

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “F” DELHI**

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

I.T.A. No.1927/DEL/2020
Assessment Year 2012-13

DCIT, Central Circle-31, New Delhi.	Vs.	RSWM Ltd., Kharigram, Gulabpura, Karouli, Rajasthan.
TAN/PAN: AAACR9700M		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri R.K. Gupta, CIT-DR		
Date of hearing:	06	10	2022
Date of pronouncement:	18	10	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Revenue against the order of the Commission of Income Tax (Appeals)-XXX, New Delhi [‘CIT(A)’ in short] dated 17.09.2020 arising from the assessment order dated 29.12.2018 passed by the Assessing Officer (AO) under Section 153A of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. The grounds of appeal raised by the Revenue read as under:

“1. That on the facts and in circumstances of the case, the ld. CIT(A) has erred in law and on facts in restricting the addition of Rs.50,17,010/- (to the extent of dividend income) as against Rs.3,85,60,000/- made u/s.14A by the Assessing Officer, without appreciating the detailed reasons given in the assessment order.”

3. When the matter was called for hearing, none appeared for the

assessee. Therefore, the matter was proceeded ex-parte.

4. Briefly stated, during the Assessment Year 2012-13 in question, the assessee has earned dividend income of Rs.50,17,000/- which is claimed as exempt under Section 10(34) of the Act. The Assessing Officer computed the disallowance of Rs.3,85,60,000/- in terms of Section 14A of the Act r.w. Rule 8D of the Income Tax Rules.

5. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) restricted the disallowance to the extent of the income and granted relief towards excess disallowance. The relevant operative paragraph of the CIT(A) is reproduced as under:

“Ground No.1 (and is sub part) of the appeal is directed against disallowance of Rs.3,85,60,000/- u/s.14 r.w.r. 8D of the income Tax Act, 1961. The appellant has disputed the disallowance on the ground of non-recording of satisfaction as well as non-sustainability of disallowance in excess of exempt income income. It has also been contended by the appellant that investment appearing in the Balance sheet are strategic investment and as such the provisions of section 14A are not applicable.

8.1 The assessing officer has computed the disallowance under Rule 8D(2)(ii) and 8D(2)(iii) of the IT Rules, 1962. I have considered the submissions of the appellant and have perused the assessment order. I find that during the year under reference, the appellant has earned exempt income in the form of dividend of Rs. 50,17,010/-. Further, the assessing officer has invoked provisions of section 14A after duly recording satisfaction in terms of provisions of 14A(2) which is evident from the observation recorded at Page 7- 10 of the assessment order wherein the AO has discussed about the applicability of section 14A r.w.r 8D in the case of the appellant. Thus, I do not find force in the submission of the appellant on the issue of satisfaction.

8.2 However, I also fail to find justification behind the action of the assessing officer in making huge disallowance of Rs. 3,85,60,000/- against exempt' dividend income of Rs. 50,17,110/-. It is trite law, as settled by Jurisdictional High Court, that disallowance u/s 14A cannot excess exempt income. This legal position is in consonance with principle that provision of section 14A is not applicable where there is no claim of exempt income. In these circumstances, I am inclined to agree with alternate plea

raised by the AR that disallowance u/s 14A should be restricted to the extent of exempt income which is supported from decision of Hon'ble Delhi High Court in the case of Joint Investments Private Limited vs. CIT [2015] 372 ITR 694 (Del) and Pr.CIT v. Caraf Builders 8b Constructions (P.) Ltd. [2019] 414 ITR 122 (Delhi) [SLP dismissed by SC].

8.3 In view of finding recorded in aforesaid para, I hereby direct the Assessing Officer to restrict the disallowance to the extent of dividend income of Rs.50,17,110/- and delete remaining disallowance. The Ground No.1 is thus partly allowed."

6. We have carefully considered the objection raised on behalf of the Revenue on the action of the CIT(A). However, we see not merit in such objection. The CIT(A) has rightly applied the principles laid down by plethora of judicial precedents whereby it was held that the disallowance under Section 14A cannot exceed the exempt income. Thus, the action of the CIT(A) cannot be faulted being in consonance with the judgments rendered in this regard. Hence, we see no reason to interfere with the order of the CIT(A) on the issue involved.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 18/10/2022.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

DATED: /10/2022

prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**