

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.253/DEL/2019  
Assessment Year 2010-11

Holtec Consulting Pvt. Ltd., 01-0103 Imperial Tower C-Block Community Centre, Naraina Vihar, New Delhi.	v.	Addl. Commissioner of Income Tax, Special Range-04, New Delhi.
TAN/PAN: AAACH0031M		
(Appellant)		(Respondent)

Appellant by:	Shri Atul Ninawat, CA		
Respondent by:	Shri Gurpreet Shah Singh, Sr.DR		
Date of hearing:	27	07	2022
Date of pronouncement:	29	07	2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-XXXV, New Delhi ['CIT(A)' in short], dated 28.10.2018 arising from the assessment order dated 29.09.2017 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

2. The grounds of appeal raised by the assessee reads as under:

*"1. The order passed by the Learned CIT(A) ['Ld CIT(A)], upholding the disallowance of INR 43,00,745/- made by the learned Assessing Officer ('Ld. AO') u/s 14A of the Income Tax Act , 1961 ('the Act'), is bad in law and on the facts and*

*circumstances of the case.*

*1.1 The Ld. CIT(A) has erred in upholding the disallowances that have been made by the Ld. AO in a mechanical manner without following direction of the Hon'ble ITAT.*

*1.2 The Ld. CIT(A) has erred in upholding the disallowances that have been made by the Ld. AO based on conjectures and surmises and without bringing on record any expenditure incurred for earning exempt income.*

*1.3 The Ld. CIT(A) has erred in upholding the disallowances that have been made by the Ld. AO erroneously without excluding investments not yielding any income or yielding taxable income while applying Rule 8D(iii) of Income Tax Rules, 1962.*

*1.4 The Ld. CIT(A) has erred in upholding the disallowances without addressing the various contentions raised by the appellant vide submissions placed on record.*

*1.5 The Ld. CIT(A) has erred in law by upholding the disallowances solely based on the Judgement of Hon'ble Apex Court in case of Maxopp Investment Ltd. vs. CIT [2018] 402 ITR 640 (SC) without taking into account the submission dated 16.10.2018 providing detailed arguments for non-applicability of the aforesaid judgment, to the facts of the case.*

*1.6 The Ld. CIT(A) as well as the Ld. Assessing Officer have erred in passing order by ignoring the various judicial precedents relied upon by the appellant.*

*2. The Ld. Assessing Officer has erred in determining the taxable income excessive by INR 11,55,331 due to adopting*

*assessed income under Section 250/143(3) as INR 43,06,28,718 instead of INR 42,94,73,387/-”*

3. When the matter was called for hearing, the ld. counsel submitted that the Ground No.1 relates to disallowance of expenditure under Section 14A of the Act. It was submitted that in the light of the decision of Co-ordinate Bench in the case of the assessee in ITA No.437/Del/2019; Assessment Year 2009-10, order dated 30<sup>th</sup> May, 2022 similar relief should be given and 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.

Particular	Details	Balance as on 31.03.2009	Balance as on 31.03.2010	Average
Total Investments (-) Provision for diminution of investments		80,73,67,329 (5,000)	1,13,22,60,956 (5,000)	
Net Investments	(A)	80,73,62,329	1,13,22,55,956	96,98,09,142
investment yielding taxable income	(B)	34,06,80,05	1,98,628	17,04,39,340
investment yielding no income	(C)	26,05,78,070	41,86,93,920	33,96,35,995
Investment yielding exempt income	(D)=(A)- (BHC)	20,61,09,208	71,33,68,408	45,97,38,808
Total Disallowance under Rule 8D(iii)	(E) = (D)*0.5%			22, 98,694
(-)Amount suo-moto disallowed by assessee	(F)			(40,000)
Net Disallowance under Rule 8D(iii)	(G)=(E)-(F)			22,58,694

4. A reference was made to the judgment of the Hon'ble Delhi Court in the case of Pr.CIT vs. Caraf Builders & Construction (P.) Ltd., (2019) 101 taxmann.com 167 (Del).

5. Ld. DR for the Revenue relied upon the observations of the Assessing Officer and CIT(A).

6. We have carefully considered the rival submissions and perused the material on record. The assessee has relied upon the decision of the Co-ordinate Bench in Assessment Year 2009-10 on similar facts which are reproduced hereunder:

*“7. We have considered rival submissions and perused the 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.”*

7. The observations made in Assessment Year 2009-10 shall apply *mutatis mutandis* to the Assessment Year 2010-11 in question.

8. Accordingly, the matter is restored to the file of the Assessing Officer with a direction for factual verification of assessee’s claim with reference to working of investments which have either yielded taxable income or not yielded any income and compute the disallowance with reference to only those investments which have yielded exempt income during the year.

9. Ground No. 1 of the appeal of the assessee is partly allowed in terms of direction noted above.

10. Ground No.2 concerns, determination of taxable income at a higher figure of Rs.43,06,28,718/- instead of Rs.42,94,73,387/-. It was submitted that the Assessing Officer while giving appeal effect to the order of the ITAT has wrongly assumed the assessed income at a higher figure without any basis, the correction of which has not been carried out resulting in the determination of higher taxable income without any legal basis. In the light of the submissions made on behalf of the assessee, we consider it expedient to restore this issue also back to the file of the Assessing Officer. The assessee shall be at liberty to provide suitable explanation and adduce such evidence as may be necessary to establish its case before the Assessing Officer. The Assessing Officer shall dispose of the grievance of the assessee in the light of the facts in accordance with law.

11. Ground No.2 of the appeal of the assessee is accordingly allowed for statistical purposes.

12. In the result, the appeal of the assessee is partly allowed.

**Order was pronounced in the open Court on 29/07/2022.**

Sd/-  
[KUL BHARAT]  
JUDICIAL MEMBER

DATED: /07/2022

*Prabhat*

Sd/-  
[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER