

**Income Tax Appellate Tribunal
Delhi Bench "A": New Delhi
Before Shri M. BALAGANESH, Accountant Member
and
Shri Anubhav Sharma, Judicial Member**

ITA No. 51/Del/2023
(Assessment Year: 207-18)

BMG Enterprises Ltd, First Floor, DCM Building, 16, Barakhamba Road, New Delhi (Appellant)	Vs. ACIT, Circle-5(1), New Delhi (Respondent)
--	--

PAN: AAACB4657R

Assessee by :	Shri R. K. Kapoor, CA Shri Harish Dhamija, CA
Revenue by:	Shri. Girish Kohli, Sr. DR
Date of Hearing	28/06/2023
Date of pronouncement	11/09/2023

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 51/Del/2023 for AY 2017-8, arise out of the order of the Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre (NFAC) Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. ITBA/NFAC/AC/S/250/2022-23/047565123(1) dated 22.1.2022 against the order of assessment passed u/s 143(3A) and 143(2B) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 07.12.209 by the Assessing Officer, DCIT, Circle-5(1), Delhi (hereinafter referred to as 'ld. AO').

2. The assessee has raised the following grounds of appeal:-

"1. That the assessment order passed by the Learned Assessing Officer ("Ld. AO") dated 07.12.2019 under section ("u/s") 143(3) of the Income Tax Act, 1961 ("Act") and the order passed by the Learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC) (Ld.

CIT(A)”) dated 22.11.2022 u/s 250 of the Act are bad in law and erroneous on the facts & circumstances of the assessee's case.

2. That the Ld. AO and consequently the Ld. CIT(A) have grossly erred in in law and on the facts and circumstances of the appellant's case in determining the total income / (loss) of the assessee at (Rs. 20,54,811/-) against the returned income/ (loss) at (Rs. 30.44.034/-) under normal provisions of the Act by making disallowances u/s 14A of the Act read with rule 8D of the Income Tax Rules amounting to Rs. 9,89,223/- on wholly unjust, illegal, erroneous and untenable grounds.

3. That the Ld. CIT(A) has grossly erred in law in holding that the amendment made u/s 14A read with Rule 8D of the Act by the Finance Act, 2022 are clarificatory in nature and apply for the A.Y. 2017-18 without appreciating various judicial pronouncements including the Hon'ble Jurisdictional Delhi High Court in the case of ERA Infrastructure (India) Ltd. (TS-577-HC-2022(DEL)) have held that the amendment (supra) applies prospectively from the A. Y. 2022-23 and onwards.

4. Without prejudice to the ground no. 3 above, the Ld. AO and consequently the Ld. CIT(A) have grossly erred in law and on the facts and circumstances of the appellant's case in:

a. disregarding the decision of the Hon'ble Jurisdictional Delhi High Court in the case of ACB India Ltd. [(2015) 374 ITR 108 (Delhi)] to consider only investments that earn or generate exempt income and not the total investments of the appellans computing the disallowance u/s 14A of the Act;

b. not limiting the disallowances u/s 14A to the total exempt income earned of Rs. 1,03,155/- (dividend u/s 10(35)) by the assessee following the Hon'ble Jurisdictional Delhi High Court decision in the case of Joint Investments Pvt. Ltd. [(2015) 372 ITR 694 (Delhi)]

5. That each ground is independent of and without prejudice to the other grounds raised herein.”

3. We have heard the rival submission and perused the material available on record. We find that the Assessee had earned dividend income of Rs. 1,03,155/- in respect of investment made in mutual fund. This was claimed as exempt income in the

return of income. The Assessee had suo moto made disallowance of expenditure u/s 14A of the Act in the sum of Rs. 21,476/-. This disallowance was made by the Assessee by considering only those investments which had yielded exempt income to the Assessee. This disallowance was worked out on the basis of amended computation mechanism provided in Rule 8D(2) of the Income Tax Rules, 1962. The Assessee also furnished the basis of suo moto disallowance before the ld AO. The ld. AO ignored the said workings of the Assessee and proceeded to disallow u/s 14A of the Act by adopting the computation mechanism provided in amended Rule 8D(2) of the Rules by considering the entire investments irrespective of the fact that whether it had yielded income or not. The Assessee carried the matter before the ld CIT(A) and the ld CIT(A) upheld the action of the ld AO by stating that the amendment in section 14A brought by the Finance Bill, 2022 has to be construed as retrospective in operation.

4. We find that this issue is no longer *res integra* in view of the decision of the Hon'ble Jurisdictional High Court in the case of PCIT Vs. M/s. Era Infrastructure India Ltd reported in TS-577-HC-2022 wherein, after considering the amendment in Finance Act, 2022 the Hon'ble Delhi High Court held that the said amendment is not retrospective in operation. We find that the computation provided by the Assessee for making suo moto disallowance is also in accordance with the amended Rule 8D workings only. We find that Hon'ble Supreme Court in Maxopp Investment Vs. CIT (2018) 402 ITR 640 (SC) has held that only those investments which had yielded exempt income alone are to be considered for the purpose of computing disallowances u/s 14A of the Act and under Rule 8D(2) of the Rules. Accordingly, we

direct the ld AO to delete the disallowance made u/s 14A of the Act. The grounds raised by the Assessee are allowed.

5. In the result, the appeal of the Assessee is allowed.

Order pronounced in the open court on 11/09/2023.

-Sd/-
(Anubhav Sharma)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 11/09/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi