

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'C' : NEW DELHI)

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.9199/Del/2019
(Assessment Year : 2016-17)

ACIT, Circle-12(1), New Delhi	Vs.	M/s. ICRA Limited 1105, 11 th Floor, Kailash Building 26, Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 PAN : AAACG7758B
Appellant		Respondent

Cross Objection no. 42/Del/2022
(in appeal no. 9199/Del/2019)
(Assessment Year : 2016-17)

M/s. ICRA Limited B-710, Statesman House 148, Barakhamba Road New Delhi-110001 PAN : AAACI0218B	Vs.	ACIT, Circle-12(1), New Delhi
Appellant		Respondent

Revenue by	Smt. Sunita Singh, CIT(DR)
Assessee by	Sh. Vishal Kalra, Advocate amnd Shri Ankit Sahni, Adv.

Date of hearing:	04.01.2023
Date of Pronouncement:	10.01.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been filed by the Revenue against order dated 17.09.2019 in Appeal No. 108/2019-20/CIT(A)-44 assessment year 2016-17 passed by Commissioner of Income Tax (appeals)-44, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 19/12/2018 u/s 143(3) of the Income Tax Act, 1961 passed by ACIT, Central Circle-12(1), New Delhi (hereinafter referred to as the Assessing Officer or 'AO') and Cross objection have been filed by assessee.

2. Heard and perused the record.
3. The Revenue has come in appeal raising following grounds :-

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,52,96,323/- made by the AO on account of disallowance u/s 14A of the Income Tax Act, 1961 ('the Act') read with the provisions of Rule 8D of the Income Tax Rules, 1962 ('the Rules')

l.a) Whether the Ld. CIT(A) has erred in deleting the disallowance u/s 14A r.w. Rule 8D on the ground that Assessing Officer did not find any fault in the working of disallowance at Rs. 75/- by the assessee, ignoring the fact that the AO had duly discussed at length the reasons for invoking Rule- 8D and that the finding of the AO regarding the working of disallowance by the assessee (at Rs. 75/-) being non-satisfactory and incorrect is implicit in the said discussion in the assessment order.

l.b) Whether the Ld. CIT(A) has erred in holding that disallowance u/s 14A read with Rule 8D should be limited to only those investments which have yielded exempt income during the year, not appreciating the fact that the entire corpus of the investments constitutes a source yielding exempt income and that sub-section (1) of section 14A refers to income which does not form part of the total income 'under the act' and not 'of the year' and therefore, disallowance under S.14A r.w.Rule

8D can thus be effected even in respect of investments which have not earned any taxable income in a particular year.

1. *c) Whether the Ld CIT(A) has erred in deleting the disallowance made by AO on account of section 14A rw rule 8D without appreciating that while noticing the objects and reasons behind introduction of Section 14A of the Income Tax Act, 1961, the Hon'ble Supreme Court held [in CIT v. Walfort Shares & Stock Brokers (P.) Ltd. [2010] 192 Taxman 211/326 ITR 1 (SC)], has held that "Expenses allowed can only be in respect of earning of taxable income" ?*

1. *The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal."*

3.1 The Assessee has raised the following grounds in Cross Objections:-

"That on the facts and in the circumstances of the case, and in law:

1. *The Learned Commissioner of Income Tax (Appeals) ["Ld. CIT(A)"], has erred in computing disallowance under section 14A of the Act at Rs. 69,000 as against the amount of disallowance of Rs. 75 which was already disallowed suo-moto by the Appellant in the return of income filed for the year under consideration as per section 14A of the Act read with Rule 8D of the Income-tax Rules, 1962.*

1.1. *The Ld. CIT(A) erred in law and on the facts and in the circumstances of the case by not taking cognizance of the detailed submission filed by the Appellant to explain why disallowance under section 14A should not be made in excess of the suo-moto disallowance already made by the appellant in the return of income.*

1.2. *The Ld. CIT(A) erred in restricting disallowance under section 14A of the Act to Rs. 69,000 being exempt income earned by the appellant during the year under consideration without providing/recording any cogent reasons for rejecting the computation of disallowance of Rs. 75 as made by the appellant suo-moto as per the provisions laid down under section 14A of the Act in the return of income filed by the appellant for the year under consideration;*

1.3. *That the Ld. CIT(A) has erred in law in not following the decision of various Hon'ble Courts/Tribunals and making impugned disallowance under section 14A of the Act as*

computed by the Appellant. Also, the Ld. CIT(A) has erred in law in not following the decision of the Hon'ble Commissioner of Income Tax (Appeals)-39, New Delhi pertaining to AY 2011-12 & AY 2012-13 and the decision of Hon'ble Commissioner of Income Tax (Appeals)-4, New Delhi pertaining to AY 2014-15 & AY 2015-16 in the Appellant's own case.

2. That on the facts and circumstances of the case and in law, Education Cess ("EC") and Secondary Higher Education Cess ("SHEC") paid on Income Tax and Dividend Distribution Tax ("DDT") needs to be considered as an allowable expenditure under section 37(1) of the Act.

The appellant craves leaves to add, amend, alter, delete, rescind, forgo or withdraw any of the above grounds of cross-objections either before or during the hearing before Hon'ble ITAT."

4. On behalf of the revenue it was submitted that Ld. CIT(A) has fallen in error in deleting the addition while Ld. AR supported the findings of Ld. CIT(A) and pressing that still CIT(A)'s order is not sustainable in regard to leaving matter for further enquiry of the Ld. AO.

5. Appreciating the matter on record it can be observed that the Id. AO had determined income at Rs. 99,91,73,610/- against return income of Rs. 98,38,08,290/- by making a disallowance u/s 14 r.w.s. 8D to the extent Rs. 1,53,65,323/-. The assessee had claimed exempt income of Rs. 69,000/- and disallowed a sum of Rs. 75/- being related to the earnings of the exempted income. In response to the questionnaire dated 09.05.2018 as to why disallowance be not made as per rule 8D in the previous years assessee had replied that there is only income of Rs. 15,000/- of the dividend against which 0.5% suo-moto disallowance of Rs. 75/- has been made. However, Ld. AO had taken a value of investments between 31.03.2015 to 31.03.2016 and made a disallowance of Rs. 1,53,65,398/- at 0.5% of average value of investment. Ld. CIT(A) however took into account the settled provisions of

law that disallowance u/s 14A of the Act cannot exceed the amount of exempt income and accordingly directed Ld. AO to restrict the disallowance to the amount of dividend earned by the appellant.

6. However, the Bench is of considered opinion that assessee holds Quoted Shares in India worth Rs. 15,000/- only, as reflected as page no. 71 and 72 of the submissions made to Ld. AO. But Ld. CIT(A) has fallen in error in not giving any cogent reasons for rejecting this suo-moto disallowance of Rs. 75/- made by the assessee under the provisions of section 14A.

7. Then in assessee's own case for assessment year 2014-15 ITA no. 1916/Del/2018 the appeal of the revenue filed on similar grounds was dismissed. There is nothing cited before this Bench to differentiate.

8. Consequently, cross objection no. 1 raised by the assessee deserves to be allowed and the grounds of challenge of the revenue deserve to be disallowed. **The appeal of revenue is dismissed and the cross objections of assessee is allowed for statistical purposes.**

Order pronounced in the open court on 10th January, 2023.

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:-10.01.2023

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI