

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

**BEFORE,
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.9525/Del/2019
(ASSESSMENT YEAR 2016-17)**

DCDC Health Services Private Limited, B-22, New Multan Nagar, New Delhi-110 056 PAN-AAFCD 0204K	Vs.	Asst. Commissioner of Income Tax, Circle-7(1), New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. C.S. Anand, CA
Respondent by	Sh. Sanjay Kumar, Sr. DR
Date of Hearing	26/06/2023
Date of Pronouncement	/07/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-3, New Delhi [Ld. CIT(A)", for short], dated 14/10/2019 for Assessment Year 2016-17. Grounds taken in this appeal are as under:

“1.0 That on the facts and in circumstances of the case and in law, the order passed by the Learned Commissioner of Income Tax (Appeals) [Ld CIT(A)] is erroneous and bad in law.

2.0 Disallowance under section 14A of the Act.

2.1 That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the Appellant's ground of appeal on disallowance under section 14A amounting to INR 2,471,086.

2.2 That on facts and circumstance of the case and in law, the Ld. CIT(A) erred in upholding the disallowing under section 14A of the Act invoking rule BD of the Income Tax Rules, 1962 (the Rules) without considering the fact that investments in mutual funds on which divided income was earned were made from Appellant's own fund and not through interest bearing loan funds.

2.3 That on facts and circumstance of the case and in law, the Ld. CIT(A) erred in upholding the disallowance of INR 2,471,086 under section 14A of the Act read with rule 8D without appreciating the facts that only a small part was used for investment in subsidiary company.

2.4 That the Ld. CIT(A) grossly erred in applying the ratio held by Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs CIT [2018] 402 ITR 640, without appreciating the facts of the Appellant.

2.5 That the Ld CIT(A) erred in not appreciating the fact that disallowance under section 14A on identical issue and facts was decided (by him) in favour of the appellant in AY 2015-16 i.e. immediately preceding AY, where the subject investment fetched exempt income.

3. That the above grounds of appeal are mutually exclusive and without prejudice to each other.

4.0 That the Appellant craves leave to add, alter, amend and/or rescind any of the above grounds of appeal and to submit such statements, documents and papers as may be considered necessary either at the time of or before the hearing of this appeal as per the law.”

2. Brief facts of the case are that, the assessee filed return declaring loss of Rs. (-) 2,09,29,781/- the case of the assessee selected for scrutiny and assessment order came to be passed on 13/11/2018 u/s 143(3) of the Act at total income of Rs. (-) 6,13,011/- as against the returned loss of income of Rs. 2,09,49,781/- by making following additions:-

- i. Addition of Rs. 24,71,086/- by making disallowance u/s 14A of the Act.*
- ii. Addition of Rs. 46,24,470/- u/s 41 of the Act.*
- iii. Addition of Rs.13,16,025/- on account of disallowance of prior period expenses;*
- iv. Addition of Rs. 20,52,770/- on account of disallowance of bad debt;*
- v. Addition of Rs. 1,10,98,441/- on account of low net profit rate.*

3. Aggrieved by the above additions, the assessee preferred an appeal before the CIT(A), the ld. CIT(A) vide order dated 26/12/2018, partly allowed the Appeal wherein upheld the disallowance made u/s 14A amounting to Rs.24,71,086/-. Aggrieved by the order of the CIT(A) , the assessee preferred the present appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee submitted that the ld. CIT(A) committed grave error while upholding the disallowance made u/s 14A read with Rule 8D of Rs. 24,71,086/- and further submitted that the ld. CIT(A) just four days after passing the order impugned, decided the Assessee's appeal for Assessment Year 2015-16 following the judgment of Hon'ble Supreme Court and Hon'ble High Courts and held that, since investment in mutual funds were made out of non interest bearing funds in the form of share capital, disallowance made by the A.O. u/s 14A read with Rule 8D (2)(ii) is not called for, accordingly, the ld. CIT(A) had deleted the addition made u/s 14A read with Rule 8D 92)(ii) at Rs. 27,24,159/- for the Assessment year 2015-16.

5. The Ld. Counsel for the assessee also taken us through the order of the CIT(A) and the paper book and submitted that, for making the investments in mutual funds, the assessee had not incurred any expenditure, hence no disallowance under Rule 8D(2)(iii) of the Rules can be sustained. The Ld. AR also submitted that since the investments in Mutual Funds (which yielded dividend income) were made out of non-interest bearing funds in FY 2014-15

and no fresh investments towards mutual funds were made in FY 2015-16, the disallowance u/s 14A rwr 8D(2)(2) of the Rule deserves to be deleted and relied several judgments of the Hon'ble Supreme Court and Hon'ble High Courts.

6. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities submitted that the Appeal of a is devoid of merit.

7. We have heard both the parties and perused the material available on record. It is found from the record that during the year under consideration, the closing figure of current investments was reduced from 20,50,38,041/- to Rs. 3,71,401/- as on 31/03/2016. The assessee had earned dividend income of Rs. 77,51,248/- the A.O. made disallowance of Rs.24,71,086/- u/s 14A read with Rule 8D of the Rules in following manners:-

<i>Particulars.</i>	<i>Amount (Rs.)</i>
<i>On a/c of interest</i>	<i>1877610/-</i>
<i>On a/c of other expenses being 0.5%</i>	<i>593476</i>
<i>Total Disallowance made u/s 14A r.w.r 8D</i>	<i>2471086</i>

8. The said addition has been disallowed by the CIT(A) vide impugned order dated 14/10/2019. It is observed from the record that, just after four days from the date of passing the order impugned, the ld. CIT(A) had decided Assessee's Appeal for Assessment Year 2015-16, wherein the issue relating to disallowance made u/s 14A read with Rule 8D wherein it was held that, since the investments in Mutual Funds were made out of non-interest bearing funds in the form of share capital, the disallowance made by the learned AO u/s 14A r.w.r 8D(2)(ii) is not called for. Accordingly the learned CIT(A) Delhi- 03 had deleted the addition made u/s 14A r.w.r 8D(2)(ii) at Rs.2724159/- for the Assessment Year 2015-16. Since the investment in mutual funds which yielded dividend income were made out of non interest bearing fund Financial Year 2014-15 and no fresh investments towards mutual funds were made in the Financial Year 2015-16, the disallowance u/s 14A read with Rule 8D (2)(2) of the Rules deserves to be not sustainable for the year under consideration. The above view of ours has been fortified by the following judicial pronouncements:-

- “Godrej & Boyce Mfg. Co. Ltd. reported in 394 ITR 449 (SC)
- CIT Vs. Reliance Industries Ltd. reported in 410 ITR 466 (SC)
- PCIT Vs. Sintex Industries Ltd. reported in 403 ITR 418 (Guj)
Revenue's SLP was dismissed [255 Taxman171 (SC)]
- South Indian Bank Ltd Vs CIT. reported in 438 ITR 1 (SC)

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- CIT VS Suzlon Energy Ltd. reported in 354 ITR 630 (Guj.)
- CIT Vs Microlabs Ltd. reported in 383 ITR 490 (Kar)
- CIT Vs Max India Ltd. reported in 388 ITR 81 (P&H)”

9. Further it is found from the record that for the Financial Year 2015-16 the total amount of interest paid/payable on cash credit facility and other was Rs. 19,81,563/- and total amount of interest income earned by the assessee in the form of interest on loans bank deposits and others was 25,53,248/- the Ld. AR brought to our notice on Note 23 finance cost and also drawn our attention to the paper book page No. 46 & 47 which are extracted as under:-

NOTE 23 FINANCE COST [PB:47]

	FY 15-16	FY 14-15
Interest on Term Loans	2615252	852585
Interest on Hire Purchase Loans	412589	1432147
Interest on Cash Credit Facility	1951722	1938855
Interest Others	29841	17597
Finance Charges	120847	0
Bank Charges	320812	224886
	5451063	4466070

Total of Rs.1951722/- and Rs.29841/- works out at Rs.1981563/-.

NOTE 19 OTHER INCOME [PB:46]

	FY 15-16	FY 14-15
Interest on Loans & Bank deposits	2347035	51152
Interest Others	206213	0
Dividend on Current Investments	7751248	5319972
Gain on sale of Current Investment	1184141	10525
Unclaimed Balances and excess provision written back	5887638	0
Misc Income	0	512540
	17376275	5894189

Total of Rs.2347035/- and Rs.206213/- works out at Rs.2553248/-.

10. Thus, it is found that for making investment in mutual funds, the assessee had not incurred any expenditure hence, no disallowance under rule 8D (2)(iii) can be sustained. For the said proposition, we rely following judgments:-

- *“PCIT vs. Sintex Industries Ltd. reported in 403 ITR 418 (Guja) Revenue’s SLP was dismissed [225 Taxman 171 (S.C).*
- *CIT Vs. Suzlon Energy Ltd. reported in 354 ITR 630 (Guj).*
- *CIT Vs. Max India Ltd. reported in 389 ITR 81(P & H).”*

11. For the above said reasons we are of the opinion that, the Lower Authorities have not justified in making disallowance u/s 14A of the Act and thereafter determining the expenses in respect of interest and administrative expenses Rs. 24,37,500/- u/s 14A of

the Act read with Rule 8D. Thus, we find merit in the grounds of Appeal of the assessee, accordingly, the Grounds of Appeal of the assessee are allowed. The Order of the CIT(A) upholding disallowance made u/s 14A amounting to Rs. 24,71,086/- is hereby set aside.

12. In the result, the Appeal filed by the assessee is allowed.

Order pronounced in open Court on 10th July, 2023

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 10/07/2023

Pk/R.N, SR. sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

