

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. N.K CHOUDHRY, JUDICIAL MEMBER**

ITA No. 1422/Del/2018
(Assessment Year: 2013-14)

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| M/s Opelina Finance and Investment Ltd., 28, Nazafgarh Road, Delhi 110015 PAN No. AAACO 5195 R (APPELLANT) | Vs. | ITO, Ward-19(2), New Delhi 110002 (RESPONDENT) |
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| Assessee by | Shri Salil Kapoor, Adv. Ms. Ananya Kapoor, Adv. Shri Amarbir Singh, Adv. |
| Revenue by | Shri Jitender Chand, Sr. DR |

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| Date of hearing: | 07.03.2023 |
| Date of Pronouncement: | 15.03.2023 |

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 20.11.2017 of the Commissioner of Income Tax (Appeals)-New Delhi relating to Assessment Year 2013-14.

2. Brief facts of the case as culled out from the material on record are as under :-

3. The assessee is a company stated to be engaged in the business of investment, selling underwriting, shares etc. The assessee electronically filed its return of income for A.Y 2013-14

on 28.11.2013 declaring NIL taxable income. The case of the assessee was selected for scrutiny and thereafter assessment was framed u/s. 143(3) vide order dated 29.03.2016, and the total was determined at Rs. 83,88,530/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 20.11.2017, granted partial relief to the assessee.

5. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:-

1. *That the order passed by Assessing Officer ('AO') dated 29.03.2016 and by the Commissioner of Income Tax (Appeals) (CIT(A)) dated 20.11.2017 and the additions/disallowances made are illegal, bad in law and without jurisdiction. The assessing officer has grossly erred in assessing the income of the assessee at Rs.83,88,530/- as against the returned income of a NIL amount.*
2. *That the CIT(A) has erred in law and on the facts of the case, by upholding the addition of Rs. 83,88,530/- w/s 14A of the Act over and above the amount of Rs. 3,37,76,274/- suo moto disallowed by the assessee in its return of income.*
3. *That in view of the facts and circumstances of the case, the invocation of Sec 14A and Rule 8D against the assessee is illegal and bad in law. No valid satisfaction is recorded by the AO to invoke Sec 14A / Rule 8D against the assessee.*
4. *That the CIT(A) has failed to appreciate that the suo moto disallowance of Rs 3,37,76,274/- made by the assessee in its return is based on a scientific and logical calculations and the same have been ignored by the AO and CIT(A). No more disallowance is called for on the facts of the case.*

5. *That the calculations made by the AO to compute disallowance of Rs. 83,88,530/- over and above the amount of Rs. 3,37,76,274/- suo-moto disallowed by the assessee is illegal, bad in law, and against various judgments of Income Tax Appellate Tribunal, High Court and Supreme Court.*
6. *That the AO and CIT(A) have erred in ignoring the fact that the majority of the dividend income earned by the assessee is from the strategic investments made in the group concerns and hence no disallowance is justified w/s 14A.*
7. *Without prejudice, the AO and CIT(A) have erred in not appreciating the fact that the assessee has earned exempt income from only four concerns and hence taking the entire investments for calculations w/s 14A and Rule 8D is completely illegal and unjustified.*
8. *That, in view of the facts and circumstances of the case, the AO/CIT(A) has erred on facts and in law in not appreciating the evidence filed by the assessee in a judicious manner.*
9. *That the additions/disallowances made are based on mechanical application of rule 8D. The additions/disallowances made are unjust, arbitrary, against the principles of natural justice and are also highly excessive.*
10. *That the documents, explanations filed by the assessee and the material available on record has not been properly considered and judicially interpreted.*
11. *That in the view of facts and circumstances of the case the Assessing officer have erred in law and on facts in initiating penalty under section 271(1)(c).*
12. *That the interest charged u/s 234B is illegal, bad in law without jurisdiction. The said interest is wrongly charged and is wrongly worked out and is also highly excessive.*

6. Before us at the outset, Ld. AR submitted that though assessee has various grounds but he would like to argue only ground no. 7 and the other grounds be treated as not pressed. Considering the aforesaid submission of Ld. AR, we dismiss the other grounds of assessee and proceed to dispose of ground no. 7.

7. During the course of assessment proceedings, AO on perusing the Balance Sheet of the assessee as on 31.03.2013 noticed that assessee had investments in equity shares and had earned dividend income to the tune of Rs. 13,25,07,176/- and assessee had *suo motto* disallowed Rs. 3,35,91,350/- u/s. 14A of the Act. During the course of assessment proceedings assessee furnished detailed computation of 14A r.w.r 8D but the same was not found acceptable to AO. AO thereafter by invoking the provisions of Rule 8D worked out the total disallowance u/s. 14A at Rs. 4,90,79,877/- and after giving the credit of the *suo motto* disallowance of Rs. 3,35,91,350/- that was made by assessee made addition of net amount of Rs. 83,88,527/- u/s. 14A r.w.r 8D.

8. Aggrieved by the order of AO, assessee carried the matter before CIT(A), who upheld the order of AO.

9. Aggrieved by the order of CIT(A), assessee is now before Tribunal.

10. Before us, Ld. AR reiterated the submissions made before the lower authorities and further submitted that AO, while working out the disallowance under Rule 8D has considered the

total investments irrespective of the fact whether the assessee has earned any exempt income from those investments. He submitted that the various High Courts including the jurisdictional High Court have held that for the purpose of making disallowance of expenses under 14A as per Rule 8D, only those investments should be considered for computing average value of investments which yielded exempt income during the relevant year. In support of his aforesaid contention he placed reliance on the decision rendered by Hon'ble Delhi High Court in the case of **Cargo Motors (P) Ltd. vs. DCIT [2022] 145 taxmann.com 641 (Delhi) and ACB India Ltd. vs ACIT [2015] 62 taxmann.com 71 (Delhi)**. He thereafter fairly submitted that since there is no finding of the AO on the investments which have yielded exempt income, the matter may be remitted to AO for reworking the disallowance u/s. 14A r.w.r 8D. He further submitted that the assessee does not agitate the *suo moto* disallowance made by the assessee and if on reworking the disallowance by AO, if the disallowance works out to a figure which is less than the *suo moto* disallowance made by assessee the disallowance be restricted to the *suo moto* disallowance.

10. Learned DR on the other hand, strongly supported the order of AO.

11. We have heard the rival submissions and perused the materials available on record. Before us, assessee is challenging the working of disallowance u/s. 14A r.w.r 8D. Before us learned AR has contended that for working out of disallowance u/s. 14A

r.w.r 8D, AO has considered total average investments instead of average investments which have yielded dividend income. The aforesaid factual contention of Ld. AR has not been controverted by the Revenue. We find that Hon'ble Delhi High Court in the case of Cargo Motors (P) Ltd. vs DCIT (supra) after considering various decisions cited in the order, have held that for the purpose of making disallowance of expenses u/s. 14A r.w.r. 8D only those investments are to be considered for computing average value of investments which have yielded exempt income during the relevant year. Before us, Revenue has not placed on record any contrary binding decision. We further find that there is no finding of the lower authorities on the investments which have yielded exempt income. We are therefore of the view that the issue of the disallowance u/s. 14A needs to be reworked by the AO, in view of the decision of Hon'ble Delhi High Court in the case of Cargo Motors (P) Ltd. (supra). We therefore restore the issue back to the file of AO and direct him to rework the disallowance u/s. 14A r.w.r 8D after considering the decision of Hon'ble Delhi High Court in the case of Cargo Motors (P) Ltd. (supra), and in accordance with law. Further before us Ld. AR has stated that assessee does not agitate the *suo moto* disallowance made by assessee. In view of the aforesaid submissions of Ld. AR, if on reworking of disallowance made by AO, the disallowance u/s. 14A works out to a figure less than the *suo moto* disallowance, the disallowance shall be restricted to *suo moto* disallowance. Needless to state that AO shall grant adequate opportunity of

hearing to the assessee. Assessee is also directed to promptly furnish the details called for by the authorities. **Thus this ground of assessee is allowed for statistical purposes.**

7. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 15.03.2023

**Sd/-
(N.K CHOUDHRY)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 15.03.2023

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI