

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE,
SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.7917/Del/2018
(ASSESSMENT YEAR-2007-08)**

M/s Holtec Consulting India Pvt. Ltd. 01-0103, Imperial Tower, C-Block Community Centre, Naraina Vihar, New Delhi-110 028. PAN-AAACH 0031M (Appellant)	Vs.	Addl. Commissioner of Income Tax, Special Range-04, New Delhi-110 002. (Respondent)
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Appellant by	Sh. Atul Ninawat, CA
Respondent by	Sh. Prabhat Ranjan, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal has been filed by the Assessee against the impugned appellate order dated 20.09.2018 of the Learned Commissioner of Income Tax (Appeals)-35, New Delhi ["Ld. CIT(A)" for short]. The original assessment order was passed in this case on 17.11.2009 u/s 143(3) of Income Tax Act wherein the total income was assessed at Rs.35,48,17,160/- as against the returned

income of Rs.30,42,18,189/-. This assessment order was rectified vide order dated 26.03.2010, passed u/s 154 of Income Tax Act, whereby the assessee's income was amended to Rs.32,45,73,124/-. One of the additions made in the aforesaid assessment order dated 17.11.2019, as rectified by aforesaid order dated 26.03.2010, passed u/s 154 of Income Tax Act; was an addition of Rs.8,86,275/- made u/s 14A of Income Tax Act. This addition was partly deleted by the Ld. CIT(A) vide order dated 11.11.2013. The matter travelled to Income Tax Appellate Tribunal ("ITAT" for short). Vide consolidated order dated 18.08.2016 in the assessee's own case in ITA No.276 & 1057/Del/2014; ITA No.2280/Del/2014 and C.O.No.16/Del/2015, the Co-ordinate Bench of ITAT, Delhi set aside the matter in dispute to the Assessing Officer. Fresh order dated 02.03.2017 was passed by the Assessing Officer u/s 254/143(3) of Income Tax Act wherein the Assessing Officer considered ad hoc amount computed @ 20% of the exempt income to be a reasonable amount to be disallowed u/s 14A of the Act. The amount of ad hoc disallowance was computed by the Assessing Officer at Rs.4,10,295/- being 20% of exempt income (dividend

income) of Rs.20,51,473/-. This disallowance of Rs.4,10,295/- was upheld by the Ld. Commissioner of Income Tax (Appeals)-35, New Delhi (“Ld. CIT(A)” for short) vide impugned appellate order date 20.09.2018. The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 20.09.2018 of the Ld. CIT(A). In the course of appellate proceedings in Income Tax Appellate Tribunal in the present appeal before us, the paper book was filed from the assessee’s side, containing the following particulars:

S.	PARTIC I LARS
(A)	(B)
1	Copy of Form 36 along with grounds of appeal filed by the Appellant
2	Order of CIT(A) u s 250(6) for AY 2007-08 dated 20.09.2018 - Round 2
3	C'opv of Form 35 alomi with grounds of appeal tiled by the Appellant - Round
4	Assessment Order u/s 254/143(3) passed by Ld. A.O. for AY 2007-08 dated 02.03 20K Round 2
5	Order of Hon'ble ITAT for AY 2007-08 & 2010-11 dated 18.08.2016 in case of Appellant Round 1
6	Order of CIT(A) u s 250(6) for AY 2007-08 dated 11.11 .2013 - Round 1
7	Copy of Form 35 along with grounds of appeal filed by the Appellant – Round
8	Assessment Order u/s 154/143(3) passed by Ld. A.O. dated 26.03.2010 for AY: “OS Round 1

9	Assessment Order u/s 143(3) passed by Ld. A.O. dated 17.11.2009 for AY '00? wS Round 1
10	Copy of Income Tax Return for AY 2007-08
11	Copy of Audited Financials of the Appellant for the year ended 31.03.2010
12	Working of Disallowance u/s 14A of the Act read with Rule 8D of the Rules
13	Detailed breakup of Investment held by Appellant
14	Order of Ld. AO for AY 2011-12 in case of Appellant
15	Order of Hon'ble ITAT for AY 2014-15 dated 13.01.2022 in case of Appellant
16	Order of Hon'ble ITAT for AY 2012-13 dated 31.03.2021 in ease of
17	Order of Hon'ble ITAT for AY 2013-14 dated 23.02.2021 in case of Appellant
18	Order of Hon'ble ITAT for AY 2011-12 dated 25.11.2019 in case of Appellant
19	Order of Hon'ble ITAT for AY 2008-09 & 2009-10 dated 07.07 2014 in case of Appellant
	Submissions filed by the Appellant before various authorities
	Before Hon'ble ITAT
20	Submission dated 05.01.2016 (Synopsis) - Round 1
	Before Ld. CIT(A)
21	Submission dated 20.09.2018
	Before Ld. AO
22	Submission dated 24.10.2016
23	Submission dated 22.08.2016

(A.1) Further, a compilation of judgments; as well as synopsis of arguments was also filed from the assessee's side.

(B) At the time of hearing before us, the Ld. Counsel for the assessee contended that although Rule 8D was not applicable for the assessment year under consideration (Asst. Year 2007-08); the assessee was agreeable to the idea of disallowance being made u/s 14A of Income Tax Act in accordance with computation prescribed U/s 8D of Income Tax Rules, 1962 [for short “Rule 8D”]. The Ld. Counsel for the assessee submitted that the computation method prescribed u/s 8D of IT Rules was a reasonable basis for computing this disallowance in the facts and circumstances of the present case; despite, as contended by the Ld. Counsel for the assessee, Rule-8D being not applicable for Assessment Year 2007-08. The Ld. Counsel for assessee drew our attention to page 177 of the Paper Book, wherein the quantum of disallowance u/s 14A of IT Act, computed in accordance with method prescribed under Rule 8D of IT Rules, was quantified at Rs.1,244/-

(B.1) The Ld. Senior Departmental Representative (“Ld. SR-DR” for short), supported the orders of the Ld. CIT(A) and the Assessing Officer. However, the Ld. Sr. DR could not justify how the ad hoc disallowance made by the Assessing Officer @ 20% of exempt

income, was a reasonable disallowance in the facts and circumstances of the case.

(B.2) We have heard both sides. We have perused the materials on record. We find from the perusal of the orders of the Ld. CIT(A) and the Assessing Officer that there is no justification to explain how the disallowance made at the ad hoc rate of 20% of the exempt income is a reasonable disallowance in the facts and circumstances of the case before us. We further find that the assessee has itself agreed at the time of hearing before us, to the idea of disallowance u/s 14A of the Income Tax Act being computed in accordance with method prescribed in Rule 8D of Income Tax Rules.

(B.2.1) In view of the foregoing, as no justification has been offered by Revenue for estimation of disallowance @ 20% of exempt income; and further, as the assessee has agreed to disallowance u/s 14A being computed in accordance with method prescribed under Rule 8D; in the specific facts and circumstances of the present appeal before us; we direct the Assessing Officer to compute the disallowance u/s 14A of Income Tax Act in accordance with the method referred to in the Rule 8D of Income Tax Rules.

The assessee has, as per the computation submitted, quantified the disallowance at Rs.1,244/- as mentioned earlier, in foregoing paragraph (B) of this order. The Assessing Officer is directed to verify this computation at the time of giving effect to this order. The Assessing Officer is further directed to provide reasonable opportunity to the assessee to explain the computation, and to make submissions, in case computation presented by the assessee's side in accordance with Rule-8D of Income Tax Rules is not accepted by the Assessing Officer. This appeal is disposed off in accordance with the aforesaid directions.

(C) In the result, for statistical purposes, this appeal is partly allowed.

Our decision was already pronounced orally on 11.05.2022 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing. This written order is now signed today on 12.05.2022.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER
Dated: 12.05.2022
Pk

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELH