

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

**BEFORE  
DR. BRR KUMAR, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 747/Del/2023  
Asstt. Year: 2016-17

DLF Utilities Limited, 9 <sup>th</sup> Floor, DLF Centre, Sansad Marg, New Delhi – 110 001 PAN AAACN3199A (Appellant)	Vs.	DCIT-7(1) New Delhi.  (Respondent)
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Assessee by:	Shri R.S. Singhvi, Advocate
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	30.08.2023
Date of pronouncement:	31.10.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 06.02.2023 of the Ld. Commissioner of Income Tax (Appeals) NFAC, Delhi ("**CIT(A)**") pertaining to Assessment year ("**AY**") 2016-17.

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

- "1(i) *That on the facts and in the circumstances of the case, the learned CIT(A), NFAC (National Faceless Appeal Centre Delhi) has erred in confirming the disallowance of expenses Rs.41,17,215/- u/s 14A read with rule 8D without considering or giving effect to the suo-moto disallowance Rs.6,14,286/- made by the appellant in the ITR.*
- (ii) *That the assessing officer having failed to record mandatory dissatisfaction in terms of section 14A(2) with regard to suo-motu*

*disallowance of Rs.6,14,286/- u/s 14A read with Rule 8D made by the appellant company, the Ld. CIT(A) is not justified in upholding the disallowance made in the assessment order.*

- (iii) *That there being no nexus between interest bearing funds and investment appearing in the Balance Sheet, there is no basis or justification for attributing any indirect interest expense under Rule 8D of the Income tax Rules, 1962.*
2. *That in absence of earning of tax free (exempt) income during the year under consideration, the provision section 14A read with Rule 8D is not applicable and as such the confirmation of disallowance by CIT(A) is misconceived and contrary to settle legal principle.*
3. *That the upholding of disallowance Rs.41,17,215/- u/s 14A read with Rule 8D is not sustainable on facts and same is bad in law.”*

3. Brief facts are that the assessee company is engaged in the business of generation of power through gas, turbines and gas engines, running of multiplex theatres, providing facility management services and real estate development. It e-filed its return for AY 2016-17 on 30.11.2016 declaring loss of Rs. 1,23,84,02,885/-.The case was selected for complete scrutiny under CASS. Statutory notice(s) were issued and duly served upon the assessee. In response, assessee filed requisite details and produced books of account, bills and vouchers etc. which were examined on text check basis.

3.1 During assessment proceedings the Ld. Assessing Officer (**“AO”**) found that the assessee had invested Rs. 5,72,00,000/- in equity shares but had not earned any exempt income during the year. However, it disallowed Rs. 6,14,286/- under section 14A of the Income Tax Act, 1961 (**the “Act”**) suo moto.

3.2 The Ld. AO was of the view that some more expenditure has to be necessarily incurred for carrying out the activity of investment and to earn exempt income. He therefore recorded his dissatisfaction with the correctness of the assessee’s claim and show caused the assessee why disallowance under section 14A of the Act r.w. Rule 8D be not made. The assessee submitted its reply before the Ld. AO, the gist of which is-

- (i) The assessee has not earned any exempt income during the year and on its own disallowed Rs. 6,14,286/-, amount equivalent to salary of an official looking after the activity of investment etc.
- (ii) The assessee had made investments in the subsidiary companies/Group Associates in earlier years without any intent to earn any dividend income but to have control inter-se over the affairs amongst each other.
- (iii) The assessee company's investment in equity shares is basically with intent to acquire business. The investment in the subsidiary companies/Group Associates in turn had been utilised by the said concerns in their business activities and revenue generated therefrom has been subjected to tax under the head "Business Income".
- (iv) Expenditure on acquiring shares out of "commercial expediency" and to earn taxable income cannot be disallowed as held by the Hon'ble Delhi High Court in CIT vs. Oriental Structural Engineers Pvt. Ltd.

3.3 The explanation was not acceptable to Ld. AO. He calculated the disallowance of Rs. 41,17,215/- under section 14A r.w. Rule 8D and completed the assessment accordingly on 31.12.2018 under section 143(3) of the Act.

4. The appeal of the assessee before the Ld. CIT(A) was unsuccessful as he declined to interfere with the order of the Ld. AO. This has brought the assessee before the Tribunal and all the grounds relate thereto.

5. The Ld. AR submitted that the Ld. AO did not record mandatory dissatisfaction in terms of section 14A(2) with regard to suo moto disallowance of Rs. 6,14,286/- made by the assessee under section 14A r.w. Rule 8D. Even the suo-moto disallowance made by the assessee has not been given effect to in making the impugned disallowance. The Ld. AR further submitted that in the absence of nexus between interest bearing

funds and investment appearing in the balance sheet, there is no justification for attributing any indirect interest expense under Rule 8D of Income Tax Rules, 1962. According to Ld. AR no tax free (exempt) income has been earned during the year, hence provisions of section 14A r.w. Rule 8D cannot be applied. He urged that confirmation of impugned disallowance by the Ld. CIT(A) is not sustainable.

6. The Ld. Sr. DR supported the order of the Ld. AO/CIT(A).

7. We have carefully considered the submission of the parties and perused the record. It is not in dispute that during the year the assessee did not earn any exempt income. It is also not in dispute that the assessee on its own disallowed an amount of Rs. 6,14,286/- under section 14A of the Act. Sub. Section (2) of section 14A ordains that the Ld. AO, having regard to the accounts of the assessee, has to record reasons why he is not satisfied with the correctness of the expenditure disallowed by the assessee suo moto. In para 1.1 of his order at page 2 the Ld. AO says only that for carrying out the activity of investment and to earn exempt income, some more expenditure than what the assessee itself disallowed has to be necessarily incurred. This is only a surmise and guess not based on any cogent reason whereas the assessee explained that the suo-moto disallowance made by it is equivalent to salary of an official looking after the activity of investment etc. A bald satisfaction of the Ld. AO is not envisaged under section 14A(2) of the Act. He has to record his satisfaction over the assessee's claim 'having regard to the accounts of the assessee' which has not been done. In such a case disallowance made by the Ld. AO is not sustainable as held by the Hon'ble Delhi High Court in Pr. CIT vs. Keshav Power Ltd. (2019) 112 taxmann.com 323 (Del) and Hon'ble Bombay High Court in Pr. CIT vs. Reliance Capital asset Management Ltd. (2017) 251 Taxman 68 (Bom). It may be stated that Revenue's SLP filed before Hon'ble Supreme Court against the orders (supra) of the Hon'ble Delhi and Bombay High Court's stand dismissed as reported in (2020) 268 Taxman 331(SC) and (2018) 259 Taxman 83 (SC) respectively. Moreover, the contentions

raised by the assessee before the Ld. AO could not be countered by the Ld. AO as also by the Ld. CIT(A). We, therefore hold that disallowance of Rs. 41,17,215/- made by the Ld. AO under section 14A r.w. Rule 8D and confirmed by the Ld. CIT(A) is not justified. The appeal of the assessee is decided in its favour.

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

**Order pronounced in the open court on 31<sup>st</sup> October, 2023.**

**sd/-**

**(DR. BRR KUMAR)  
ACCOUNTANT MEMBER**

**sd/-**

**(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 31/10/2023

**Veena**

Copy forwarded to -

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 approved draft comes to the Sr. PS/PS	
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