

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No.3830/Del/2019
(Assessment Year : 2015-16)

Competent Software Pvt. Ltd. A-188, Okhla Industrial Area, Phase-1, New Delhi PAN No. AAACC 2314 A (APPELLANT)	Vs.	ACIT Special Range-2 New Delhi (RESPONDENT)
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Assessee by	Shri Vijay Jindal, C.A.
Revenue by	Shri Shankar Lal Verma, Sr. D.R.

Date of hearing:	28.03.2023
Date of Pronouncement:	31.03.2023

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 19.03.2019 passed by the Commissioner of Income Tax (Appeals)-2, New Delhi for Assessment Year 2015-16.

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

3. Assessee is an individual stated to be engaged in the business of Information Technology services. Assessee filed its return of income for A.Y. 2015-16 on 04.09.2015 declaring an income of Rs.5,22,15,490/-. The case of the assessee was selected for scrutiny

and, thereafter, assessment was framed u/s 143(3) of the Act vide order dated 20.12.2017 and the total income was determined at Rs.5,56,02,550/-.

4. Aggrieved by order of AO, assessee carried the matter before CIT(A) who vide order dated 19.03.2019 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

“The learned assessing officer as well as CIT(A) have erred in making the addition of Rs. 33,87,061/- u/s 14A read with Rule 8D without considering the various judgments and fact that the investments in mutual funds are managed through Portfolio manager Citi bank The assessee has already disallowed the direct expenditure in its ITR. No other expenditure has been incurred by the assessee Company in relation to exempt income. The assessee is already having surplus reserve & the investments in mutual funds were made out of this interest free surplus funds.

The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.”

5. During the course of assessment proceedings, AO noticed that assessee had shown a receipt of dividend income from mutual fund amounting to Rs.1,76,32,558/- which was claimed as exempt u/s 10(34) of the Act. The assessee was asked to show-cause as to why provisions of section 14A r.w.s 8D not be invoked as the assessee has made investments and has earned exempt income. Assessee made the submissions, which was not found acceptable to AO. AO was of the view that the provisions of Section 14A (2) were applicable in the case of assessee and the expenses related to exempt income were required to be disallowed u/s 14A in accordance with Rule 8D of the IT Rules.

He, thereafter, computed the disallowance u/s 14A at Rs.33,87,061/- and disallowed the same.

6. Aggrieved by the order of AO, assessee carried the matter before CIT(A). Before CIT(A), it was *inter alia* submitted that the investments in mutual funds were managed through Portfolio manager Citi Bank and assessee had already disallowed the direct expenditure in its Income-tax return and no other expenditure were incurred by the assessee in relation to exempt income and therefore no further disallowance was called for. It was further submitted that the investments have been made out of the interest free funds comprising of Share Capital and Reserve and Surplus and therefore no disallowance of interest was called for. Assessee also placed reliance at various decisions which was noted by CIT(A) in his order. CIT(A) did not accept the contentions of the assessee. He was of the view that it was not possible to earn dividend income at Rs.1.76 cr. without any indirect expenses or managerial support in decision making. He was further of the view that dividend was not a static concept but a dynamic concept and needs continuous monitoring, manoeuvring and financial management expertise. He did not agree with the submissions of the assessee and held that it is too simplistic argument that Rs.1.76 cr. of dividend has come as a natural process. He thereafter for the reasons noted in his order upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now before us.

7. Before us, Learned AR reiterated the submissions made before AO and CIT(A) and further submitted that identical issue arose in assessee's own case before the Hon'ble Tribunal in A.Y. 2014-15 and

the Tribunal vide order dated 08.10.2021 in ITA No.2051/Del/2018 have decided the issue in favour of the assessee. He pointed to the relevant findings of Tribunal order. He, therefore, submitted that since the facts of the case in the year under consideration are identical and to that of earlier year, no further disallowance u/s 14A is called for.

8. Learned DR on the other hand took us through the order of AO and CIT(A) and supported their orders.

9. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance u/s 14A r.w.r 8D. It is an undisputed fact that assessee had earned tax free dividend mutual fund amounting to Rs.1,76,32,558/-. It is also the contention of the assessee that the investments in mutual fund are managed through Portfolio manager and assessee has also disallowed the direct expenditure earned for earning the exempt income. The aforesaid contention of the assessee has not been controverted by Revenue. We find that identical issue arose in assessee's own case for A.Y. 2014-15 before the Co-ordinate Bench of Tribunal. The Co-ordinate Bench of Tribunal decided the issue in favour of the assessee by observing as under:

“7. We find that the Ld. CIT(A) did not agree with the contention of the assessee by observing that the assessee might have made some overhead expenses and further that the investor has to keep an eye on the investment where huge stakes are involved. We are of the view that above observations made by the Ld. CIT(A) are based only on vague assumption. The assessee has already brought on record that the investment in mutual fund were managed through portfolio manager and the charges paid to the portfolio manager had already been suo-moto disallowed by the assessee. There is no other evidence

on the file that the assessee had incurred any other expenditure except the aforesaid fees paid to portfolio manager. Merely because that the investments were high and that the investor has to keep an eye on investment, that does not mean that the assessee might have incurred much more expenditure in this respect than that has been declared by the assessee. As per provisions of section 14A of the Act, the resort can be made to the formula prescribed under Rule 8D only when the Assessing Officer is not satisfied with the working given by the assessee of the suo-moto disallowance. Such satisfaction of the Assessing Officer must be based on some reasoning after consulting the accounts of the assessee. The Hon'ble Delhi High Court in the case of Joint Investment Pvt. Ltd. vs CIT (372 ITR 694) (Del.) has held that section 14 of the Act or Rule 6D cannot be interpreted so as to mean that the entire tax-exempt income of the assessee is to be disallowed. That the window for disallowance indicated in section 14A is only to the extent of disallowing the expenditure incurred by the assessee in relation to the tax-exempt income. This proportion or portion on the tax exempt income surely cannot swallow the entire amount of tax-exempt income. In the case, in hand, no disallowance is attracted on account of interest expenditure. The only disallowance attracted is in relation to the administrative expenses. The assessee has suo-moto disallowed the sufficient amount of Rs.17,13,287/- on account of fees paid to the portfolio manager. In view of this, we do not find justification on the part of the Ld. CIT(A) in confirming the disallowance made by the Assessing Officer by invoking the formula under Rule-8D(2)(iii), merely on assumption basis without recording the satisfaction as to how the suo-moto disallowance made by the assessee was not co-relating to the accounts of the assessee vis-à-vis other circumstances. In view of the this, the impugned order of the Ld. CIT(A) is set-aside and the disallowance u/s 14A is restricted to that has been suo-moto made by the assessee."

10. Before us, Revenue has not pointed to any distinguishing feature in the facts of the case of the assessee in the year under consideration and that of A.Y. 2014-15 and further no material has been placed before us by Revenue to demonstrate that the decision rendered by the Co-ordinate Bench of Tribunal in assessee's case for A.Y. 2014-15 has been stayed/ set aside/ overruled by higher judicial forum. We therefore, following the order of Co-ordinate Bench in assessee's case for A.Y. 2014-15 for similar reasons are of the view that no

disallowance u/s 14A is called for in the present case. We therefore direct the AO to delete the disallowance over and above suo moto disallowed by assessee u/s 14A of the Act. **Thus ground of the appeal of the assessee is allowed.**

11. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 31.03.2023

Sd/-

**(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 31.03.2023

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI