

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'I-1': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.470/DEL/2018
[Assessment Year: 2012-13]**

Haldia Coke And Chemicals Private Limited, 6 th Floor, Mookambika Complex, Lady Desika Road, Mylapore, Chennai-600004	Vs	Additional Commissioner of Income-tax, Range-11, New Delhi
PAN-AABCH5389P		
Assessee		Revenue

Assessee by	None
Revenue by	Sh. Mahesh Shah, CIT(DR)

Date of Hearing	25.07.2022
Date of Pronouncement	26.08.2022

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of the Assessing Officer, dated 27.10.2017, passed in accordance with DRP direction dated 20.09.2017.

2. Grounds of appeal reads as under:-

"1. The Order of the Additional Commissioner of Income Tax, Range II New Delhi u/s 143(3) r.w.Sec.144(13) based on the order of Dispute Resolution Panel -1, (DRP), New Delhi is contrary to law and facts of the case.

2. The DRP-1, New Delhi erred in rejecting the objections raised by the appellant in respect of the following additions proposed by the Assessing Officer in his draft assessment order u/s.143(3) r.w.Sec.144C(1) dated 02.12.2016 and upholding the additions proposed by the Assessing Officer in his order u/s.144C(5) dated 27.10.2017.

in computing the income under Normal Computation.

- i. Disallowance u/s.14A r.w Rule 8D Rs.3,52,85,830/-
- ii. Disallowance u/s.36(i)(iii) Rs.2,72,78,836/-
- iii. Disallowance u/s.37(i) Rs.73,32,804/-.

in computation of income u/s.115JB

- i. Disallowance u/s.14A r.w Rule 8D Rs.3,52,85,830/-

3. Disallowance u/s 14A r.w.Rule 8D:

i) The Assessing Officer erred in disallowing Rs.4,04,40,552/- u/s. 14A r.w Rule 8D.

ii) The Assessing Officer erred in not appreciating the fact that the appellant has not received any dividend income during the year and that no expenditure was incurred in relation to income which does not form part of total income.

iii) The Assessing Officer erred in making disallowance u/s 14A r.w.Rule 8D though there was no exempt income. In this connection the appellant rely on the following decisions:

- 1) Principal CIT Vs. IL&FS Energy Development Co. Ltd (IT Appeal No. 520 of 2017) HC. Delhi.
- 2) M/s.Redington (India) Ltd Vs. Additional Commissioner of Income Tax (T.C.A.No.520 of 2016) Madras HC.
- 3) CIT Vs. Corrttech Energy Pvt Ltd (372 ITR 97) Guj. HC.
- 4) CIT Vs. Lakhani Marketing Inc. (226 Taxmann 45) P&H, HC.

iv) The Assessing Officer erred in proceeding to apply Rule 8D without recording having regard to the accounts of the assessee as to why he was not satisfied with the correctness of the appellant's claim that no expenditure was incurred in relation to income which does not form part of total income. In this connection the appellant relies on the following decisions:

1. CIT Vs Taikisha Engineering India Ltd (229 Taxman 143) Delhi HC.
2. CIT Vs I P Support Services India P Ltd (378 ITR 240).Delhi HC

v) Without prejudice to the appellant's ground that no disallowance u/s.14A r.w. Rule 8D is not attracted, the following grounds are raised.

a) *The Assessing Officer erred in not excluding the share application money for the purpose of computation of disallowance u/s.14A r.w Rule 8D. In this connection the appellant relies on the following decisions:*

1) *ITAT Delhi decision in the case of T&T Motors Limited Vs Addl.CIT, Range-16, New Delhi (I.T.A No.5096 / Del / 2011 dated 22.11.2013).*

2) *Aban Investments (P.) Ltd Vs DCIT, Company Circle 1(1), Chennai [2012] 52 SOT 36 (Chennai)(URO)*

b) *The Assessing Officer erred in not excluding the investments in subsidiary companies while computing the disallowance u/s.14A r.w Rule 8D.In this connection the appellant relies on the following decisions:*

1) *Interglobe Enterprises Ltd Vs DCIT (ITA No 1362 & 1032 / DEL / 2013 dated 04.04.2013) ITAT Delhi*

2) *ITAT Chennai decision in the case of L & T Infrastructure Development Projects Limited Vs ITO (37 ITR (Trib) 10)*

3) *EIH Associated Hotels Ltd. Vs. DCIT, CC II (1), ITAT Chennai*

c) *The Assessing Officer erred in disallowing Rs.4,04,40,552/- u/s 14A r.w.Rule 8D in the order u/s.143(3) r.w.Sec.144C(13) against the amount of Rs.3,52,85,830/- mentioned in the draft assessment order u/s 143(3) r.w.Sec.144C(1).*

4. Disallowance u/s 36(1)(iii)

i) *The Assessing Officer erred in disallowing Rs.3,31,07,748/- u/s.36(1)(iii) observing that it is without prejudice to the disallowance made u/s.14A.*

ii) *The Assessing Officer erred in not appreciating the fact that the entire interest expenses claimed were wholly and exclusively for the purpose of business and hence no disallowance u/s.36(1)(iii) is warranted.*

iii) *The Assessing Officer erred in taking the share application money for the purpose of computing the amount of interest disallowance as the investments in share application money was out of Capital.*

iv) *The Assessing Officer erred in disallowing Rs.3,31,07,748/- u/s.36(1)(iii) against Rs.2,72,78,836/-*

mentioned in the draft assessment order u/s 143(3) r.w.Sec.144C(1).

v) The Assessing Officer erred in making disallowance under two sections, once u/s 14A and again u/s 36(1)(iii).

5. Disallowance u/s 37(1)

i) The Assessing Officer erred in disallowing Rs.73,32,804/- u/s. 37(1) observing that it is without prejudice to the disallowance u/s. 14A

ii) The Assessing Officer erred in not appreciating the fact that the entire expenditure claimed related to the appellant's business activities and hence the disallowance u/s. 37(1) is not warranted.

iii) The Assessing Officer erred in making disallowance under two sections, once u/s 14A and again u/s 37(1).

iv) The Assessing Office erred in taking into account the investments in shares and share application money which were made out of own funds for the purpose of computation of disallowance u/s 37(1).

6. Disallowance u/s 14A in computing Book Profit u/s 115JB :

i) The Assessing Officer erred in disallowing Rs.4,04,40,552/- u/s14A in computation of book profit u/s.115JB.

ii) The grounds raised with regard to the disallowance u/s. 14. r.w. Rule 8D in computing the income under normal computation may be taken as ground for the above disallowance also.

iii) The Assessing Officer erred in not appreciating the fact that the computation mentioned in Sec.14A only applies to computation of income under normal computation and does not apply to computation of book profit u/s. 115JB. In this connection the appellant relies on the following decisions:

1) ITAT Special Bench decision in the case of ACIT Vs Vireet Investments Pvt Ltd (82 Taxamnn.com 415)

2) ITAT Chennai Bench in the case of Shriram Capital Limited in I.T.A No.512 & 513/ Mds /2015 dated 26.06.2015 (Assessment year 2010- 11 & 2011-12)

7. For these and other grounds that may be adduced before or at the time of hearing, the Hon'ble ITAT may be pleased to delete the following additions:

- i. Disallowance u/s.14A r.w Rule 8D Rs.4,04,40,552/-.
- ii. Disallowance u/s.36(1)(iii) Rs.3,31,07,748/-.
- iii. Disallowance u/s.37(1) Rs.73,32,804/- and
- iv. Disallowance u/s 14A in computing Book Profit u/s115JB Rs.4,04,40,552

Apropos issue of disallowance u/s 14A

3. Brief facts of the case are that the Assessing Officer in this case made disallowance of Rs.3,52,85,830/- u/s 14A read with Rule 8D. The Ld. DRP upheld the same by observing as under:-

6. Issue of Disallowances u/s 14A read With rule 8D for Rs.3,52,85,830/-

6.1 The assessee has contended that:

- It has not received any dividend income during this year. Hence, no expenditure was incurred,
- Majority of investments are in subsidiary companies and work made as a matter of commercial expediency.
- The AO has not recorded the satisfaction to apply Rule 8D.
- There are no attributable expenses to earning of exempt income.
- Without prejudice the AO has taken into account the share application money also.
- It has pointed out that some arithmetical errors in the computation of correct amount of disallowance.

6.2 Tire AO has elaborately discussed this issue from pages 2 to 11 of its order, it has considered all the above objections of the assessee in the order and has referred to relevant

circular 5/2014 of CBDT and various judicial pronouncements on this Issue, which are not being reproduced for the sake of brevity,

6.3 After going through the submissions of the assesses and the discussion in the assessment order, the DRP Is not inclined to interfere with the order of AO. However, any arithmetical mistake should be corrected by the AO.”

4. Against the above order, the assessee is in appeal before us.
5. We have heard the Ld. DR. None appeared on behalf of the assessee. The Ld. DR has placed written submission before us. In this written submission, there is no whisper about the assessee's claim that no disallowance is required u/s 14A of the Act if no exempt income has been earned. The Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs CIT (2015) 378 ITR 33 (Del.) reiterated the same. It has been held that even after amendment, no disallowance is required if no exempt income has been earned. Accordingly, we remit this issue to the file of the Assessing Officer. The Assessing Officer shall factually verify when the assessee has whether earned any exempt income or not, thereafter he shall follow the ration of Hon'ble Delhi High Court as above.
6. As regards the addition in computation u/s 115JB of the Act is concerned, it has already been held by the Special Bench of the ITAT in the case of ACIT vs Vireet Investments Pvt. Ltd. (80 taxmann.com 415) that disallowance u/s 14A cannot be computed u/s 115JB of the Act.

Apropos disallowance u/s 36(1)(iii) and 37(1) of the Act

7. These disallowance have been done by the Assessing Officer without prejudice to the additions made u/s 14A of the Act. The DRP

has upheld the same. These additions have been done by the Assessing Officer as well as by the DRP by holding that the assessee has common mixed funds with inclusion of own funds and interest bearing funds also and it has been held that the onus is upon the assessee to show that interest free funds have been used. However, we find that the above view is erroneous in as much as right of attribution lies with the assessee. Hence, we remit these issues also to the file of the Assessing Officer. He will examine the issue afresh in the light of observation given by us hereinabove.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 26th August, 2022.

Sd/-
[ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Delhi; Dated: 26.08.2022.

Shekhar,

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi