

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'C' : NEW DELHI)  
BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 4582/Del/2018 , A.Y. 2012-13

Jaypee Infra Ventures Pvt. Ltd. (erstwhile known as Jaypee Infra Ventures) (A Private Company with unlimited liability) Sector 128, Noida- 201304, UP PAN : AACJ5628G	Vs.	DCIT, Circle-13(2), New Delhi
Appellant		Respondent

ITA No. 4435/Del/2018 , A.Y. 2012-13

DCIT, Circle-13(2), New Delhi	Vs.	Jaypee Infra Ventures Pvt. Ltd. (erstwhile known as Jaypee Infra Ventures) (A Private Company with unlimited liability) Sector 128, Noida- 201304, UP PAN : AACJ5628G
Appellant		Respondent

Assessee by	Shri V.K.Garg, Adv.
Revenue by	Shri Anuj Garg, Sr. DR

Date of hearing:	11.04.2023
Date of Pronouncement:	29.05.2023

**ORDER**

**Per Anubhav Sharma, JM :**

The appeals have been filed by the Assessee & Revenue against order dated 05.03.2018 passed in appeal no. 241/2016-17 for assessment year 2012-13, by the Commissioner of Income Tax (Appeals)-32, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 21.03.2015 u/s 143(3) of I.T. Act, 1961 (hereinafter referred to as 'the Act') passed by DCIT, Circle-13(2), New Delhi (hereinafter referred as Ld. Assessing officer or in short Ld. AO).

2. Assessee is in appeal raising following grounds :-

*"1. That on the facts and law involved, the Ld. Commissioner of Income-tax (Appeals) [Ld. CIT(A)] has erred in not accepting the claim of the appellant that while computing the value of average investments for the computation of disallowance as per Rule 8D(2)(iii) the investments in shares on which no exempt income has been received should not be considered.*

*2. That the said non-acceptance of the claim of the Appellant by the Ld. CIT(A) is against the binding decisions of jurisdictional High Court of Delhi in the case of ACB India Pvt. Ltd. v. ACIT reported in [2015] 374 ITR 108 (Delhi) and of the Delhi ITAT Special bench in the case of ACIT v. Vireet Investment (P) Ltd. reported in [2017] 82 Taxmann.com 45 (ITAT Delhi) (SB)*

*3. That the non-acceptance of the claim of the Appellant without proper reasons is against the facts and law involved.*

*4. That the grounds of appeal as herein are without prejudice to each other.*

*5. That the assessee respectfully craves leave to add, amend, alter and / or forego any ground(s) at or before the time of hearing."*

2.1 Revenue is in appeal before the Tribunal raising following grounds :-

*“1. That in the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that only the interest expense having direct nexus with the investment must be included for computation of disallowance u/s 14A under Rule 8D(2)(ii), instead of the entire interest expense as taken by the AO.*

*2. That the grounds of appeal are without prejudice to each other.*

*3. That the appellant craves leave to add, alter, amend or forego any ground(s) of the appeal raised above at the time of hearing.”*

3. The facts in brief are that the company was incorporated on 30.3.2011 and this is the first year of its operations and pursuant to the scheme of amalgamation between M/s. Jaypee Ventures Pvt. Ltd. (Transferor Company) and the assessee company (Transferee Company) effective from 1.4.2011, all assets and liabilities of M/s. Jaypee Ventures Pvt. Ltd. were taken over by the assessee company. The assessee filed its return of income u/s 139(1) of the Act on 30.09.2012 declaring total Loss at Rs.39,73,27,697/- and thereafter vide assessment order u/s 143(3) dated 21.3.2015, Loss was assessed at Rs.33,26,10,440/-. Tax was charged under MAT on Book Profit of Rs.38,07,50,578/-.

4. Heard and perused the record.

**Ground no. 1 of the Revenue’s appeal;**

5. The issue in appeal of the department relates to assertion about inapplicability of section 14A r w Rule 8D(2)(ii) on interest which is directly attributable to investments in foreign subsidiary, income where from is liable to tax and is not exempt. Assessee claims issue is directly covered in assessee’s favour by decisions of jurisdictional Hon’ble Delhi High Court **Pr. CIT v. Bharti Overseas (P.) Ltd. [20151 64 taxmann.com 340 (Delhi)**. It is also submitted by Ld. AR that the appeal of the department also deserves to be

dismissed because the ground of appeal is wrong. It is submitted that Ld. CIT(A) has not directed to compute the proportionate disallowance of interest under Rule 8D(2)(ii) only on interest which relate directly to exempt income. Nor, this is the claim of the appellant. In fact, Ld. CIT(A) has held that the amount of interest having direct nexus with investments in foreign subsidiaries is not disallowable as dividend received there from is liable to tax. As the ground itself is erroneous and des not lie against the order of the Ld. CIT(A).

5.1 In this regard it can be observed that primarily the department agitates the findings of Ld. CIT(A) in para 5.4a that “*interest having direct nexus with investments in foreign subsidiaries is not disallowable as dividend received there from is liable to tax.*” The Bench is of considered opinion that a patent interpretation of the provisions of Rule 8D(2)(ii) provide that it is only interest having no direct nexus with any particular income or receipt is to be allocated to income or receipt and not the interest which has direct nexus with investment which yield exempt income or with investment which yield taxable income. Thus this Rule primarily deals with only “common interest expenditure’ i.e expenditure which is not attributable to earning either tax exempt income or taxable income. In case of assessee interest expense of Rs. 52,195,844/- on term loan of Rs. 150 crores relates to investment in shares of foreign subsidiary and dividend income from the same is taxable and is not exempt. Thus, the findings of Ld. CIT(A) in para 5.4a do not require an interference. Ground is decided against the Revenue.

**Ground no. 1 to 3 of the Assessee’s appeal;**

6. The issue in appeal of the assessee relates to inapplicability of section 14A r w Rule 8D on investments on which assessee claims no exempt income is received for which assessee’s Ld AR claims issue is directly covered in assessee’s favour by decisions of jurisdictional Hon’ble High Delhi Court in the case of PCIT v. Caraf Builders & Constructions (P.) Ltd 2019 101

taxmann.com 167 (Delhi) where SLP is dismissed vide PCIT-2 v. Caraf Builders & Constructions 2019 112 taxmann.com 322 (SC)1.

6.1 In regard to this ground it can be observed that the assessee in its final computation before Ld. CITA(A) made disallowance at Rs. 265,349,780/- by reducing inter alia the amount of investments on which no dividend was received during the year. Assessee also gave a justification to consider this re-computation at first appeal stage. Though no conclusive findings were given by the Ld. CIT(A). It is settled proposition of law that Section 14A r.w.r 8D do not apply on investments on which no exempt income is received during the relevant year. Ld. CIT(A) has partly given relief to the assessee while directing re-computation of the income as per observations in para 5.4c but seems to have not taken note of the plea of assessee about inapplicability of Section 14A with Rule 8D on investments on which no exempt income was received during the year. Accordingly these grounds in hand deserve to be allowed with a direction to the Ld. AO that apart from following the directions given by Ld. CIT(A) to compute the average value of investments, the Ld. AO shall also exclude the amount of investments on which no exempt income has been received during the year.

7. As a consequence of above determination of the grounds in respective appeals, the **appeal of Revenue is dismissed and of assessee is allowed** with aforesaid directions made in para 6.1 to the Ld. AO.

**Order pronounced in the open court on 29<sup>th</sup> May, 2023.**

Sd/-  
(G.S.PANNU)  
PRESIDENT

Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER

*Date:-29<sup>th</sup> .05.2023*

*\*Binita, SR.P.S\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI