

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'C' : NEW DELHI)

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 5503/Del/2018, A.Y. 2014-15

HLS ASIA LTD. 109, Aurobindo Place, New Delhi	Vs.	Addl. Commissioner of Income- tax , Special Range-4, C.R.Building, I.P.Estate, New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Ankit Arora, CA
Revenue by	Shri Anuj Garg, Sr. DR

Date of hearing:	20.03.2023
Date of Pronouncement:	21.03.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Assessee against order dated 28.05.2018 in appeal no. 54/17-18 passed u/s 250(6) of the Income Tax Act, 1961(hereinafter referred to as 'the Act') by Commissioner of Income Tax (Appeals)-35, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 24.12.2017 u/s 143(3) of the Income Tax Act, 1961 passed by Assistant Commissioner of Income Tax, Spl. Range-4, New Delhi (hereinafter referred to as the Ld. Assessing Officer or in short 'Ld. AO').

2. The facts in brief are assessee filed return of income of Rs. 29,79,81,295/- on 26.11.2014 and the case was selected for scrutiny. The assessee company is engaged in the business of wire line logging, perforation and related oil field activities for various oil companies operating in India. During the year under assessment, the assessee company had declared income from providing services to these companies and total amount of operational revenue is declared at Rs. 108.84 crore.

2.1 During the assessment proceedings it was noticed that the assessee company had earned exempt dividend income of Rs. 27,77,732/-. The assessee company has made investment of Rs.7436.75 lacs in equity shares however no disallowance u/s 14A has been made though the dividend income earned from such investment shall be exempt from tax. Accordingly, the assessee was asked by the Ld AO, to explain as to why the disallowance u/s 14A should not be made in accordance with the Rule 8D of I.T. Rules, 1962

3. After taking the submissions of the assessee, the Ld. AO made the disallowance of Rs. 37,52,198/- u/s 14A r.w.s. 8D of the I.T.Rules which were sustained by Ld. CIT(A) with following observations in Para 4.3.3. :

“4.3.3. The Appellant has exempt income of Rs. 27,77,732/-. In the assessment order, the AO worked out the disallowance u/s. 14A r.w. Rule 8D at Rs. 37,52,198/- and after reducing the suo-moto disallowance done by the appellant of Rs.4,66,712/-, the AO added Rs. 37,52,198/- to the income of the appellant. 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 decision of the Hon'ble Supreme Court In the case of Maxopp Investment Ltd. vs. CIT, New

Delhi (civil Appeal nos. 104-109 of 2015) dated 12.02.2018, the addition u/s. 14A r.w, Rule 8D is applicable in this ease. The working of disallowance u/s 14A r.w Rule 8D at Rs.37,52,198/- is correct. Therefore, addition of Rs.37,52,198/- is upheld. I find no reason to interfere with the AO's order on this issue. Therefore, Ground no. 2 is dismissed.”

4. The assessee is in appeal raising following grounds :-

1. That on the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) ['CIT(A)'] erred in dismissing, the appeal filed by the appellant against the order dated 24.12.2017 passed under section 143(3) of the Income-tax Act, 1961 ('the Act') disallowing Rs.37,52,198 u/s 14A of the Act read with Rule 8D of Income Tax Rules, 1962 ('Rules')

2. That the CIT (A) erred in dismissing the appeal applying the principle laid down in decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. without appreciating facts of the case and submissions made by the appellant.

2.1 That the CIT (A) erred on facts, evidences on record and in law in holding that the appellant had failed to justify the method adopted by it for determination of disallowance under section 14A of the Act.

2.2 That the CIT(A) further grossly erred in law and on facts of the case in not appreciating the nature of investments made by the appellant company and arbitrarily proceeding on the basis that all investments made by the appellant company yield exempt income.

The appellant craves leave to add to, alter, amend or vary from the aforesaid grounds of appeal at or before the time of hearing.”

5. Heard and perused the record.

6. It was submitted on behalf of the assessee that Ld. AO had made an incorrect factual observation of investments in equity shares while making the disallowance. Relying page no. 16 of the paper book as part of

the audit report, it was submitted that the investments are not in equity shares and not even equity oriented mutual funds. It was submitted that investments were made in 100% debt mutual funds –growth. At page no. 81 to 133 of the paper book, the information with regard to investments have been filed. Referring to them it was submitted that these all statements reflect that except for investment in JP Morgan Short term income Fund, from which dividend income was received, the return from other growth oriented funds was taxable in nature and there was no question of earning any tax exempt income. It was submitted that these investments rather created capital gains income and during the relevant assessment year capital gains from sale of debt oriented mutual funds has been offered for tax. It was submitted that taking into consideration the income derived from JP Morgan short term Income fund investment, according to Rule 8D, a suo moto disallowance was made. Ld. DR however supported the findings of ld. Tax Authorities below.

7. Appreciating the matter on record, the Bench is of considered opinion that the nature of investments require a different treatment according to the nature of return. As with regard to the investments of the assessee, other than JP Short term income a fund only, the assessee was not receiving dividend income as the remaining investments were in the debt instrument which do not provide for dividend income or any other tax free income. There treatment should have been different, however, Ld. Tax Authorities below have taken a general and cumulative view about the investments and the nature of their return to make the disallowance. Ld. CIT(A) has particularly fallen in error in observing *that “since the appellant company would 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 IT Rules , 1962 is applicable in this*

case”. The question was not about applicability of Rule 8D but there had to be distinction based on the nature of return on the basis of method of distribution of income to the investor. If there is no distribution of income or the return is of nature capital gains, same cannot be taken into consideration for application of Rule 8D.

8. The issue therefore, requires to be restored to the files of Ld. AO with direction to take into consideration, the aforesaid conclusions of the Bench and to make a re-computation of the disallowance on the basis of the same. **The grounds and the appeal of assessee are allowed for statistical purposes.**

Order pronounced in the open court on 21st March, 2023.

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 21 .03.2023

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI