

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "H": NEW DELHI**

**BEFORE  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 2188/Del/2022  
Asstt. Year 2017-18

M/s. B4S Solution P. Ltd. Ch. No. 206-207, Ansal Satyam RDC, Raj Nagar, Ghaziabad Uttar Pradesh 201002. PAN AABCB4705D	Vs.	ACIT, Circle-4(2) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Ankit Kumar, Advocate
Department by:	Shri Amit Katoch, Sr. DR
Date of Hearing:	13.09.2023
Date of pronouncement:	13.09.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 19.07.2022 of the Ld. Commissioner of Income Tax (Appeals)-26, New Delhi (**"CIT(A)"**) pertaining to Assessment Year (**"AY"**) 2017-18.

2. The assessee has raised the following grounds:-

- “1. That, the order of learned lower authority is bad in law and against the facts and circumstances of the case and hence is unsustainable.
2. That, learned CIT (A) grossly erred in sustaining disallowance of Rs. 30,65,239/- made by Id. AO by wrongly invoking provisions of S.14A/Rule 8D in whole disregard to the fact that with identical facts revenue itself has accepted the plea of assessee and

*provisions of section 14A not invoked in subsequent years, thereby disallowance is against the basic tenets of law.*

3. *That, learned CIT (A) erred in sustaining aforesaid disallowance without appreciating the facts on record as neither assessee incurred any expenditure to earn exempt income nor there is any such possibility to incur such expenditure where dividend is automatically credited in a day by e-trf. by subsidiary company on earlier investments.*
4. *That, learned CIT (A) manifestly erred in sustaining aforesaid disallowance without appreciating the fact that, neither AO examined books of accounts nor recorded satisfaction in terms of section 14A/rule 8D except making a general but contradictory observation, thereby disallowance is beyond the provisions of Act and settled law on issue.”*

3. Briefly stated, the assessee company is engaged in the business of security services, labour contract work and operation/maintenance work of telecommunication towers. For AY 2017-18, it filed its return on 01.11.2017 declaring income of Rs. 9,97,72,810/-. The case was selected for scrutiny through CASS. In response to statutory notice(s) reply/details have been filed through system which the Ld. Assessing Officer (**“AO”**) examined. The Ld. AO found that the assessee earned dividend of Rs. 74,08,555/- which it claimed exempt under section 10(34) of the Income Tax Act, 1961 (**“the Act”**). However, the assessee did not make any disallowance suo moto under section 14A of the Act on the investments made in equity shares. The Ld. AO disallowed Rs. 30,65,239/- being 1% of average monthly investments during the period April, 2016 to March, 2017 under section 14A r.w. Rule 8D of Income Tax Rules, 1962 (**“the Rules”**) and added it to the income of the assessee. Accordingly, he completed the assessment under section 143(3) of the Act on total income of Rs. 10,28,38,000/- on 22.12.2019.

4. The assessee filed appeal before the Ld. CIT(A). During appellate proceedings, the assessee made a lengthy written submission which has been reproduced by the Ld. CIT(A) in para 3 at pages 2-8 of the appellate order. The Ld. CIT(A) recorded the following observations and findings on the submissions of the assessee in para 4.1:-

*“4.1 I have carefully considered the facts of the case and submissions of the appellant. During the assessment proceedings it was observed that assessee has earned exempt dividend income of Rs. 74,08,555/- during the year FY 2016-17. It was observed that total long term investment as on 01.04.2016 was Rs. 31,22,45,231/- and as on 31.03.2017 were 29,92,98,590/-. The assessee has not disallowed any expenses w.r.t. expenses incurred on earning exempt income. The Assessing Officer has observed that the assessee has made investment in equity shares and earned exempt dividend Income as well. The Assessing Officer being not satisfied with the submissions of the assessee has invoked provisions of Section 14A of the Income Tax Act, 1961. The assessee has not incurred any interest expenditure. No direct expenditure has been claimed by the assessee. Accordingly, invoking provisions of Section 14A of the Income-Tax Act, 1961 read with Rule 8D, the Assessing Officer made disallowance of Rs. 30,65,239/- being 1% of average investment. During the appeal proceedings, the assessee has emphasized that there are no borrowings and no direct expenditure has been incurred by the assessee. In this regard, it is observed that the Assessing Officer has not made any disallowance on account of direct expenditure or on account of interest expenditure.*

However, the Ld. CIT(A) confirmed the disallowance equal to 1% of annual average value of investment under Rule 8D(2)(iii) of the Rules.

5. Dissatisfied, the assessee is in appeal before the Tribunal and all the four grounds relate thereto.

6. The Ld. AR submitted that the Ld. CIT(A) is not correct in sustaining the impugned disallowance under section 14A r.w. Rule 8D of the Rules as he did not appreciate that the assessee neither incurred any expenditure to earn exempt income nor there is any possibility to incur such expenditure. The assessee has received dividend from its subsidiary on investment made in earlier year i.e. AY 2016-17. Dividend comes automatically for which there is no involvement of staff / management as it is credited by e-transfer. Moreover, the assessee made the said investment out of its own non-interest bearing funds and not out of any borrowed capital. The Ld. AR further submitted that in its case in subsequent years provisions of section 14A have not been invoked. In the absence of incurring any direct/indirect

expenditure against the exempt income, disallowance under section 14A is against the law being wholly arbitrary, he argued.

7. The Ld. DR relied on the order of Ld. AO/CIT(A).

8. We have considered the submission of the parties and perused the records. It is not in dispute that the assessee did not make any disallowance suo-moto under section 14A as it earned the exempt dividend income from its investment made in the immediately preceding year in its subsidiary company out of its own non-interest bearing funds without incurring any direct/indirect expenditure. These contentions were raised before the Ld. AO as also Ld. CIT(A). None of them contradicted these contentions by bringing on record any material. There has to be a proximate cause for disallowance which is its relationship with tax exempt income. In the absence thereof, the provision of section 14A of the Act is inapplicable as held by the Hon'ble Supreme Court in CIT vs. Walfort Share & Stock Broker (P) Ltd. (2010) 192 Taxman 211(SC).

9. Having recorded the finding that the assessee has not incurred any interest expenditure; no direct or indirect expenditure has been claimed by the assessee towards earning of exempt dividend income, in our opinion, the Ld. CIT(A) was not justified in sustaining the impugned disallowance being 1% of average investment by applying Rule 8D(2)(iii). We, therefore, direct the Ld. AO to delete the impugned disallowance.

10. In the result, appeal of the assessee is allowed.

**Order pronounced in the open court on 13<sup>th</sup> September, 2023.**

**sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Dated: 13/09/2023

**sd/-**  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

**Veena**

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

ASSISTANT REGISTRAR  
ITAT, New Delhi

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Date on which the fair order is placed before the Dictating Member for pronouncement	
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