

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H': NEW DELHI
BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No.1042/Del/2021
(ASSESSMENT YEAR 2016-17)**

M/s Sudhir Power Limited 507, International Trade Tower, Nehru Place New Delhi-110 019 PAN-AABCS 6697K	Vs.	Dy. CIT Central Circle-4 New Delhi-110 055
(Appellant)		(Respondent)

**ITA No.900/Del/2021
(ASSESSMENT YEAR 2016-17)**

Dy. CIT Central Circle-4 New Delhi-110 055	Vs.	M/s Sudhir Power Limited 507, International Trade Tower, Nehru Place New Delhi-110 019 PAN-AABCS 6697K
(Appellant)		(Respondent)

**ITA No.1041/Del/2021
(ASSESSMENT YEAR 2012-13)**

M/s Sudhir Power Limited 507, International Trade Tower, Nehru Place New Delhi-110 019 PAN-AABCS 6697K	Vs.	Asst. CIT Central Circle-4 New Delhi-110 055
(Appellant)		(Respondent)

ITA No.899/Del/2021
(ASSESSMENT YEAR 2012-13)

Dy. CIT Central Circle-4 New Delhi-110 055	Vs.	M/s Sudhir Power Limited 507, International Trade Tower, Nehru Place New Delhi-110 019 PAN-AABCS 6697K
(Appellant)		(Respondent)

ITA No.1043/Del/2021
(ASSESSMENT YEAR 2017-18)

M/s Sudhir Power Limited 507, International Trade Tower, Nehru Place New Delhi-110 019 PAN-AABCS 6697K	Vs.	Asst. CIT Central Circle-4 New Delhi-110 055
(Appellant)		(Respondent)

ITA No.34/Del/2022
(ASSESSMENT YEAR 2017-18)

Jt. CIT (OSD) Central Circle-4 New Delhi-110 055	Vs.	M/s Sudhir Power Limited 507, International Trade Tower, Nehru Place New Delhi-110 019 PAN-AABCS 6697K
(Appellant)		(Respondent)

Assessee by	Mr. Rajiv Khandelwal, CA & Sh. Karan Kumara, CA
Department by	Sh. Amit Katoch, Sr. DR
Date of Hearing	03/08/2023
Date of Pronouncement	30/08/2023

ORDER

PER M. BALAGANESH, AM:

ITA No.1042/Del/2021 of the Assessee as well as ITA No.900/Del/2021 of the Revenue arises out of the order of the Learned Commissioner of Income Tax (Appeals)-23, Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.CIT(A), Delhi-23/10336/2018-19 dated 25/03/2021 against the order passed by the Income Tax Officer, Central Circle-4, New Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 26/12/2018 for the Assessment Year 2016-17.

2. In ITA No.1041/Del/2021 of the Assessee as well as ITA No.899/Del/2021 of the Revenue arises out of the order of the Learned Commissioner of Income Tax (Appeals)-23, Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.CIT(A), Delhi-23/10184/2019-20 dated 31/03/2021 against the order passed by

the Assistant Commissioner of Income Tax, Central Circle-4, New Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 29/11/2019 for the Assessment Year 2012-13.

3. In ITA No.1043/Del/2021 of the Assessee as well as ITA No.34/Del/2021 of the Revenue arises out of the order of the Learned Commissioner of Income Tax (Appeals)-23, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.CIT(A), Delhi-4/10539/2019-20 dated 14/06/2021 against the order passed by the Assistant Commissioner of Income Tax, Central Circle-4, New Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 12/11/2019 for the Assessment Year 2017-18.

4. At the outset, there is a delay in filing of appeals by the assessee before us by 94 days, 95days and 40 days for AY 2012-13, 2016-17 and 2017-18 respectively. Similarly, there is a delay in filing of appeal by the Revenue before us by 48 days for AY 2012-13 and 2016-17. Since, these appeals by both the sides were filed during Covid-19 pandemic period, in view of the relaxation granted

by the Hon'ble Supreme Court, the appeals preferred by assessee as well as by the Revenue are hereby admitted for adjudication after condoning the delay thereon.

5. As identical issues are involved in all these appeals, hence, they are taken up together and disposed of by this common order for the sake of convenience.

6. Let us take up the appeal for AY 2012-13.

7. The only issue involved for AY 2012-13 in the cross appeals is with regard to disallowance made u/s 14A of the Act.

8. We have heard the rival submissions and perused the materials available on record. During the year consideration, the assessee was engaged in the business of Manufacturing, erecting and commissioning, buying, Selling, re-selling, altering, importing, exporting, improving, assembling, distributing, hiring on hire purchase or otherwise dealing in generators of any kind/description, hydro thermal or diesel electric stations, transformers, HTOCB sub-station and transformer station, switches all description control panels, net work of any kind, batteries, channel electric motors of all types, fuel tanks channel frame and

other allied Engg items. The assessee earned exempt income of Rs.17,36,87,896/- and had made suo moto disallowance of Rs.16,51,056/- u/s 14A of the Act in the return of income. The basis of suo moto disallowance made by the assessee was by considering the salary of employees who look after investments. The fact of the basis of the disallowance made by the assessee being submitted before the Ld. AO is not in dispute before us. The Ld. AO ignored the suo moto disallowance made by the assessee and directly proceeded to apply the computation mechanism provided in Rule 8D(2) of the Income Tax Rules treating it as sacrosanct and adopting it as the only method of computing disallowance. The Ld. AO accordingly made disallowance u/s 14A of the Act by applying the computation mechanism provided under second and third limb of Rule 8D(2) of the Rules.

9. We find that the Ld. CIT(A) in para 6.3.11 of his order had erroneously observed that the Ld. AO had indeed recorded satisfaction as to why the basis of disallowance made by the assessee is incorrect. The Ld. CIT(A) having considered the details of availability of own funds sufficiently available with the assessee still

proceeded to make disallowance of interest under second limb of Rule 8D(2) of the Rules. However, the Ld. CIT(A) while confirming the disallowance under second and third limb of Rule 8D(2) of the Rules, directed the Ld. AO to consider only those investments which had actually yielded exempt income to the assessee. Aggrieved, by this, both assessee as well as Revenue are in appeals before us.

10. On perusal of the provisions of section 14A(2) of the Act r.w.Rule 8D(1) of the Income Tax Rules, we find that it is the bounden duty of the Ld. AO to record objective satisfaction having regard to the books of account of the assessee as to why the voluntary disallowance made by the assessee is incorrect, with cogent reasons. On perusal of the orders of the Ld. AO, this has not been done. Hence, for want of recording of objective satisfaction as to why the suo moto disallowance made by the assessee is incorrect, the disallowance made by the Ld. AO by applying the computation mechanism provided in Rule 8D(2) of the Rules deserves to be deleted in view of the decision of Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. vs. CIT* reported in 402 ITR 640 (SC). Accordingly, the grounds raised by the assessee on

merits are allowed and grounds raised by the Revenue are dismissed.

11. Since, the relief is granted to the assessee on merits, we do not deem it fit to address the legal grounds raised by the assessee challenging the validity of the reopening u/s 147 of the Act and they are left open.

12. In the result, the appeal of the assessee is allowed for AY 2012-13 and appeal of the Revenue is dismissed for AY 2012-13.

Assessment Year 2016-17

13. During the year under consideration, the assessee has earned exempt income of Rs.6,34,31,964/- and had made suo moto disallowance of Rs.9,95,143/- u/s 14A of the Act in the return of income. The assessee had considered the proportionate salary of employees who look after the investments together with certain administrative costs while arriving at the aforesaid suo moto disallowance. The fact of the basis of the disallowance made by the assessee being submitted before the Ld. AO is not in dispute before us. The Ld. AO ignored the suo moto disallowance made by the assessee and directly proceeded to apply the computation mechanism provided in Rule 8D(2) of the Rules treating it as

sacrosanct and adopting it as the only method of computing disallowance. The Ld. AO accordingly made disallowance u/s 14A of the Act after applying the computing mechanism provided in 2nd and 3rd limb of Rule 8D(2) of the Rules. We find that the Ld. CIT(A) in para 5.3.11 of his order had erroneously observed that the Ld. AO had indeed recorded satisfaction as to why the basis of disallowance made by the assessee is incorrect. The Ld. CIT(A) having considered the details of availability of own funds sufficiently available with the assessee still proceeded to make disallowance of interest under second limb of Rule 8D(2) of the Rules. However, the Ld. CIT(A) while confirming the disallowance under second and third limb of Rule 8D of the Rules, directed the Ld. AO to consider only those investments which had actually yielded exempt income to the assessee. Aggrieved, by this, both assessee as well as Revenue are in appeals before us.

14. On perusal of the provisions of section 14A(2) of the Act r.w.Rule 8D(1) of the Income Tax Rules, we find that it is the bounden duty of the Ld. AO to record objective satisfaction having regard to the books of account of the assessee as to why the voluntary disallowance made by the assessee is incorrect, with

cogent reasons. On perusal of the orders of the Ld. AO, this has not been done. Hence, for want of recording of objective satisfaction as to why the suo moto disallowance made by the assessee is incorrect, the disallowance made by the Ld. AO by applying the computation mechanism provided in Rule 8D(2) of the Rules deserves to be deleted in view of the decision of Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. vs. CIT reported in 402 ITR 640 (SC)*. Accordingly, the grounds raised by the assessee are allowed and grounds raised by the Revenue are dismissed.

Assessment Year 2017-18

15. The assessee earned exempt income of Rs.2,83,59,262/- and had made suo moto disallowance of Rs.6,68,594/- u/s 14A of the Act in the return of income. The basis of suo moto disallowance made by the assessee was by considering the salary of employees who look after investments and certain administrative costs. The fact of the basis of the disallowance made by the assessee being submitted before the Ld. AO is not in dispute before us. The Ld. AO ignored the suo moto disallowance made by the assessee and directly proceeded to apply the computation mechanism provided in Rule 8D(2) of the Rules treating it as sacrosanct and adopting it as

the only method of computing disallowance. The Ld. AO accordingly made disallowance u/s 14A of the Act by applying the computation mechanism provided under second and third limb of Rule 8D(2) of the Rules. We find that the Ld. CIT(A) in para 6.2.11 of his order had erroneously observed that the Ld. AO had indeed recorded satisfaction as to why the basis of disallowance made by the assessee is incorrect. The Ld. CIT(A) confirmed the disallowance of expenses made under third limb of Rule 8D(2) of Rules. However, the Ld. CIT(A) directed the Ld. AO to consider only those investments which had actually yielded exempt income to the assessee. Aggrieved, by this, both assessee as well as Revenue are in appeals before us.

16. On perusal of the provisions of section 14A(2) of the Act r.w.Rule 8D(1) of the Income Tax Rules, we find that it is the bounden duty of the Ld. AO to record objective satisfaction having regard to the books of account of the assessee as to why the voluntary disallowance made by the assessee is incorrect, with cogent reasons. On perusal of the orders of the Ld. AO, this has not been done. Hence, for want of recording of objective satisfaction as

to why the suo moto disallowance made by the assessee is incorrect, the disallowance made by the Ld. AO by applying the computation mechanism provided in Rule 8D(2) of the Rules deserves to be deleted in view of the decision of Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. vs. CIT* reported in 402 ITR 640 (SC). Accordingly, the grounds raised by the assessee are allowed and grounds raised by the Revenue are dismissed.

17. In the result, the appeal of the assessee is allowed for AY 2017-18 and appeal of the Revenue is dismissed for AY 2017-18.

18. In the result, the appeals of the assessee are allowed and appeals of the Revenue are dismissed.

19. To sum up, all the appeals of the assessee are allowed and all the appeals of the Revenue are dismissed.

Order pronounced in the open court on 30th August, 2023.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated:30/08/2023
Pk/sps

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI