

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 6526/Del/2019
(Assessment Year : 2014-15)**

Sh. Chowdry Associates 4 th Floor, Punjabi Bhawan, 10, Rouse Avenue, New Delhi PAN : AAACC0387R	Vs.	ACIT, Circle-6(1), New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. M.P.Rastogi, Adv.
Revenue by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of hearing:	13.09.2023
Date of Pronouncement:	14.09.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Assessee against the order dated 24.05.2019 of CIT (A)-33, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') arising out of an appeal before it against the order dated 09.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Circle-6(1), New Delhi (hereinafter referred as the Ld. AO).

2. The assessee company filed return declaring loss which was selected for scrutiny and Ld. AO has made a disallowance u/s 14A r.w.r 8D observing that the assessee has made a disallowance and its computation under clause (iii) of the rule 8D which is for expenses other than direct expenses and interest. AO concluded that the assessee had claimed deduction of Rs. 48,48,136 out of total disallowance of Rs. 66,87,900/- calculated as per clause (iii) Rule 8D without any legal basis.

2.1 Ld. CIT(A) has sustained the addition and the relevant findings in para 7.1 to 7.4 are reproduced below :-

“7.1 Briefly, the facts of the case are that the Assessee earned tax free income amounting to Rs.43.11 Crore during the year under consideration. The Assessee itself disallowed Rs. 11,45,364/- u/s 14A of the IT Act, 1961. In the audit report, the auditor had made the following note -

"The above disallowance does not include proportionate expenses on dividend receipt from Dabur Group Companies, as no interest or direct expenses has been incurred on these investments."

7.2 It has been informed by the Appellant that 81% of the exempt income was received from Dabur India Limited. The Assessing Officer has given the details of disallowance of expenses made by the Assessee u/s 14A of the IT Act. Against the column amount of expenditure directly incurred or indirectly incurred on interest, the amount has been shown at Nil. The Appellant has simply given a figure of Rs. 11,45,364/- against the column disallowance u/s 14A. Total disallowance @ 0.5% of average investments works out to Rs.59,93,500/-. Since 81% dividend was received from Dabur India Limited, the expenditure related to this exempt income has not been disallowed by the Appellant. The Assessing Officer has observed in the Assessment Order that leaving such disallowance outside the computation u/s 14A is without any legal basis. The Assessing Officer also observed that the Assessee has not

disallowed any expenditure incurred towards interest. Half percent disallowance of the average investment is not for direct expenses but for the indirect expenses. Thus it may be seen that the Assessing Officer expressed his dissatisfaction on the quantum of disallowance shown by the Assessee. The Appellant's main contention that the Assessing Officer did not record his satisfaction regarding the quantum of disallowance made by it. The observations of the Assessing Officer in very express words pointed out the above to rebut the contention of the Appellant.

7.3 Before the Assessing Officer, the Appellant has submitted that it is a promoter group company of Dabur India Limited and there was no investment activity in holding the shares of this company. After considering the submission of the Assessee during assessment proceedings, the Assessing Officer held that the decision of the Hon'ble Delhi High Court in the case of CIT vs. Holcim India Pvt. Ltd. cited by the Assessee has no bearing upon the decision of this case as in that case no exempt income was earned. But in the present case, the Assessee has earned dividend income of Rs.35.90 Crores. The Assessing Officer also observed that the Assessee has not declared any administrative expenses with respect to non-current investments. The Assessing Officer recorded his satisfaction, on the above facts, that the disallowance is not computed as per Rule 8D of IT Rules, 1962. She, therefore, disallowed Rs.48,48,136/- in addition to the disallowance made by the Appellant.

7.4 I have gone through the facts of the case and submission of the Appellant. I have also gone through the decisions relied on by the Appellant. It is a settled law that the expenses related to the exempt income are to be disallowed u/s 14A of the IT Act. The method to compute the disallowance has been given under Rule 8D of the IT Rules. The Appellant has failed to explain as to how no expenses were incurred for maintaining the shares of Dabur India Limited from which dividend income was earned. In number of cases, it has been held that indirect expenses are always there to look after the investments, though there may not be bifurcation in the books of account. The Appellant has not satisfied with its computation of disallowance leaving aside the expenses incurred on the shares of Dabur India Limited. Therefore, I hold that the

Assessing Officer was fully justified in computing the disallowance under Rule 8D of the IT Rules, 1962 and enhancing the disallowance to the extent of Rs.48,48,136/-. Accordingly, the grounds of appeal taken by the Appellant are dismissed.”

3. The assessee is in appeal raising following grounds :-

“1. On facts and circumstances of the case and in law, no satisfaction was recorded by the Ld AO before invoking notional rule of disallowance u/s 14A read with rule 8D. Thus, enhanced addition of Rs 48,48,136 is unsustainable under law and deserves to be quashed.

2. On the facts and circumstances of the case and in law, both the learned CIT-A and Ld AO has erred in determining the enhanced disallowances u/s 14A of Rs 48,48,136 without ascertaining why disallowance of Rs 11,45,364 u/s 14A made by the assessee is incorrect.

3. That both CIT(A) and Ld AO has erred in working out enhanced disallowances u/s 14A read with rule 8D of Rs 48,48,136 on incorrect assumption of facts and applying Rule 8D in mechanical manner.

4. The appellant craves leave to alter, amend or withdraw all or any of the Grounds of Appeal herein or add any further grounds as may be considered necessary and to submit such statements, documents and papers as may be considered necessary either before or during the hearing.”

4. Heard and perused the record.

5. Ld. AR re-asserted the submissions which were raised before Ld. CIT(A) and his stress was on the fact that assessee is a holding company and the dividend income earned is from the subsidiary only. Ld. DR however supported the findings of Ld. Tax Authorities below.

6. Appreciating the matter on record it comes up that on behalf of the assessee computation of the similar disallowance was provided which is reproduced by Ld. AO in para 2.2 as follows :-

“2.2 The computation for disallowance u/s 14A of the I.T.Act, 1961 given by the assessee in the Computation of Income is reproduced hereunder :
Calculation of Expenses u/s 14A

(i)	Amount of expenditure directly relating to exempt income	Nil
(ii)	Indirect interest expenses	Nil
(iii)	0.5% of average value of the investments	5993500
	Total disallowance u/s 14A	
	Closing investment is	965954139
	Opening investments	1431445847
	Average investments	1198699993
	Less: Expenses on account of income on which no activity has been done in the previous year	
	Total exempt income	
	Dividend received	358979674
	Long term capital gain & intt.	
	Tax free bonds	<u>72093173</u>
		431072847
	Less: Dividend Recd. From DIL	348694400
	% of DIL dividend in exempted income <u>81%</u>	
	<u>4848136</u>	
	Disallowance u/s 14A	1145364

7. It is now settled proposition of law in regard to application of provisions of section 14A read with Rule 8D of Income-tax what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable.” In **Maxopp**

Investment Ltd. v. Commissioner of Income Tax (2018) 402 ITR 640 (SC)., the Hon’ble Supreme Court vide para 41 held that *“having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo motu disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.”*

8. After thorough examination of the assessment order and order of Id. CIT(A), it can be observed that not a single word is discussed on the basis of the financials or the P & L Account of the assessee company to show how this suo moto disallowance, is not justified. No reason for disagreeing with the suo-motto disallowance is mentioned by the Id. AO. The exempt income is from investments in subsidiary and there is no justification to attribute any direct or indirect expenses by the assessee for maintaining the shares of subsidiary Dabur India Limited on a very general presumption. Grounds are sustained. **The appeal is allowed** and impugned addition is deleted.

Order pronounced in the open court on 14th September, 2023.

Sd/-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

Date:- 14 .09.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

3. CIT
4. CIT(Appeals)
5. DR: ITAT

AR, ITAT
New Delhi