

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER  
(Through Video Conferencing)**

ITA. No. 2166/Del/2019  
(Assessment Year: 2014-15)

M/s. Clix Finance India Pvt. Ltd., E – 20, 1 <sup>st</sup> Floor, Hauz Khas, New Delhi – 110 016. <b>PAN: AAACG0239L</b>	Vs.	ACIT,  Circle : 6 (1),  New Delhi.
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**A N D**

ITA. No. 3260/Del/2019  
(Assessment Year: 2014-15)

ACIT,  Circle : 6 (1),  New Delhi.	Vs.	M/s. Clix Finance India Unlimited, E – 20, 1 <sup>st</sup> Floor, Hauz Khas, New Delhi – 110 016. <b>PAN: AAACG0239L</b>
(Appellants)		(Respondents)

Assessee by :	Shri Sachit Jolly, Adv.; & Ms. Disha Jham, Adv.;
Department by :	Shri Rajesh Kumar Dhanesta, Sr. D. R.;
Date of Hearing :	10/03/2022
Date of pronouncement :	19/04/2022

**ORDER**

**PER AMIT SHUKLA, J. M. :**

The aforesaid cross appeals have been filed by the assessee as well as the Revenue against order dated 16.01.2019, passed by the Id. Commissioner of Income Tax (Appeals)-2, New Delhi [hereinafter referred to as CIT (Appeals)] for the quantum of assessment passed under Section 143(3) of the Income Tax Act, 1961 (the Act) for assessment year 2014-15.

2. The Revenue is aggrieved by restricting the disallowance under Section 14A of the Act to Rs.2,22,48,998/- as against the disallowance of Rs.3,24,31,758/- made by the Assessing Officer whereas the assessee has challenged the disallowance sustained by the Id. CIT (Appeals). Though assessee has raised various grounds on the issue of disallowance under Section 14A, therefore, the same are not repeated.

3. The facts in brief are that the assessee company is engaged in the business of providing finance to industry, trade, etc. through hire purchase, lease and loans. It has been registered as Non Banking Financial Company registered with the Reserve Bank of India. The Id. Assessing Officer noted that assessee had earned dividend income of Rs.2,22,48,998/- and had disclosed investment of Rs.63,66,00,000/- in shares as on 31.03.2014. In response to the show cause notice the assessee had filed detailed submissions,

in sum and substance it was stated that, **firstly**, the dividend income had been earned by the investment made in the company which has been held for various years; **secondly**, assessee had also invested in mutual funds which were taxable; **thirdly**, all the investments had been made by the assessee out of its own funds and not borrowed funds, as own funds far exceeded the total investment to the tune of Rs.556.07 crores as against the exempt income generating investments of Rs.63.66 crores; and **lastly**, the assessee had itself worked out the disallowance to the amount of Rs.31,83,042/- being 0.5% of the average value of investment in view of Rule 8D(2)(iii) of the Act. Apart from that, various judgements were also relied upon which have been incorporated in the assessment order.

4. However, the Id. Assessing Officer simply observed that the assessee's claim that it had not incurred any expenses in respect of affairs is not acceptable, therefore, he is constrained to determine the disallowance under Section 14A of the Act. After referring to the delayed provisions and judgements made following general observations:-

“ 5.7 The earning of exempt income is not in nature of passive activity having no input. In fact in present situation making of Investment, maintaining or contributing investment and time of exit from investment are well informed and well coordinated management decisions involving not only inputs from various source but also acumen of senior management functionaries. Therefore, cost is inbuilt into even so called “passive” Investment. There are incidental expenditures of collection, telephone, follow up etc. Since in the present case, out of total funds available / raised

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by the assessee, a substantial portion of it amounting to Rs.63,66,00,000/- has been invested in Shares, therefore, it can be held that expenditure in relation to earning of exempt dividend income are embedded in indirect expenses.

5.8 The investment to the extent of Rs.63,66,00,000/- made by the assessee company, being a conscious decision and having deployment of funds clearly brings into picture expenditure by way of cost of funds "Invested." Composite fund having cost needs to be spread so as to apportion appropriate cost of funds invested in the activity lending to earning of exempt income.

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5.11 On going through the simple and plain language, it is abundantly clear that the relation has to be seen between the exempt income and the expenditure incurred in relation to it and not vice versa. What is relevant is to work out the expenditure in relation to the exempt income and the expenditure incurred in relation to it and not vice versa. What is relevant here is whether the expenditure incurred by the assessee has resulted into earning of exempt income or taxable income. From the three clauses of Rule 8D it clearly emerges that stipulation of section is to compute the amount of expenditure, which is not allowable under Section 14A as it is relatable to the exempt income and not in considering all the expenses one by one for ascertaining if either of them have resulted into exempt income and thereafter considering such amount as disallowable under Section 14A of I. Tax Act. "

5. Thereafter, Assessing Officer has computed the disallowance of Rs.3,24,31,758/- which constituted disallowance under Rule 8D in so far as the disallowance under Rule 8D(2)(iii) being 0.5% of the average value of investment is not in dispute.

6. The ld. CIT (Appeals) has restricted the disallowance under Section 14A of the Act to the extent of exempt income earned, i.e., Rs.2,22,48,998/-.

7. Before us the ld. Counsel submitted that, firstly, this issue stands covered by the decision of ITAT in assessee's own case for the assessment year 2008-09 wherein on similar facts and finding the Tribunal has deleted the disallowance of interest on the ground that assessee had huge surplus interest frere funds. Second line of his argument was that, nowhere the Assessing Officer has recorded any satisfaction that why the disallowance offered by the assessee is not correct albeit has given a general remark without understanding the expenditure debited and having regard to the books of accounts wherein any specific expenditure can be allocated for earning of the exempt income. In support, he relied upon the judgement of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT (2018) 15 SSC 523 and Godrej & Boyce Mfg. Co. Ltd. Vs. CIT (2017) 7 SCC 421.

8. On the other hand, the ld. DR strongly relied upon the order of the Assessing Officer and the ld. CIT (Appeals) and submitted that the Assessing Officer has recorded his satisfaction and then only he was invoked Rule 8D for making the disallowance.

9. We have heard the rival submissions and perused the relevant finding given in the order. We have already incorporated the observations of the Assessing Officer and the assessee's

explanation as to why interest expenditure should not have been disallowed on the facts of the present case. Nowhere the Assessing Officer has made any observation on these submissions that no interest can be disallowed or recorded his satisfaction as to why the claim of the assessee is not tenable having regard to the books of accounts and the nature of expenditure debited to the profit and loss account. He has mechanically proceeded to make the disallowance under Section 14A of the Act, without rebutting to assessee's specific claim made before him. The Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT (supra) made the following observations:-

“51. Having regard to the language of Section 14-A(2) of the Act, read with Rule 8-D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo motu disallowance under Section 14-A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the Assessing Officer. “

10. Similar view had been taken by the Hon'ble Supreme Court in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. CIT (supra). Thus, the it is sine qua non that before invoking disallowance under Rule

8D, Assessing Officer to record satisfaction after examining the nature of expenditure debited and why the assessee's claim is not maintainable. Here in this case as is evident from the order Assessing Officer has nowhere records his satisfaction except for general remarks de-hors the facts of the case and explanation given by the assessee. He has not even examined that assessee had surplus funds which were interest free of more than Rs.556.07 crores as against the exempt income earning investment of Rs.63.66 crores. Thus, interest expenditure could not have been disallowed. Now in the latest judgement of **Hon'ble Supreme Court in the case of South Indian Bank vs. CIT, 438 ITR 1**, wherein it has been held that where assessee had interest free funds available which exceeds the investment made in tax free fund security then no interest expenditure can be disallowed and it has to be presumed that it is out of assessee's own fund and proportionate disallowance could not warrant under section 14A even where no separate accounts were maintained by the assessee and other expenditure made for earning tax free income. Hon'ble Supreme Court clearly held that if assessee had mixed funds, made up partly of interest free funds and partly of interest-bearing funds and payment has been made out of mixed funds, then the investment must be considered to have been made out of interest free funds. It is the assessee who has such right of appropriation and also the right to assert from what part of the fund a particular investment is made and it would be not permissible for the Revenue to make an estimation of a proportionate figure. Disallowance could

be legally impermissible for the investment made by the assessee in bonds/shares using interest free funds under Section 14A. Thus proportionate disallowance of interest is not warranted under section 14A for investments made in tax-free bonds/ securities which yielded tax free dividend and interest to assessee banks where interest free funds are available exceeded their investments. Thus, no disallowance on account of section 14A can be made.

11. Thus, in this case no disallowance of interest could have been made and hence the same is deleted. Moreover, this Tribunal in assessee's own case for assessment years 2008-09 and 2009-10 precisely on the same issue had deleted the said disallowance, after observing and holding as under:-

“13. We have heard the rival submissions and also perused the relevant finding given in e impugned orders. First of all, we find that before the Assessing Officer in response to the show cause notice as to why disallowance u/s. 14A r.w. Rule 8D should not be made, assessee has given a very detailed reason as to why interest expenditure or administrative cost cannot be said to be attributable for the purpose of earning of dividend income. The Assessing Officer without going into the merit of such a claim as was required by him in terms of sub-section (2) and sub-section (3) of Section 14A, that is, the Assessing Officer has to first examine the accounts of the assessee and if he is not satisfied with firstly, the correctness of assessee's claim of expenditure; or secondly, the claim made by the assessee that no expenditure has been incurred. Similar stipulation has been laid down under Rule 8D (1) also and once these mandatory conditions are satisfied then only he can proceed to apply formula Rule 8D. If he does not complies with such mandatory requirement, then he cannot proceed to make disallowance. Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Ltd. (supra) has upheld the said proposition in the following manner:-

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*"Sub-sections (2) and (3) of section 14A of the Act read with rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of section 14A(2) and (3) read with rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."*

14. Similarly, the Hon'ble Jurisdictional High Court in the case of HT Media Ltd. (supra) had also reiterated the same principle in the following manner:-

*Rule 8D(1) states more or less what section 14A(2) of the Act states. It requires the Assessing Officer to first examine the accounts of the assessee and then record that he is not satisfied with (a) the correctness of the assessee's claim of expenditure or (b) the claim made by the assessee that no expenditure has been incurred. Unless this stage is crossed, i.e., the stage of the Assessing Officer recording that he is not satisfied with the claim of the assessee in the manner indicated, i.e., after examining the assessee's accounts, the question of applying the formula under rule 8D(2) does not arise. That this is a mandatory pre-requisite for applying rule 8D(2) is fairly well-settled."*

15. Thus in absence of any kind of satisfaction by the Assessing Officer after examining the nature of expenditure debited and examining the accounts of the assessee, he cannot proceed to apply Rule 8D. Here in this case, it is more so, because assessee has given a very categorical explanation as to why disallowance u/s. 14A should not be made, because entire investments have been made out of internal accruals and own interest free funds; and secondly, has given reasons as to why administrative expenditure cannot be held to be attributable at all for the purpose of disallowance. The Assessing Officer should have first examined such a claim with regard to the accounts of the assessee and the nature of expenditure debited so as to prima-facie come to a satisfaction whether any

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expense can be attributed for the purpose of earning the exempt income. It is only when he finds certain discrepancies in assessee's claim, then only he can proceed with making of the disallowance. Here in this case, as discussed above, no such satisfaction has been recorded, and therefore, we hold that no disallowance u/s. 14A should be made. The other plea taken by the parties before us, are not discussed, because at the threshold we have held that no disallowance should be made.”

12. Accordingly, the disallowance as made by the Assessing Officer under Rule 8D(2)(iii) is deleted. Consequently, the appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on : **19/04/2022.**

**Sd/-**  
**( DR. B.R.R. KUMAR )**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**( AMIT SHUKLA )**  
**JUDICIAL MEMBER**

Dated : 19/04/2022.

\*MEHTA\*

Copy forwarded to :

1. Appellants;
2. Respondents;
3. CIT
4. CIT (Appeals)

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5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	7.04.2022
Date on which the typed draft is placed before the dictating member	11.04.2022
Date on which the typed draft is placed before the other member	19.04.2022
Date on which the approved draft comes to the Sr. PS/ PS	19.04.2022
Date on which the fair order is placed before the dictating member for pronouncement	19.04.2022
Date on which the fair order comes back to the Sr. PS/ PS	19.04.2022
Date on which the final order is uploaded on the website of ITAT	19.04.2022
date on which the file goes to the Bench Clerk	19.04.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	