

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA Nos.3095 & 3096/DEL/2019
[Assessment Years: 2013-14 & 2014-15]**

M/s Nalwa Sons Investments Ltd. OP Jindal Marg, Industrial Area, Hisar (Haryana)-125005	Vs	DCIT, Circle-17(2), New Delhi
PAN-AAACJ2734R		
Assessee		Revenue

Assessee by	Sh. Ashwani Kumar, CA
Revenue by	Sh. Jeetendra Chand, Sr. DR

Date of Hearing	28.12.2022
Date of Pronouncement	12.01.2023

ORDER

PER SHAMIM YAHYA, AM,

These are appeals filed by the assessee against the respective orders of the Ld. CIT(A) for the concerned assessment years.

2. Since, the issues are common and connected and the appeals were heard together, these are being consolidated and disposed of together for the sake of convenience.

3. The common issue raised is that the Ld. CIT(A) erred in restricting the disallowance u/s 14A of the Act on account of expenditure allegedly incurred in relation to earning exempt income for AY 2013-14 (Rs.40,25,602/-) and for AY 2014-15 (Rs.30,17,531/-). Since, the facts are similar, we are referring the facts and figures for AY 2013-14.

4. Brief facts of the case are that on perusal of the computation of income, it was found that the assessee had claimed exemption u/s 10(34) of the IT Act in respect of dividend income of Rs.8,83,85,143/-. The assessee was asked vide order sheet dated 08.09.2015 as to why provision of section 14A r.w.r. 8D may not be invoked. The assessee has suo-moto disallowed Rs.26,13,767/- u/s 14A out of expenditure in its computation of income. On query in this regard, the assessee's response was noted by the AO as under:-

“The assessee vide its reply filed on 09.03.2016 stated that the investments were existing since 1985 and hence, no disallowance could be made u/s 14A read with rule 8D, as these provisions came in the statute much later. The Proviso to section 14A was cited by the assessee in this regard Further, the assessee stated that no one to one of correspondence can be arrived at between the income and the expenditure for the purpose of section 14A. The disallowance has to be made on the basis of reasonable basis. This being the case no expenses have been incurred specifically; and are correspondingly attributable to earning exempt income i.e. dividend and accordingly no further disallowance u/s 14A is called for. The investment was stated to be out of surplus funds and it was contended that no expenditure was relatable to the earning of exempt dividend income. The assessee also cited various case laws to support its contentions.”

4.1. The AO considered the same and held as under:-

“I have considered the contentions raised by the assessee and the same are found not acceptable. The expenditure incurred by the assessee to earn exempt income, whether direct or indirect expense has to be disallowed, as per provisions of section 14A of the IT act. Before 23.02.2008, there was no settled principal/method for working the disallowance u/s 14A of the IT Act. Rule 8D inserted by the Income Tax (Fifth Amendment) Ruled 2008 with effect from 24.03.2008 has prescribed the method for determining the amount of expenditure to be disallowed u/s 14A of the IT Act.”

4.2. Thereafter, he referred several judicial decision regarding implication of Rule-8D and thereafter invoking Rule-8D, he made disallowance of Rs.87,55,830/-. Since, the assessee has already worked out certain amount of disallowance, the same was reduced and further disallowance of Rs.61,42,063/- was done.

5. Upon assessee's appeal, the Ld. CIT(A) referred to the order of the Ld. CIT(A) for AY 2011-12. Referring to the said order, he granted part relief and concluded as under:-

"5.2.7. Since in the case under consideration facts of the case are same and in view of the discussion above, it is held that the disallowance made by the A is fully justified. However, since the total expenditure debited in the profit and loss account for all the activities of the appellant amounted to Rs.66,39,369/-, the disallowance under section 14 A cannot exceed in any manner the total expenses debited in the profit and loss account. As such the disallowances restricted to Rs.66,39,369/-. Further, since the appellant has on its own disallowed a sum of Rs. 26,13,767 / - under section 14A which is also noted by the AO, out of the total disallowance of Rs.61,42,063/-, additional disallowance can only be up to Rs.40,25,602/-. Therefore, the disallowance made by the AO is reduced from Rs.61,42,063/- to Rs.40,25,6021% Ground of appeal No. 3 is partly allowed."

6. Against the above order, the assessee is in appeal before us.

7. We have heard both the parties and perused the records. The ld. Counsel for the assessee submitted that the assessee has made investment since 1985 and no special expenditure was incurred in earning exempt income. He further submitted that the AO has not made out any satisfaction while rejecting the assessee's claim. This, he submitted is fatal. He submitted that in series of similar cases ITAT in

assessee's own case for AY 2005-06 to 2012-13 has decided the issue in favour of the assessee.

8. Per Contra, the Ld. DR has relied upon the orders of the authorities below.

9. We find that the Ld. CIT(A) has followed the order of his predecessors in AY 2011-12 which has already been subject matter of adjudication before the ITAT as noted above. The ITAT in ITA No.7807/Del/2017 and in ITA No.420/Del/2018 for AY 2012-13 vide order dated 17.03.2021 has decided the issue as under:-

"8. We have heard the rival contentions and also perused the relevant material placed on record. It is an admitted fact that assessee has earned dividend income on the investment which was made in much earlier years. The assessee had made suo motu disallowance of Rs.33,99,679/- on proportionate basis by taking proportion of personnel and administrative expenses which can held to be relatable for earning of the exempt income. Admittedly, no interest expenditure is attributable for earning of exempt income. The only dispute is with regard to indirect expenditure under Rule 8D (2) (iii). Once the investment has been made in the earlier years and only if the dividend amount has been credited, then the only rational basis at the most could be the proportion of salary and administrative expenses. The Assessing Officer thereafter having regard to the accounts maintained by the assessee and the nature of expenses incurred was required to record his satisfaction that expenditure claimed by the assessee for earning of exempt income is incorrect or the expense disallowed by the assessee is not reasonable. It is only after recording of such satisfaction that Assessing Officer can proceed to make a disallowance under the prescribed method of Rule 8D and this is the mandate of Section 14A(2). Here, in this case, the Assessing Officer has mechanically applied Rule 8D by stating that the expenditure incurred by the assessee towards exempt income, whether direct or indirect has to be disallowed in view of method provided under Rule 8D. There is no specific satisfaction of Assessing Officer as to how the claim made by the assessee is not tenable having regard to the nature of account maintained by the assessee and the nature of

expenditure debited in the P&L account, especially when the dividend has come from old investments and not fresh investment. Exactly on the same reasoning, this Tribunal in assessee's own case for all the earlier years right from Assessment Years 2005-06 to 2011-12 has deleted the disallowance made under Rule 8D(2) (iii). Thus, respectfully following the precedent in assessee's own case for the earlier years, we do not find any reason to sustain the disallowance which has been made by the Assessing Officer by mechanically applying Rule 8D. Accordingly, the appeal of the assessee is allowed."

10. The other orders of ITAT are on similar lines. It is not the case that any of them have been reversed by Hon'ble High Court. Therefore respectfully following the aforesaid precedents of ITAT in assessee's own case (supra), we set-aside the orders of the authorities below and decide the issue in favour of the assessee.

11. Our above order applies *mutatis mutandis* to Assessment Year 2014-15 also.

12. In the result, these appeals by the assessee stands allowed.

Order pronounced in the open court on 12th January, 2023.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Delhi; Dated: 12.01.2023.

Shekhar

Copy forwarded to:

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

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi