crores in shares and securities as on 31.03.2014. The assessee in its computation filed has *suo motu* disallowed an amount of Rs.2,41,164/-, the computation of which is as under:-

**Calculation of expenses u/s 14A**

(i)	Amount of expenditure directly relating to exempt income		NIL
(ii)	Indirect interest expenses Interest paid Average Value of investment/average value of total assets.		NIL
(iii)	0.5% of average value of the investments.		<u>1,11,10,711/-</u>
		Total disallowance u/s 14A	<u>1,11,10,711/-</u>
	Closing investments	248,74,44,407	
	Opening investments	<u>195,68,40,160</u>	
	Average investments	<u>222,21,42,284</u>	
	<u>Less: Expenses on account of income on which no activity has been done in the previous year.</u>		
	<b><u>Total exempt income</u></b>		
	Dividend received	<u>27,02,35,558</u>	
		27,02,35,558	
	Less: Dividend received from Dabur India Ltd. and Ayurved % of Dabur India Ltd. dividend in exempted income	<u>26,43,69,953</u>	
		98%	<u>1,08,69,548/-</u>
		Disallowance u/s 14A	<u>2,41,164/-</u>

6. The AO did not accept the above computation filed by the assessee and disallowed an amount of Rs.1,11,10,711/- by applying the provisions of Rule 8D, the computation of which is as under:-

Sl.	DETAILS	AMOUNT DISALLOWABLE (RS.)
(i)	The amount of expenditure directly relating to income which does not form part of total income.	NIL
(ii)	Indirect Interest expenses	NIL
(iii)	0.5% of Average value of investments	
	I Value of such investment as appearing in the balance sheet on 1 <sup>st</sup> day of previous year	1,95,68,40,160
	II Value of such investment appearing in the balance sheet on last day of previous year	2,48,74,44,407
	III Average value of such investment (I + II)/2	2,22,21,42,284
	0.5% of Average value of investments	1,11,10,711
(iv)	Expenditure incurred in relation to income which does not form part of total income	1,11,10,711

7. Since the assessee had offered an amount of Rs.2,41,164/- in the return of income, the AO made addition of the balance amount of Rs.1,08,69,547/-.

8. In appeal, the Id.CIT(A), following his order for AY 2010-11, sustained the disallowance by observing as under:-

3.2. It is noted that similar issue was adjudicated by CIT(Appeals)-36 for the A.Y. ,2010-11 in the appellant's case in New Appeal No. 215/2016-17; Old Appeal No. 157/2015-16 dated 12.05.2017 in which disallowance u/s 14A made by the AO was confirmed. Operative part of the order is reproduced as under:

"(i). It is observed from the details of previous A.Ys that the assessee had offered the whole of the amount as disallowance. It could not be explained as to how the same investment with group companies became strategic this year and was not so in the earlier year.

(ii). It is also seen that the AO has in the assessment for A.Y 2014-15 also disallowed the amount on the same grounds stating that "In view of the above, the assessee is not justified in reducing the proportionate disallowance of common administrative expenditure on account of dividend received from Group Company." The assessee has made investments, resulting income from which is exempt under the provisions of the I.T Act. Thus the provisions of the Section 14A are applicable in the case of the assessee.

(iii) I am therefore inclined to uphold the disallowance made by the AO as per computation procedure given in rule 8D as the assessee had been following the same earlier also & the AO has given valid reason to not accept the suo moto calculation of the assessee. This Ground o Appeal is therefore dismissed. "

3.3. Since the facts are similar in the present appeal, no interference is called for with my predecessor. Therefore, disallowance of Rs.1,08,69,547/- u/s 14A read with rule 8D is sustained. This ground of appeal is ruled against the appellant.ö

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

10. The ld. counsel for the assessee submitted that for disallowance u/s 14A(2), only the actual expenditure incurred to earn the income has to be disallowed and no disallowance can be made on notional basis irrespective whether expenditure has been incurred or not. For the above proposition, the ld. Counsel for the assessee referred to the decision of the Honøble Delhi High Court in the case of Maxopp Investment Ltd. vs. CIT, reported in 347 ITR 272. He submitted that in the instant case, the Assessing Officer has not pointed out any item of expenditure incurred by the assessee to earn the dividend received from Dabur India Ltd. and Ayurved Ltd. He submitted that there is no change in the investment made by the assessee in the immediately preceding year and the year under consideration. Therefore, it cannot be imagined that the assessee would have incurred the expenses to earn the dividend income from Dabur India Ltd. and Ayurved Ltd.

10.1 The Id. Counsel for the assessee, in his next plank of argument, submitted that before making any disallowance u/s 14A of the Act, the AO has to record his satisfaction in clear terms about the nature of expenses incurred by the assessee to earn the dividend and that satisfaction note has to be recorded with reference to the accounting entries made in the books of account. However, the AO, in the instant case, has not done the same. Therefore, this action of the AO against the ratio laid down by the Honøble Supreme Court in the case of Maxoop India Ltd. vs. CIT, 402 ITR 640.

10.2 Referring to the decision of the Honøble Delhi High Court in the case of HT Media Ltd. vs. PCIT, reported in 399 ITR 576, he submitted that the Honøble jurisdictional High Court, following the decision of the Honøble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. vs. DCIT, reported in 328 ITR 81, has held that the satisfaction of the AO must be arrived at on an objective basis. It is only when the AO is not satisfied with the claim of the assessee that the legislature directs him to follow the method that may be prescribed. In a situation where the accounts of the assessee furnish an objective basis for the AO to arrive at a satisfaction in regard to the correctness of the claim of the assessee of the expenditure which has been incurred in relation to income which does not form part of the total income, there would be no warrant for taking recourse to the method prescribed by the rules. It is only in the event of the AO not being so satisfied that recourse to the prescribed method is mandated by law.

10.3 The Id. Counsel for the assessee, referring to the order of the Tribunal for AY 2010-11, vide ITA No.3796/Del/2015, order dated 13.11.2019, submitted that the Tribunal has deleted the disallowance made by the AO u/s 14A(2) of the Act in absence of satisfaction note. He submitted that since no expenditure has been incurred by the assessee to earn the dividend income from Ayurved Ltd. and Dabur India Ltd., therefore, no disallowance should be made u/s 14A(2) of the IT Act.

10.4 The Id. Counsel for the assessee, in another plank of argument, submitted that no disallowance can be made under Rule 8D(2)(iii) of IT Rules in respect of shares for which no dividend has been received. For the above proposition, he relied on the decision of the Honorable Madras High Court in the case of CIT vs. Shri Ram Ownership Trust, reported in 318 CTR 233 (Madras) and the ITAT Delhi Special Bench decision in the case of Vireet Investment, reported in 165 ITD 27 (Del) (SB).

11. The Id. DR, on the other hand, heavily relied on the order of the CIT(A).

12. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee, in the instant case, has received dividend income of Rs.27,02,35,558/- from investments made by it in the equity shares, which was claimed as exempt income. The assessee, while computing the disallowance u/s

14A has suo moto disallowed an amount of Rs.2,41,164/-, the details of which are as per para 5 above. We find, the AO, without recording any satisfaction as to how and why the computation filed by the assessee making suo moto disallowance of Rs.2,41,164/- is incorrect, computed the disallowance at Rs.1,11,10,711/-. After deducting the suo moto disallowance made by the assessee at Rs.2,41,164/-, the AO made an addition of Rs.1,08,69,547/- to the total income of the assessee which has been upheld by the CIT(A) and the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Id. Counsel for the assessee that it is a condition precedent that before making any disallowance u/s 14A of the Act, the Assessing Officer has to record his satisfaction in clear terms about the nature of expenses incurred by the assessee to earn the dividend and that satisfaction note has to be recorded with reference to the accounting entries made in the books of account. We find merit in the above argument of the Id. Counsel for the assessee. A perusal of the assessment order nowhere shows that there is any satisfaction recorded by the AO as to why the computation filed by the assessee, in the instant case, is incorrect. Admittedly, the assessee has not incurred any expenditure directly relating to any exempt income. We find, the Id.CIT(A), following the order for AY 2010-11 in assessee's own case, has confirmed the disallowance made by the AO u/s 14A of r.w. Rule 8D of IT(AT) Rules. However, a perusal of the order of the Tribunal in assessee's own case for AY 2010-11, vide ITA Nos.3796/Del/2015 and 4574/Del/2015, order dated 13.11.2019, shows that

the Tribunal at para 29 of the order has set aside the order of the CIT(A) and directed the AO to delete the addition by observing as under:-

29. We have considered the rival arguments made by both the sides; perused the orders of the Assessing Officer and the CIT(A); and the paper book filed on behalf of the assessee. As held by the Assessing Officer himself, the assessee has received a dividend income of Rs.39,97,165/- on shares held as stock-in-trade which has been claimed as exempt. It is also held by the Assessing Officer that the assessee has made *suo motu* disallowance of Rs.55,32,603/- u/s 14A of the Act. Therefore, we find merit in the argument advanced by the ld. counsel that when the assessee has himself disallowed an amount of Rs.55,32,603/- and no satisfaction has been recorded by the Assessing Officer, therefore, the disallowance made by the Assessing Officer and sustained by the CIT(A) is not correct. We, therefore, set aside the order of the CIT(A) on this issue and direct the Assessing Officer to delete the addition.ö

13. Since the AO in the instant case has not recorded his satisfaction before making the disallowance, therefore, respectfully following the decision of the Tribunal in assessee's own case for AY 2010-11 where it is held that in absence of any satisfaction recorded by the AO, the disallowance made by him and sustained by the CIT(A) is not correct, we set aside the order of the CIT(A) and direct the AO to delete the addition. The grounds of appeal Nos. 1 and 2 raised by the Revenue are accordingly dismissed.

14. Ground No.3 raised by the assessee reads as under:-

3. That both the Ld. CIT(A) and Ld. AO erred in law and in facts in total disallowance of Rs 18,37,557/- lakhs on account of foreign travel (Rs 14,09,855) and business promotion expenses (Rs.5,93,103) in an adhoc manner, without taking into account the business needs of the assessee.ö

15. Facts of the case, in brief, are that the assessee, during the year under consideration, has debited an amount of Rs.14,09,855/- towards travelling and conveyance and an amount of Rs.5,93,103/- towards business promotion in the P&L Account. From the details filed by the assessee, the AO noted that out of the total travelling and conveyance expenses, an amount of Rs.12,88,954/- pertained to foreign travel of Shri Pradip Burman, the director of the company. Similarly, out of the total business promotion expenses, an amount of Rs.5,48,603/- pertained to purchase of foreign exchange for Shri Pradip Burman. He, therefore, asked the assessee to give the purpose of foreign travel since the business of the assessee is investment in shares and securities in India which has no foreign connection. The assessee, vide statement dated 28.11.2016, submitted as under:-

*"The expenditure incurred towards foreign travelling is towards promoting and advisory services from various professionals for the purpose of trading in units of Mutual Funds. To identify profitable business opportunities involves meeting up, networking with prospects for business deals, investors, intermediaries which entails maintaining the business relations. This fructifies in identifying profitable business opportunities. This involves travelling as well as entertaining the business guests met at various business meets."*

16. However, the AO was not satisfied with the arguments advanced by the assessee and made addition of Rs.18,37,557/- being the foreign travel expenses of Rs.12,88,954/- and purchase of foreign exchange to the tune of Rs.5,48,603/-.

17. In appeal, the Id.CIT(A) upheld the action of the AO by observing as under:-

¶4.2. I have carefully considered the assessment order and written submission furnished by the Ld. AR. The AO disallowed Rs.18,37,557/-

claimed as business promotion expenses as no justification or evidence to the effect that these expenses were incurred for the purpose of business of the appellant considering the nature of its business i.e. trading in mutual funds, shares etc was furnished. In appellate proceedings, the appellant has made very general submissions for allowability of the impugned expenditure. Mere assertion, without adducing any material evidence and documentation does not establish that the impugned expenditure is allowable as a business expenditure. The appellant has not furnished any cogent explanation or furnished the break-up of the business promotion expenses disallowed. In the absence of any details pertaining to the claim, I do not see any reason to interfere with the disallowance. In view thereof, disallowance of Rs. 18,37,557/- made by the AO is upheld. This ground of appeal is ruled against the appellant.ö

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

19. The Id. Counsel for the assessee submitted that the assessee is an NBFC and doing business of investment having share capital and reserves amounting to Rs.382.82 crores. For the expansion of its financial business, the directors of the assessee company visited foreign countries from time to time to meet the various fund managers interested to make investment in India as well as to examine the availability of better opportunities to make investment outside India. Referring to the provisions of section 37 of the IT Act, he submitted that as per the said provisions, any expenses laid out or expended wholly and exclusively for the purpose of business are to be allowed. Referring to the decision of the Honøble Supreme Court in the case of Sasoon J. David & Co. Pvt. Ltd. vs. CIT reported in 118 ITR 261, he submitted that the Honøble Supreme Court held that the expression öwholly and exclusivelyö as used in Section 37 does not mean

necessarily and if the expenses have been incurred voluntarily and for the purpose of business, the same has to be allowed. Referring to the decision of the Honøble Supreme Court in the case Eastern Investment Ltd. vs. CIT in 20 ITR 1, he submitted that the Honøble Supreme Court has held that in order to prove the expenses allowable, it is not necessary to show that the expenditure was a profitable one or that any profit was earned. It is enough that the money was expended ñnot of necessityö and with a view to a direct and immediate benefit to that trade, but voluntarily and on the ground of commercial expediency for the purpose of business. He submitted that the directors of the assessee company have undertaken foreign visits in order to exchange views with various foreign fund managers located outside India but were interested to make investment in India as well as to study the proper opportunities to make investment out of India. Therefore, the disallowance made by the AO and sustained by the CIT(A) is not correct.

20. The ld. DR, on the other hand, heavily relied on the order of the AO and the CIT(A).

21. We have carefully considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, made disallowance of Rs..18,37,557/- being the foreign travel expenses of Rs.12,88,954/- incurred by the director and

Rs.5,48,603/- pertaining to purchase of foreign exchange. We find, the Id.CIT(A) sustained the addition made by the AO the reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the CIT(A) on this issue. Admittedly, the assessee is an NBFC company engaged in trading of units of various mutual funds and conducting investment activities in shares and fixed maturity plans. However, there is no evidence on record as to whom the directors who visited the foreign country met and as to what is the outcome of the said meeting and whether any of the statements made by the assessee has materialized or not. Since the assessee could not furnish any evidence or substantiate its claim other than mere statement either before the AO or before CIT(A) or before us that these expenses were in fact incurred for the purpose of business of the assessee, we do not find any infirmity in the order of the CIT(A) on this issue. Accordingly, the same is upheld and the ground raised by the assessee is dismissed.

22. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 28.01.2022.

Sd/-

(AMIT SHUKLA)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated:28<sup>th</sup> January, 2022.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi