

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

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

**ITA No. 485/Del/2019
[Assessment Year: 2008-09]**

M/s Holtec Consulting Private Limited, 01-0103 Imperial Tower C-Block, Community Centre, Naraina Vihar, New Delhi-110028	<u>Vs</u>	Addl. CIT, Special Range-04, New Delhi.
PAN- AAACH0031M		
APPELLANT		RESPONDENT
Assessee represented by	Shri Atul Ninawat, Adv.	
Department represented by	Shri Anuj Garg, Sr. DR	
Date of hearing	15.12.2022	
Date of pronouncement	21.02.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-35, New Delhi, dated 28.10.2018, pertaining to the assessment year 2008-09. The assessee has raised following grounds of appeal:

“1. *The order passed by the Learned CIT(A) [Ld CIT(A)], upholding the*

disallowance of INR 26,80,564/- 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.

1.2 The Ld. CIT(A) has erred in upholding the disallowance 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 disallowance 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 law and facts in computing of disallowance u/s 14A read with Rule 8D based on net current assets i.e. the total assets after netting with current liabilities while calculating the amount of average assets.

1.5 The Ld. CIT(A) has erred in upholding the disallowance that have been made by the Ld. AO erroneously without excluding the interest expense on auto loan while applying Rule 8D(ii) of Income Tax Rules, 1962.

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

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

1.8 The Ld. CIT(A) as well as the Ld. AO have erred in passing order by ignoring the various judicial precedents relied upon by the appellant.

2. All the above grounds are independent and without prejudice to each other.

3. The Appellant craves to add to, alter, modify, substantiate, delete

and/or to rescind all or any of the grounds of appeal on or before the final hearing, if necessity so arises.”

2. The only effective ground in this appeal is against upholding the disallowance of Rs. 26,80,564/- made by invoking the provisions of Section 14A of the Income Tax Act, 1961 ('the Act') read with Rule 8D of the Income Tax Rules, 1962 ('the Rules').

3. The facts of the case as recorded by the learned CIT(Appeals) are as under:

4.3.2.1. The facts of the case are that the assessment order (dated 27-03-2017) has been passed u/s 254/143(3). In this case, the assessment U/s 143(3) was completed on 27.12.2010 at the total Income of Rs. 35,58,59,890/- which included addition u/s 14 A of Rs. 26,80,564/-. The appellant filed an appeal before the Ld. CIT(A) and on this issue, CIT(A) directed the AO to recompute the disallowance u/s 14A. The AO gave appeal effect of the order of CIT(A) and maintained the disallowance u/s 14 A at 26,80,564/-. Aggrieved with the order of Ld. CIT(A) both the department as well as appellant filed appeal before the Hon'ble ITAT and these appeals were disposed vide order dated 07.07.2014. Thereafter, the appeal effect (ITAT) order u/s 250/143(3) was passed, wherein the AO computed and again maintained the disallowance u/s/14A.

4. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who sustained the disallowance by observing as under:

“4.3.3.2. In the appeal effect order [CIT(A)], the AO has observed that on the issue of disallowance u/s 14A, the Ld. CU(A) has held that the AO is perfectly right in determining the disallowance u/s 14A read with Rule 8D.

The Ld. CIT(A) further observed that in working of disallowance, the AO has wrongly taken the value of net total assets instead of average assets as required in clause (i) of Rule 8D and have taken the total investment instead of average value of investment income of which does not form part of total income. Accordingly the AO was directed to recompute the disallowance u/s 14A read with Rule 8D. The AO has noted that on perusal of assessment order (table on page-11 of assessment order) clearly indicated that no disallowance under rule 8D (2)(i) was made by the appellant company. Further, the AO has stated that while working the disallowance under Rule 8D(2)(ii), the average value of assets as well as average value of investment has been taken, thus the disallowance u/s 14A read with Rule 8D has been computed in accordance with Rule 8D of the Income Tax Rules. Hence, the AO held that there appeared to be no mistake in computation of disallowance u/s 14A while completing the assessment u/s 143(3) of the Act, therefore, the AO felt that there was no need for re-computation and maintained the disallowance u/s 14A at Rs. 26,80,564/-.

4.3.3.3. In the present case, during the appellate proceedings, the appellant company submitted that no expenditure was incurred for earning the exempt income and no details whatsoever has been provided for computing the disallowance u/s 14A in terms of the decision of Hon'ble High Court in the case of Maxopp. The Hon'ble High Court in the case of Maxopp has held that for periods prior to Rule 8D, the AO will have to adopt a reasonable method to determine the expenditure. The AO was not satisfied with the correctness of the claim of the appellant that no expenditure was incurred by the appellant in relation to exempt income and considered that Rs. 26,80,564/- is a reasonable amount to be disallowed u/s 14A of the Act. Therefore, the AO held that Rule 8D of I.T. Rule 1962 is squarely applicable in this case. Since, the Appellant Company could not justify the method adopted by it for determination of disallowance u/s. 14A, the AO correctly held that the method provided under Rule 8D of I.T. Rule, 1962 is applicable in this case. The working of disallowance u/s 14A rw Rule 8D by the AO is upheld. I find no reason to interfere with the AO's order on this

issue.

In view of the above discussion, Ground nos.2, (a), (b)& (c) are dismissed.”

5. Aggrieved, now the assessee is in appeal before this Tribunal.
6. Apropos to the grounds of appeal no. 1 to 1.8, learned counsel for the assessee submitted that the disallowance made u/s 14A read with Rule 8D(2)(iii) should be restricted to investments yielding exempt income and investments yielding taxable income or no income should be ignored. He contended that the Assessing Officer erroneously considered value of net total asset after deducting current liabilities instead of total assets while computing disallowance under Rule 8D(2)(ii) of the Rules. He further submitted that it is second round of litigation. On earlier round the Tribunal was pleased to restore the issue to the file of the Assessing Officer and it was directed that the Assessing officer would decide the issue of disallowance u/s 14A of the Act and give his objective findings after giving a reasonable opportunity to the assessee of being heard. He drew our attention to the chart submitted during the course of hearing to demonstrate the correct amount of disallowance. He prayed that AO may be directed accordingly.
7. On the other hand, learned DR opposed the submissions and supported the orders of the authorities below. He submitted that there is no infirmity into the

findings of authorities below as the disallowance has been made in accordance with Rule 8D.

8. In rejoinder, learned counsel for the assessee opposed the submissions and submitted that the finding of AO is contrary to binding precedents.

9. We have heard rival contentions and perused the material available on record. We find that the Assessing officer while passing the order, assessed income by observing as under:

“2. Aggrieved with the order of Ld. CIT(A) both the department as well a assessee filed appeals before the Hon’ble ITAT and these appeals were disposed vide order dated 07.07.2014. in pursuance of the order of Hon’ble ITAT dated 07.07.2014, the income of the assessee is computed as under:

<i>Income assessed u/s 250/143(3) vide order dated 27.03.2017</i>	<i>Rs. 35,34,91,655/-</i>
<i>Less: Relief allowed by ITAT</i>	
<i>Disallowance of Commission u/s 36(1)(ii)</i>	<i>Rs. 1,05,02,874/-</i>
<i>Assessed total Revised income</i>	<i>Rs. 34,29,88,781/-</i>

10. However, while passing order in pursuance to the directions of the CIT(Appeals), the Assessing Officer had assessed income at Rs. 35,34,91,655/- after making disallowance u/s 14A at Rs. 26,80,564/-. The Assessing Officer has not disturbed his earlier finding despite the clear direction by the Tribunal. The Tribunal had, vide order dated 7.7.2014, directed the Assessing Officer as under:

“12. As regards ground No. 1 in I.T.A. No. 4563/Del/2012, and ground No.2 in I.T.A. No. 4706/Del/2012 with regard to upholding of partial

disallowance u/s 14A, we find that Ld. CIT(A) has not considered the submissions of the assessee regarding break-up of investment which included investment in group companies and also has not considered that a major part of investment in mutual funds was in debt related investments where the investments generally earn fixed income but distribution of income is in the form of dividends. We are of the opinion that fixed maturity plans offered by mutual funds definitely require much less professional expertise as compared for making investments in equity related schemes and therefore, less expenditure is involved in managing such schemes. Moreover before upholding partial disallowance u/s 14A, Ld. CIT(A) should have considered the submissions of assessee that a part of investments were not for earning dividends but were strategic investments. In view of the above, we are of the opinion that the issue of disallowance be readjudicated by the Assessing Officer and the Assessing Officer should decide the disallowance on the basis of his objective findings after giving a reasonable opportunity to the assessee of being heard. In view of the above, the appeal of the assessee in I.T.A.No.4563/Del/2012 is allowed for statistical purposes and the Revenue's appeal in I.T.A. No. 4706/Del/2012 is partly allowed for statistical purposes."

11. We find force into the contention of the assessee that the authorities below have not computed the disallowance in accordance with law. The assessee has given the computation of disallowance as under:

Sr. No.	Particular	Detail	Amount as per Ld. AO	Amount as per the Appellant
1	Expenditure by way of interest not include in clause(i)	(A)	11,13,322	11,13,322
2	Average value of investments yielding exempt income	(B)	36,03,83,960	36,03,83,960
3	Average value of total assets appearing in balance sheet	(C)	47,60,69,060	1,31,51,43,759
4	Disallowance under rule 8D(ii)	(D)= (A)*(B)/(C)	8,42,784	3,05,079

12. Therefore, considering the totality of the facts and material placed before us, we hereby set aside the impugned order and direct the Assessing Officer to recompute the disallowance after verifying the correctness of the figures related to the investments that have yielded exempt income. Grounds are allowed for statistical purposes.

13. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 21st February, 2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
MP

Copy forwarded to:

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

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI