

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.5703, 5704 & 5705/DEL/2019  
Assessment Years 2013-14, 2014-15 & 2015-16

ACIT, Circle-7(1), New Delhi.	v.	DLF Homes Developers Ltd., New Delhi.
TAN/PAN: AACCD0037H		
(Appellant)		(Respondent)

Appellant by:	Shri R.S. Singhvi, CA and Shri Satyajeet Goel, CA		
Respondent by:	Shri T. James Singson, CIT-DR		
Date of hearing:	22	02	2023
Date of pronouncement:	07	03	2023

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeals have been filed by the Revenue against the respective orders of the Commissioner of Income Tax (Appeals)-III, New Delhi ['CIT(A)' in short] all dated 16.04.2019 arising from the respective assessment orders dated 27.12.2016, 27.12.2016 and 30.12.2017 passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AYs 2013-14, 2014-15 and 2015-16.

2. In all the three captioned appeals, the Revenue has challenged the reversal of the disallowance made by the Assessing Officer under Section 14A r.w. Section 8D of Income Tax Rules, 1962 of different amounts. The issue being common, all the appeals are disposed of by this common order.

3. The grounds of appeal raised by the Revenue in ITA No.5703/Del/2019 concerning Assessment Year 2013-14 is reproduced herein for ready reference:

*“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance made by the Assessing Officer under Section 14A r.w. Rule 8D of the Act of Rs.1,53,04,36,680/-”*

4. Briefly stated, the assessee is engaged in the business of real estate development, power generation and golf course operation etc. The return filed by the assessee at a loss of Rs.268.60 crore was subjected to scrutiny assessment. In the course of the assessment, the Assessing Officer *inter alia* carried out the disallowance of Rs.153.04 crore by invoking Section 14A of the Act holding that such expenses are attributable to the investments made by the assessee giving rise to the exempt income. The disallowance was carried out as per the statutory formula prescribed under Rule 8D of the Income Tax Rules, 1962.

5. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) noted the factual matrix and reversed the disallowance after taking note of judicial pronouncement in this regard. The relevant operative paragraph of the order of the CIT(A) is reproduced herein for ready reference.

*8.3 I have considered the facts of the case and the submission made by the AR. It has been submitted that the appellant had made (suo-motu disallowance of Rs. 4,49,320/- and the AO has not rejected the computation made by the appellant. It is further submitted that the AO has not recorded his satisfaction before invoking the provisions of section 14A and Rule 8D. The AR has also contended that the appellant had sufficient interest free funds available at its disposal for making investment and therefore, the investments were not made out of interest bearing funds. It is also observed that in similar circumstances, the appeal has been allowed in favour of the appellant by my Ld. Predecessor in AY 2012-13 by stating as under:*

*"6.2 I find that section 14A(2) provides that the Assessing Officer shall determine the amount of expenditure incurred in relation to such income*

*which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act and section 14(3) provides that, "the provisions of sub section (2) shall apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act. While a lot of emphasis is placed by the counsel on wordings of section 14A(2) which refer to the need of Assessing Officer's satisfaction to the effect that the claim made by the assessee is incorrect, it simply overlooks the provisions of section 14A(3) which state that a disallowance u/s 14A(2) can also be made in a case in which assessee claims that no expenditure has been incurred for earning the tax exempt income. Therefore, a plain reading of the statutory provisions of section 14A(2) and (3) shows that when assessee offers a disallowance us 14A, the provisions of section 14A(2) read with Rule 8D cannot be invoked unless the Assessing Officer is satisfied about incorrectness of the disallowance so offered, but when assessee does not offer any disallowance us 14A on his own, the provisions of section 14A(2) read with Rule 8D can be invoked without there being any need to express satisfaction about the incorrectness of such a claim.*

*6.3 In the instant case, the appellant had made a suo-moto disallowance of Rs.3,90,760/- and the Assessing Officer has not recorded the dissatisfaction about the disallowance suo-moto made by the appellant and has not identified any expenditure which can be considered to be expended in connection with the investment activity. The appellant has own funds of Rs.2,48,274.96 lakhs which are far more than the investments of Rs.2,00,706.72 lakhs. The plain reading of the statutory provisions of section 14A(2) and 14A(3) shows that when the assessee offered the disallowance u/s 14A, the provisions of Section 14A(2) read with Rule 8D cannot be invoked unless the Assessing Officer is dissatisfied about the correctness of the disallowance so offered*

*6.4 In view of this, the addition on this account is restricted to Rs.3,90,760/- under Rules 8D(2)(i)&(it) read with section 14A of the Act."*

*Further, it is seen that the Hon'ble ITAT Delhi has allowed the issue in favour of the appellant in AY 2011-12 in ITA No. 2209/ Del/2016 vide its order dated 19.06.2018, in which it has been held as under:*

*"14. It is the case of the assessee that it was having interest free funds available to the tune of Rs. 2,95,937/- lacs and has made investment in the shares to the tune of Rs. 2,73,326.57/ - lacs which is less than own funds available with the assessee. Undisputedly, the assessee has suo moto disallowed expenses of Rs. 8,21,883/- expended to earn the exempt income.*

*15. In the given circumstances in order to invoke the provisions contained*

*under section 14A read with Rule 8D, the Assessing Officer was required to record his dissatisfaction that the computation made by the assessee under 14A is not correct, however, when we examine the Assessment Order, nowhere dissatisfaction has been recorded by the AO nor any reason been given as to how the computation made by the assessee, making suo moto disallowance of expenses of Rs. 8,21,883/-, is not correct nor the AO has disputed the fact that the assessee was having own sufficient interest free funds available with it to make the investment in the year under assessment.*

*16. When the assessee was having sufficient interest free own funds to the tune of Rs. 2,95,937/- lacs no disallowance can be made under Rule 8D(2)i) as the assessee has not incurred any expenses on account of payment of interest.*

*17. Hon'ble High Court of Bombay in case cited as CIT-2, Mumbai vs. HDFC Bank Ltd. - (2014) 49 taxmann.com 335 (Bombay) while dealing with the identical issue held that when the assessee's own funds and other non-interest bearing funds were more than investment in tax free securities, no disallowance on account of interest payment under section 14A can be made.*

*18. Furthermore, the AO has not recorded his dissatisfaction as to the computation made by the assessee company that no expenditure has been made by the assessee company during the year under assessment to earn the interest free income rather proceeded mechanically by extracting the bare language of Rule 8D. Hon'ble Apex Court in Godrej & Boyce Manufacture Company Ltd. vs. DCIT - 394 IT 449 (SCI thrashed the issue in controversy as to invoking of the provisions contained under Rule 8D of the Rules by observing as under "37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable"*

.....

*21. Moreover, when the assessee has come up with categoric plea that the entire investment have been made out of its own interest free funds available and the incurred expenses have been suo moto disallowed and the AO has*

*not pointed out any defect the computation made by the assessee company, provisions contained u/s 14A read with Rule 8D are not attracted which can only be invoked if the AO is not satisfied with the claim of the assessee.*

*22. So far question of sustaining the addition of Rs. 1128.93 lacs under Rule 8D(2) it) by Id. CIT(A) on account of administrative expenses to earn the exempt income is concerned, again, we are of the considered view that when the AO as well as Ld. CIT(A) have not recorded their dissatisfaction that the computation of expenses disallowed by the assessee are not correct nor has pointed out any specific computation defects, the same cannot be sustained as Rule 8D(2) has only prescribed a formula to determine expenditure incurred to earn the exempt income which does not form part of the total income under the Act, which cannot be invoked unless AO has not come up with specific dissatisfaction with the claim of the assessee. So, in these circumstances addition sustained by Id. CIT(A) under Rule 8D(2)(it) is not sustainable, consequently, Ground no. 4 raised by Revenue is determined against the Revenue and Ground no. 1 raised by the assessee is determined in favour of assessee."*

*8.3.1 It is observed that the facts of the case are identical to those in earlier years. In the assessment order for the year under consideration also, the AO has not recorded any satisfaction about the incorrectness. of the disallowance made by the appellant. Keeping in view these facts and also following the principle of consistency, the addition made by the AO is deleted and the ground of appeal is allowed.*

*9. Ground no. 6 of the appeal is regarding the initiation of the penalty proceedings us 271(1)(c) of the Act. The said ground of the appeal is premature and no appeal lies against the initiation of penalty proceedings u/s 271(1)(c) of the Act. Therefore, this ground of appeal is hereby dismissed.*

*10. As a result, the appeal is partly allowed."*

6. Aggrieved by the relief granted by the CIT(A), the Revenue is in appeal in Assessment Year 2013-14 as well as Assessment Year 2014-15 and 2015-16 captioned above.

7. We have carefully considered the rival submissions and perused the material placed on record.

8. The disallowance under Section 14A in the facts of the case are in consideration. The assessee broadly contends;

(i) that the assessee has itself carried out disallowance of Rs.4,49,320/- for the Assessment Year 2013-14 and similar amount in other assessment years are attributable to the investments giving rise to exempt income.;

(ii) that the Assessing Officer has not rejected the computation made by the assessee.;

(iii) that the Assessing Officer has not recorded 'satisfaction' before invoking the provisions of Section 14A and Rule 8D despite *suo motu* disallowance offered by the assessee.;

(iv) that the assessee had sufficient interest free funds available at its disposal *qua* the investments which have yielded exempt income and therefore, a presumption would arise that investments have been deemed to be made out of interest free funds. Such as share capital and reserves which is far in excess of the corresponding investment;

(v) that in the identical circumstances, the issue has been decided in favour of the assessee in its own case by the Co-ordinate Bench of Tribunal in ITA No.2567/Del/2016 order dated 19.06.2018 Assessment Year 2011-12; ITA No.4155/Del/2017 order dated 31.08.2020 Assessment Year 2012-13 and 8041/Del/2019 order dated 11.04.2022 Assessment Year 2016-17;

(vi) that the CIT(A) in Assessment Year 2012-13 has granted similar relief to the assessee in the identical facts

(vii) that the Hon'ble Delhi High Court in assessee's own case in *Pr.CIT vs. DLF Homes Developers Ltd., ITA No.1453/2018 judgment and order dated 18<sup>th</sup> December, 2018* has held in the Revenue's Appeal that no substantial question arises in the matter of relief granted by the

Tribunal on account of disallowance under Section 14A after detailed examination.

9. For immediate reference, the relevant paragraphs concerning the issue are extracted from the judgment of the Hon'ble Delhi High Court as under:

*8. The Revenue and the respondent-assessee preferred cross-appeals before the Trial Court on the question of disallowance under Section 14A of the Act. The Tribunal on this aspect has accepted the appeal preferred by respondent-assessee and dismissed the appeal preferred by the Revenue relying upon the decisions of the Bombay High Court in CIT-2, Mumbai vs HDFC Bank Ltd- (2014) 49 taxmann.com 335 (Bombay) and decision of the Supreme Court in Godrej & Boyce Manufacturing Company Ltd. VS. DCIT, (2017) 394 ITR 449 SC and decision of Delhi High Court in HT Media).td. vs. Principal Commissioner of Income Tax-IV (2017) 399 ITR 576.*

*9. The second issue, in our opinion, is already covered by the decision of the Supreme Court in Maxopp Investment Ltd. vs. CIT (New Delhi) [2018] 402 ITR 640 (SC) in which, it is inter-alia held as under:-*

*"41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the A was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO."*

*10. Appropriate in this regard are also the observations of the Supreme Court in Godrej & Boyce Manufacturing Company Ltd. (Supra) wherein they have held as under:-*

*"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as*

*placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the Assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the rules or a best judgment determination, as earlier prevailing, would become applicable."*

*11. In the aforesaid ruling it has been held by the Supreme Court that Rule 8D is in the nature of best judgment determination. This Rule would apply where the AO first records his satisfaction that disallowance, if any, made by the Assessee is not correct and is not in accordance with the mandate of Section 14A of the Act. In absence of formation of satisfaction, the A cannot apply Rule 8D of the Rules. In the present case, the AO has treated Rule 8D as mandatory which would apply to all cases where exempt income is earned. An order passed by AO is, therefore, not in terms of the mandate of Section 14A(2) of the Act.*

*12. Regarding the aforesaid position, we do not find that any substantial question of law arises from the second issue.*

10. The relevant operative paragraph of the order of the Co-ordinate Bench concerning Assessment Year 2012-13 in ITA No.4155/Del/2017 in assessee's own case is also reproduced herein for ready reference:

*"5. During the year, the assessee earned dividend income of Rs.40,32,638/- on account of investments in shares worth Rs.2007.06 cr. The total interest free fund available with the assessee was Rs.2482.74 cr. The AO has disallowed an amount of Rs. 143.22 cr. The Id. CIT (A) has deleted the addition relying on the judgment of Hon'ble Jurisdictional High Court in the case of Maxopp Investment Ltd. Vs CIT 247 CT 162 and holding that the Assessing Officer has not recorded the procedural dissatisfaction required to be recorded in accordance with the provisions of sub-Section 2 of Section 14A. The Id. CIT (A) held that the suo moto disallowance of Rs.3,90,760/- made by the Assessing Officer is sufficient to meet the expenses disallowable. Since, the assessee has sufficient own funds require for the investments, suo moto disallowed Rs.3,90,760/- on account of expenditure and since no dissatisfaction has been recorded by the Assessing Officer, we hereby decline to interfere with the order of the Id. CIT (A).*

*6. In the result, the appeal of the revenue is dismissed."*

11. Having regard to categorical observations made by the Hon'ble Delhi High Court in the identical facts situation approving the decision of the Co-ordinate Bench of Tribunal concerning Assessment Year 2011-12, and in consonance with the view taken by the Co-ordinate Benches in other

assessment years, we see no error in the decision arrived at by the CIT(A) in all the three captioned appeals. We thus decline to interfere.

9. In the result, all the three captioned appeals of the Revenue are dismissed.

**Order was pronounced in the open Court on 07.03.2023.**

Sd/-

**[CHANDRA MOHAN GARG]  
JUDICIAL MEMBER**

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**

DATED: **03.2023**

*Prabhat*