

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.437/Del/2019
Assessment Year: 2009-10

M/s. Holtec Consulting Pvt. Ltd., C Block, 01-0103, Imperial Tower, Community Centre, Naraina Vihar, New Delhi	Vs.	Addl. CIT, Special Range-4, New Delhi
PAN : AAACH0031M		
(Appellant)		(Respondent)

Appellant by	Sh. Atul Ninawat, Advocate
Respondent by	Ms. Anupama Singla, Sr. DR

Date of hearing	30.05.2022
Date of pronouncement	30.05.2022

ORDER

PER SAKTIJIT DEY, JM:

This is an appeal by the assessee against order dated 28.10.2018 of learned Commissioner of Income Tax (Appeals)-35, New Delhi, pertaining to assessment year 2009-10.

2. The dispute in the present appeal is confined to disallowance made of Rs.25,48,011/- under section 14A of the Income-tax Act,

1961 (for short 'the Act') read with Rule 8D of the Income-tax Rules, 1962.

3. Briefly the facts are, the assessee is a resident company. For the assessment year under dispute, the assessee had filed its return of income on 29.09.2009 declaring total income of Rs.34,61,22,857/-. In course of assessment proceeding, the Assessing Officer noticed that the assessee, in the year under consideration, has earned exempt income amounting to Rs.30,47,986/-. Being of the view that the assessee has not computed disallowance of expenditure attributable to earning of exempt income in accordance with Rule 8D, the Assessing Officer proceeded to compute disallowance by applying the said provision. The assessee disputed the disallowance made before learned Commissioner (Appeals) and, thereafter, before the Tribunal. While deciding the issue, the Tribunal restored it back to the Assessing Officer for deciding afresh in accordance with law. While completing the assessment in pursuance to the direction of the Tribunal, the Assessing Officer again made disallowance under section 14A read with Rule 8D at Rs.25,48,011/-. The disallowance so made, was also upheld by learned Commissioner (Appeals).

4. The only submission made before us by learned counsel for the assessee is to the effect that the Assessing Officer may be directed to compute disallowance under Rule 8D(2)(iii) by considering only those investments which have yielded exempt income during the year. In this context, the assessee has furnished the following working to demonstrate the quantum of investment which yielded exempt income during the year:

Particulars	Details	Balance as on 31/03/2009	Balance as on 31/03/2008	Average
Total Value of Investment	(A)	75,71,17,329	46,20,77,229	60,95,97,279
Investment yielding taxable / no income	(B)	69,84,64,668	42,07,42,255	55,96,03,462
Investment yielding exempt income	(C)=(B)-(A)	5,86,52,661	4,13,34,974	4,99,93,818
Disallowance under rule 8D(iii)	(D)=(C)*0.5%			2,49,969

5. In support of his contention, learned counsel for the assessee relied upon the decision of the Hon'ble Delhi High Court in case of Pr. CIT Vs. Caraf Builders & Constructions (P.) Ltd. [2019] 101 taxmann.com 167 (Delhi).

6. Learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

7. We have considered rival submissions and perused the materials on record. Specific contention of learned counsel for the assessee before us is, the disallowance under Rule 8D(2)(iii) should be computed by considering only those investments which have yielded exempt income during the year. In this regard, the assessee has furnished a working which has been reproduced elsewhere in the order.

8. As could be seen from the working furnished by the assessee, the income from some investments are taxable. Therefore, those investments obviously have to be reduced from the average value of investments. As regards the investments, which have not yielded any exempt income during the year, as per ratio laid down in various judicial precedents, they cannot be considered for computing disallowance under Rule 8D(2)(iii). In this context, the following observations of the Hon'ble Delhi High Court in case of Pr. CIT Vs. Caraf Builders & Constructions (P.) Ltd. (supra) would be relevant:

“26. There is another error made by the Assessing Officer in computing the disallowance under clauses (ii) of Rule 8D (2) with reference to the formula prescribed. Numerical B in clause (ii) refers to average value of the investment, income from which does not form part or shall not form part of the total income. The Assessing Officer for numerical B in clause (ii) had taken the total value of the investment and not the investment that had yielded exempt income. The Delhi High Court in ITA No. 615/2014, ACB India Ltd. vs. Asstt.

Commissioner of Income Tax decided on 24th March, 2015 has held that only average value of the entire investment that does not form part of the total income is the factor which could be covered by the numerical B for computing disallowance under clause (ii) of Rule 8D(2) of the Rules.”

9. Thus, keeping in view the ratio laid down by the Hon’ble Delhi High Court, as referred to above, we direct the Assessing Officer to factually verify assessee’s claim with reference to the working of the investments which have either yielded taxable income or not yielded any income and, thereafter, compute the disallowance by considering only those investments which have yielded exempt income during the year.

10. In the result, the appeal is partly allowed.

Order pronounced in the open court on 30th May, 2022

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 30th May, 2022.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi