INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G ": NEW DELHI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No. 1629/Del/2012
(Assessment Year: 2008-09)

M/s. The Hindustan Times Ltd, 18-20, KG Marg, New Delhi	Vs.	DCIT, Circle-16(1), New Delhi
(Appellant)		(Respondent)
PAN:AAACT4962F		

ITA No. 6512/Del/2013
(Assessment Year: 2009-10)

M/s. The Hindustan Times Ltd, 18-20, KG Marg, New Delhi	Vs.	DCIT, Circle-16(1), New Delhi
(Appellant)		(Respondent)
PAN:AAACT4962F		

ITA No. 1226 & 1227/Del/2015
(Assessment Year: 2010-11)

M/s. The Hindustan Times Ltd, 18-20, KG Marg, New Delhi	Vs.	ACIT, Circle-16(1), New Delhi
(Appellant)		(Respondent)
PAN:AAACT4962F		

Assessee by :	Shri Rohit Jain, Adv Shri Deepesh Jain, CA Shri Shaurya Jain, CA
Revenue by:	Shri Anuj Garg, Sr. DR
Date of Hearing	04/12/2023
Date of pronouncement	31/01/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA Nos. 1629/Del/2012, 1226, 1227 and 6512/Del/2013 for AY 2008-09, 2009-10 and 2010-11 arises out of the order of the

Commissioner of Income Tax (Appeals)-XIX, New Delhi dated 20.1.2012, CIT(A)-9, New Delhi dated 05.12.2014 CIT-19, New Delhi dated 30.08.2013 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2010 by the Assessing Officer, DCIT, Central Circle-16(1), New Delhi (hereinafter referred to as 'ld. AO').

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

ITA No. 1629/Del/2012 – Asst Year 2008-09

3. The assessee has raised the following grounds of appeal before us:-

"1. That the CIT(A) erred on facts and in law in confirming the disallowance of Rs. 1,54,06,773/- made by the assessing officer under section 14A of the Income tax Act, 1961 ('the Act') read with Rule 8D of the Income Tax Rules, 1962 ('the Rules').

1.1 That the CIT(A) erred on facts and in law in confirming the action of the assessing officer in applying provisions of Rule 8D in a routine manner, and in absence of any finding/satisfaction as to why the disallowance under section 14A of the Act made by the appellant in the return of income, was not correct.

2. That the CIT(A) erred on facts and in law in confirming the action of the assessing officer in adding back the aforesaid amount while computing 'book profit' under section 115JB of the Act.

2.1 That the CIT(A) erred on facts and in law in not appreciating that the provisions of section 14A and Rule 8D of the Rules are not applicable to section 115JB of the Act.

2.2 That the assessing officer erred on facts and in law in not appreciating that establishing co-relation between the earning of dividend income and the expenses incurred is a precondition for making addition in terms of clause (f) of Explanation 1 to section 115JB of the Act and that such correlation has not been established on facts of the appellant's case.

3. That the CIT(A) erred on facts and in law in confirming the action of the assessing officer in disallowing the amount of Rs. 3,07,465/-, being depreciation claimed on paintings put up in the office premises.

4. That the CIT(A) erred on facts and in law in confirming the action of the assessing officer in disallowing the amount of Rs. 13,00,000/-, being amount written off on account of currency burnt in fire."

4. The assessee had raised the following additional grounds of appeal before us:-

"1.2. That on the facts and circumstances of the case and in law, while computing disallowance under section 14A of the Act read with Rule 8D(2)(iii) of the Rules, the investment which did not yield exempt income during the relevant year and strategic investment ought to be excluded while computing the average value of investment in terms of the aforesaid clause.

3.1. That on the facts and circumstances of the case and in law, expenditure of Rs 61,49,308 incurred on acquisition of paintings is allowable revenue deduction.

5. We find that the aforesaid additional grounds raised before us are purely legal in nature and go to the root of the matter not requiring any verification of facts. Hence the same are hereby admitted and taken up for adjudication along with the original grounds of appeal.

6. The Ground Nos. 1 , 1.1.and Additional Ground No. 1.2. raised by the assessee are challenging the disallowance made u/s 14A of the Act while computing income under normal provisions of the Act.

6.1. We have heard the rival submissions and perused the materials available on record. The assessee is a public limited company engaged in the business of real estate, provision of various facilities / services to tenants etc. The revised return of income was filed by the assessee declaring total income of Rs Nil after adjustment of brought forward losses under normal provisions of the Act and book profits of Rs 18,19,41,260/- u/s 115JB of the Act. During the year under consideration, the assessee received exempt income in the form of dividend amounting to Rs 13,15,40,042/-. The assessee stated that 97.2% of the dividend income was received from old strategic long term investments as under:-

Particulars	Dividend	Investment	Remarks
HT Media Limited	4.82,95.581	195,04,13,000	These investments were acquired way back in financial year 2003-04 and 2004-05- No fresh investment
Chambal Fertilizers & Chemicals	7,95,80,956	73,90,46,000	Major investment of Rs.72.59 cr. in earlier years upto assessment year 2006-07.
Total (above investments) B	**12,78,67,537**	**268,94,59,000**	**97.2% of total dividend income**
Other Dividend	36,72,505		
Total	**13,15,40,042**		

6.2. The assessee made suo moto disallowance of Rs 2,00,000/- towards expenses u/s 14A of the Act in the return of income on the ground that dividends stood automatically credited in the bank account through Electronic Clearing Service (ECS) and that only one Executive's salary (DGM Accounts) at 10% is considered for the purpose of investment activity on the basis of time spent by him and investment decisions are taken by one Director (Shri Priyavrat Bhartia) to whom no remuneration is paid by the assessee company. The assessee submitted that from Asst Years 2002-03 onwards, the ld. AO had accepted the disallowance of expenses at Rs 1,00,000/- or Rs 2,00,000/- as the case may be. The ld. AO without recording any satisfaction as to how the suo moto disallowance made by the assessee is incorrect having regard to the books of accounts of the assessee, directly proceeded to disallow the expenses u/s 14A of the Act read with Rule 8D(2)(iii) of the Income Tax Rules a sum of Rs 1,54,06,773/- after reducing the suo moto disallowance of Rs 2 lakhs made by the assessee. This action of the ld. AO was upheld by the ld. CIT(A).

6.3. At the outset, we find that the ld. AO had rejected the basis of disallowance u/s 14A of the Act submitted by the assessee vide letter dated 17.11.2010 without recording any satisfaction thereon as to why the said basis is incorrect. The assessee had explained that it had taken DGM Accounts salary at 10% as attributable to investment activity and the Director who is

incharge of taking investment decisions was not paid any remuneration. Further the assessee had the history in its favour wherein in earlier years, the disallowance at Rs 2,00,000/- alone was made by the ld. AO u/s 14A of the Act. Hence the assessee had a proper basis for its suo moto disallowance. The ld. AO did not even bother to discuss about this aspect in the order. The year under consideration i.e. Asst Year 2008-09 is the first year in which the provisions of Rule 8D of the Income Tax Rules were introduced in the statute. However, the same cannot be applied automatically. As per the provisions of section 14A(2) of the Act read with Rule 8D(1) of the Rules, the ld. AO is duty bound to first record satisfaction in an objective manner having regard to the accounts of the assessee as to why the suo moto disallowance made by the assessee u/s 14A of the Act is incorrect, before resorting to computation mechanism provided in Rule 8D(2) of the Rules. Reliance in this regard has been rightly placed on the decision of Hon'ble Jurisdictional High Court in the case of H T Media Ltd vs PCIT reported in 399 ITR 576 (Del) wherein it was held as under:-

> ***30.*** *Rule 8D(1) states more or less what Section 14 A (2) of the Act states. It requires the AO to first examine the accounts of the Assessee and then record that he is not satisfied with (a) the correctness of the Assessee's claim of expenditure or (b) the claim made by the assessee that no expenditure has been incurred. Unless this stage is crossed i.e. the stage of the AO recording that he is not satisfied with the clam of the Assessee in the manner indicated i.e. after examining the Assessee's accounts, the question of applying the formula under Rule 8D (2) does not arise. That this is a mandatory pre-requisite for applying Rule 8D (2) is fairly well-settled.*
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> *…….*
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> ***34.*** *The Assessee had explained that Rs. 3 lakhs was being disallowed voluntarily as an "expenditure which could be attributable for earning the said income." The Assessee explained that the disallowance had been determined on the basis of cost of finance department in the ratio of exempt income to total turnover. On that basis the disallowance in AY 2005-06 was upheld by CIT (A) at Rs. 1 lakh. The disallowance for this AY was worked out as Rs. 1,42,404/- and since the Assessee had already made a disallowance of Rs. 3 Lacs, no further disallowance was called for.*

> ***35.*** *In order to disallow this expense the AO had to first record, on examining the accounts, that he was not satisfied with the correctness of the Assessee's claim of Rs. 3 lakhs being the administrative expenses. This was mandatorily necessitated by Section 14 A (2) of the Act read with Rule 8D (1) (a) of the Rules.*
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> ***36.*** *In para 3.2 of the assessment order, the AO records that, in answer to the query posed by the AO requiring it to produce calculation for disallowances, the Assessee "submitted that they have not incurred any expenditure for earning the dividend income." Thereafter, in para 3.3, the AO records "I have considered the submissions of the Assessee and found not to be acceptable." Thereafter, the AO proceeded to deal with the said provisions of Section 14A and Rule 8D and observed, in para 3.3.1, that making of investment, maintaining or continuing investment and time of exit from investment are well informed and well coordinated management decisions that, in relation to earning of income, are embedded in indirect expenses. It is then stated in para 3.4 that, in view of the above, the provisions of sub-section (2) of Section 14A and Rule 8D of the Rules are in operation and therefore, will strictly be adhered to by the Assessee. In para 3.6 of the assessment order, after discussing Section 14A(1) read with Rule 8D and referring to the decision of the Bombay High Court in Godrej and Boyce Mfg. Co. Ltd. (supra), the AO simply stated that "in view of the facts and circumstances and legal position on the issue as discussed above, I am satisfied that the Assessee had incurred expenses to manage its investments which may yield exempt income, and Assessee grossly failed to calculate such expenses in a reasonable manner to ascertain to ascertain the true and correct picture of its income and expenses."*
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> ***37.*** *In the considered view of this Court, the above observations of the AO in the assessment order are of a broad general nature not with particular reference to the facts of the case on hand.*

6.4. Further the argument of the ld. AR that 97.2% of dividend income had been received by the assessee from strategic investments and the same need to be eliminated is misconceived 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). To this extent, the argument advanced by the ld.AR is dismissed.

6.5. We further find lot of force in the alternative argument advanced by the ld. AR that only those investments which had yielded exempt income is to be considered while working out the computation mechanism provided in Rule 8D(2) of the Rules. This view of ours is further fortified by the decision of

Hon'ble Jurisdictional High Court in the case of ACB India Ltd vs ACIT reported in 374 ITR 108 (Del) and PCIT vs Caraf Builders & Constructions P Ltd reported in 414 ITR 122 (Del).

6.6. In view of the aforesaid observations, we hold that the ld. AO had not recorded any objective satisfaction having regard to the accounts of the assessee as to why the suo moto disallowance made by the assessee is incorrect. Respectfully following the decision of Hon'ble Jurisdictional High Court in the case of H T Media Ltd referred supra, we hold that the disallowance u/s 14A of the Act should be restricted only to Rs 2,00,000/- for the year under consideration. Accordingly, the Original Ground Nos. 1 & 1.1. and Additional Ground No. 1.2.are disposed of in the abovementioned terms.

7. The Ground Nos. 2 to 2.2. raised by the assessee are challenging the disallowance made u/s 14A of the Act while computing the book profits u/s 115JB of the Act.

7.1. We have heard the rival submissions and perused the materials available on record. The ld. AO proceeded to disallow the expenditure u/s 14A of the Act in the sum of Rs 1,54,06,773/- while computing the income u/s 115JB of the Act by applying the computation mechanism provided in Rule 8D(2) of the Rules. The law is now very well settled by the decision of Special Bench of Delhi Tribunal in the case of ACIT vs Vireet Investments P Ltd reported in 165 ITD 27 (Del) (SB) wherein it was held that the computation mechanism provided in Rule 8D(2) of the Rules cannot be imputed in clause (f) of Explanation 1 to section 115JB(2) of the Act. However, the actual expenditure needs to be disallowed as per clause (f) of Explanation 1 to Section 115JB(2) of the Act. Hence we direct the ld. AO to disallow only a sum of Rs 2,00,000/-, being the actual expenditure suo moto disallowed by the assessee under normal provisions of the Act, to be considered for the purpose

of computing book profits u/s 115JB of the Act. Accordingly, the Ground Nos. 2 to 2.2. raised by the assessee are partly allowed.

8. The Ground No. 3 and Additional Ground No. 3.1. raised by the assessee are challenging the allowability of expenditure incurred on Paintings.

8.1. We have heard the rival submissions and perused the materials available on record. The assessee during the year incurred expenditure of Rs 61,49,308/- towards paintings, which were meant for display in the office of the assessee. The said paintings were capitalized as furniture and fixtures in the fixed assets schedule and depreciation @ 10% was claimed by the assessee depending upon the date on which they were put to use in accordance with provisions of section 32 of the Act. The ld.AO disallow the depreciation claimed by the assessee on the ground that the paintings were 'personal effects' and not ' capital assets'. The ld. CIT(A) held that though the paintings are used in the business premises of the assessee, depreciation thereon is not allowable as the same constitutes 'personal effects' and the value of paintings increases with the passage of time rather than diminishing. The assessee had challenged the disallowance of depreciation before us and had also raised an additional ground alternatively that the said cost of paintings which is being used in the business premises of the assessee would be eligible for deduction as revenue expenditure.

8.2. We find that the assessee rents out office / commercial space and provides facility management services to its tenants. During the year under consideration, the assessee had earned service income of Rs 6.81 crores. It was submitted that the paintings / works of art constitute part of interior decoration to improve aesthetics of the reception and common area of the buildings, which are regularly visited by its clients and from the assessee is deriving income. The assessee buys customized paintings which are regularly replaced after few years with other contemporary paintings, shuffles the

location of the paintings, puts them in new locations in the common areas etc, in order to provide world class interiors to its clients, both existing and prospective, with a view to obtain more prestigious clients and consequently increase revenues through new clients. The paintings acquired have short life in so far as the assessee is concerned and the same perform as a functional role in the business of the assessee. It was submitted that the paintings also include a few specific to the business operations of the assessee, depicting the history of "The Hindustan Times" which is specific to the business of the assessee having no re-saleable value. Owing to the nature of business, the assessee keeps on refurbishing the common areas frequently to attract the foreign visitors, employees of the multinational companies, which, in turn, attracts more clients and also gets higher return from the maintenance income as compared to the other buildings located in the same area. We are completely convinced with the aforesaid submissions of the assessee and hold that the cost of paintings are meant for aesthetic purpose and for having better environment and accordingly to be construed as expenditure wholly and exclusively incurred for the purpose of business of the assessee herein. Our view is further fortified by the decision of Hon'ble Karnataka High Court in the case of CIT vs Wipro Ltd reported in 360 ITR 408 (Kar) which is directly on the impugned issue in favour of the assessee. Hence we have no hesitation in allowing the cost of paintings as a revenue expenditure. Accordingly, the Additional Ground raised by the assessee in this regard is allowed. Consequentially the depreciation claimed by the assessee on the paintings during the year under consideration and in the subsequent years are to be disallowed. The Ground No.3 raised by the assessee is dismissed and Additional Ground No. 3.1. raised by the assessee is allowed.

9. The Ground No. 4 raised by the assessee is challenging the disallowance of amount of Rs 13,00,000/- on account of currency burnt in fire.

9.1. We have heard the rival submissions and perused the materials available on record. The assessee submitted that during the year under consideration, the assessee received a sum of Rs 13,00,000/- as advance towards sale of scrap, which was lying in its stores on the ground floor. A major fire broke out in the store where such scrap and cash were kept by the assessee, resulting in damage to the scrap and currency kept in the said premises. While the entire amount was burnt in fire, the scrap dealer i.e M/s IS Trading Company) claimed the aforesaid amount given as advance to the assessee and even filed suit in the court for recovery of the amount. Due to loss of the amount on account of fire and the corresponding claim by the scrap dealer, the amount was written off as business loss by the assessee in the books of accounts and claimed as deduction in the return. The ld. AO disallowed the claim on the ground that the assessee had not filed supporting evidences in relation to the aforesaid claim. The ld. AO also held that no income was offered by the assessee in terms of section 36(2) of the Act with regard to the said currency burnt in fire and hence the same when written off would not be eligible for deduction u/s 36(1)(vii) of the Act. Before the ld. CIT(A), the assessee submitted the report of the Delhi Fire Service and Board resolution authorizing the write off of the said loss of cash burnt in fire. This action of the ld. AO was upheld by the ld. CIT(A).

9.2. At the outset , the contentions of the revenue that no income was offered in terms of section 36(2) of the Act with regard to currency burnt in fire, is totally misconceived as apparently no income at all could be offered thereon. The entire issue being looked into from the perspective of provisions of section 36(1)(vii) of the Act by the revenue , per se, is not correct in the instant case. What is to be seen is whether the currency belonging to the assessee's business was actually burnt in fire and whether there was loss to the assessee in that regard. If it is so, it becomes a trading loss for the assessee allowable as deduction u/s 28 of the Act. However, the lower authorities had observed

that no supporting evidences has been placed on record by the assessee with regard to this issue in dispute. Before us, the assessee had filed additional evidences under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963 in the form of record of cross-examinations during the civil suit proceedings initiated against the assessee by the scrap dealer in C.S. (OS) No. 904/2007 and also evidencing the fact that the scrap dealer had given advance of Rs 13,00,000/- for removal of scrap. These additional evidences containing the records relating to civil suit filed by the scrap dealer seeking compensation for loss suffered by him due to fire at assessee's premises including record of cross examination held in the suit proceedings, were admittedly not placed before the lower authorities. As these evidences are very crucial for adjudication of the issue in dispute before us, we are inclined to admit those additional evidences and deem it fit and appropriate to restore this issue to the file of ld. AO for denovo adjudication in the light of these additional evidences. The ld. AR also submitted that the advance received from scrap dealer which was remaining on the liability side was written back to income by the assessee in Asst Year 2019-20 and offered to tax thereon. The ld. AO is also directed to verify this fact from the ITR of Asst Year 2019-20. If on verification of the evidences, the ld. AO is convinced that the said sum of Rs 13,00,000/- was indeed advance received from the scrap dealer and the same was burnt in fire, then the loss on account of currency burnt in fire which was written off would be allowable as a trading loss u/s 28 of the Act. In that scenario, the ld. AO need not disturb the income returned by the assessee for Asst Year 2019-20. If the ld. AO continues to disallow the loss on account of currency burnt in fire in the year under consideration, then correspondingly the amount written back to income in Asst Year 2019-20 should not be brought to tax and ld. AO would have to give effect in Asst Year 2019-20 accordingly, in order to avoid double taxation. With these directions, the Ground No. 4 raised by the assessee is allowed for statistical purposes.

10. In the result, the appeal of the assessee in ITA No. 1629/Del/2012 for Asst Year 2008-09 is partly allowed for statistical purposes.

ITA No. 6512/Del/2013 – Asst Year 2009-10

11. The assessee had raised the following additional grounds of appeal before us:-

> *1.5. That on the facts and circumstances of the case and in law, while computing disallowance under section 14A of the Act read with Rule 8D(2)(iii) of the Rules, the investment which did not yield exempt income during the relevant year and strategic investment ought to be excluded while computing the average value of investment in terms of the aforesaid clause.*
>
> *1.6. That the assessing officer erred on facts and in law in wrongly computing disallowance as per Rule 8D of the Rules by considering average value of total assets after reducing current liabilities and provisions.*
>
> *2.2. That on the facts and circumstances of the case and in law, expenditure of Rs 69,02,930 incurred on acquisition of paintings is allowable revenue deduction.*

11.1. We find that the aforesaid additional grounds raised before us are purely legal in nature and go to the root of the matter not requiring any verification of facts. Hence the same are hereby admitted and taken up for adjudication along with the original grounds of appeal.

12. The Ground Nos. 2 & 2.1. of original grounds and Additional Ground 2.2. raised by the assessee for the Asst Year 2009-10 are identical to Original Ground No. 3 and Additional Ground No.3.1. raised for the Asst Year 2008-09. Hence the decision rendered by us hereinabove for the Asst Year 2008-09 shall apply mutatis mutandis for Asst Year 2009-10 also. Accordingly, the Additional Ground No. 2.2. raised by the assessee is hereby allowed and Original Ground Nos. 2 & 2.1. raised are dismissed.

13. The Ground Nos. 1 to 1.4. and Additional Ground Nos. 1.5. & 1.6. raised by the assessee are challenging the disallowance made u/s 14A of the Act while computing income under normal provisions of the Act.

13.1. We have heard the rival submissions and perused the materials available on record. During the year under consideration, the assessee received exempt income in the form of dividend amounting to Rs 19,80,40,129/-. The assessee stated that 97.2% of the dividend income was received from old strategic long term investments as under:-

Particulars	Dividend	Investment	Remarks
HT Media Limited	4.82,95.581	195,04,13,000	These investments were acquired way back in financial year 2003-04 and 2004-05- No fresh investment
Chambal Fertilizers & Chemicals	7,95,80,956	73,90,46,000	Major investment of Rs.72.59 cr. in earlier years upto assessment year 2006-07.
Total (above investments) B	**12,78,67,537**	**268,94,59,000**	**97.2% of total dividend income**
Other Dividend	36,72,505		
Total	**13,15,40,042**		

13.2. The assessee made suo moto disallowance of Rs 2,00,000/- towards expenses u/s 14A of the Act in the return of income on the ground that dividends stood automatically credited in the bank account through Electronic Clearing Service (ECS) and that only one Executive's salary (DGM Accounts) at 10% is considered for the purpose of investment activity on the basis of time spent by him and investment decisions are taken by one Director (Shri Priyavrat Bhartia) to whom no remuneration is paid by the assessee company. The assessee submitted that from Asst Years 2002-03 onwards, the ld. AO had

accepted the disallowance of expenses at Rs 1,00,000/- or Rs 2,00,000/- as the case may be. The ld. AO without recording any satisfaction as to how the suo moto disallowance made by the assessee is incorrect having regard to the books of accounts of the assessee, directly proceeded to disallow the expenses u/s 14A of the Act read with Rule 8D(2)(ii) and (iii) of the Income Tax Rules a sum of Rs 2,34,54,006/- after reducing the suo moto disallowance of Rs 2 lakhs made by the assessee. This action of the ld. AO was upheld by the ld. CIT(A).

13.3. At the outset, we find that the ld. AO had rejected the basis of disallowance u/s 14A of the Act submitted by the assessee without recording any satisfaction thereon as to why the said basis is incorrect. The assessee had explained that it had taken DGM Accounts salary at 10% as attributable to investment activity and the Director who is incharge of taking investment decisions was not paid any remuneration. Further the assessee had the history in its favour wherein in earlier years, the disallowance at Rs 2,00,000/- alone was made by the ld. AO u/s 14A of the Act. Hence the assessee had a proper basis for its suo moto disallowance. The ld. AO did not even bother to discuss about this aspect in the order. As per the provisions of section 14A(2) of the Act read with Rule 8D(1) of the Rules, the ld. AO is duty bound to first record satisfaction in an objective manner having regard to the accounts of the assessee as to why the suo moto disallowance made by the assessee u/s 14A of the Act is incorrect, before resorting to computation mechanism provided in Rule 8D(2) of the Rules. Reliance in this regard has been rightly placed on the decision of Hon'ble Jurisdictional High Court in the case of H T Media Ltd vs PCIT reported in 399 ITR 576 (Del) wherein it was held as under:-

> ***30.*** *Rule 8D(1) states more or less what Section 14 A (2) of the Act states. It requires the AO to first examine the accounts of the Assessee and then record that he is not satisfied with (a) the correctness of the Assessee's claim of expenditure or (b) the claim made by the assessee that no expenditure has been incurred. Unless this stage is crossed i.e.*

the stage of the AO recording that he is not satisfied with the clam of the Assessee in the manner indicated i.e. after examining the Assessee's accounts, the question of applying the formula under Rule 8D (2) does not arise. That this is a mandatory pre-requisite for applying Rule 8D (2) is fairly well-settled.

…….

34. *The Assessee had explained that Rs. 3 lakhs was being disallowed voluntarily as an "expenditure which could be attributable for earning the said income." The Assessee explained that the disallowance had been determined on the basis of cost of finance department in the ratio of exempt income to total turnover. On that basis the disallowance in AY 2005-06 was upheld by CIT (A) at Rs. 1 lakh. The disallowance for this AY was worked out as Rs. 1,42,404/- and since the Assessee had already made a disallowance of Rs. 3 Lacs, no further disallowance was called for.*

35. *In order to disallow this expense the AO had to first record, on examining the accounts, that he was not satisfied with the correctness of the Assessee's claim of Rs. 3 lakhs being the administrative expenses. This was mandatorily necessitated by Section 14 A (2) of the Act read with Rule 8D (1) (a) of the Rules.*

36. *In para 3.2 of the assessment order, the AO records that, in answer to the query posed by the AO requiring it to produce calculation for disallowances, the Assessee "submitted that they have not incurred any expenditure for earning the dividend income." Thereafter, in para 3.3, the AO records "I have considered the submissions of the Assessee and found not to be acceptable." Thereafter, the AO proceeded to deal with the said provisions of Section 14A and Rule 8D and observed, in para 3.3.1, that making of investment, maintaining or continuing investment and time of exit from investment are well informed and well coordinated management decisions that, in relation to earning of income, are embedded in indirect expenses. It is then stated in para 3.4 that, in view of the above, the provisions of sub-section (2) of Section 14A and Rule 8D of the Rules are in operation and therefore, will strictly be adhered to by the Assessee. In para 3.6 of the assessment order, after discussing Section 14A(1) read with Rule 8D and referring to the decision of the Bombay High Court in Godrej and Boyce Mfg. Co. Ltd. (supra), the AO simply stated that "in view of the facts and circumstances and legal position on the issue as discussed above, I am satisfied that the Assessee had incurred expenses to manage its investments which may yield exempt income, and Assessee grossly failed to calculate such*

expenses in a reasonable manner to ascertain to ascertain the true and correct picture of its income and expenses."

37. *In the considered view of this Court, the above observations of the AO in the assessment order are of a broad general nature not with particular reference to the facts of the case on hand.*

13.4. Further the argument of the ld. AR that 97.2% of dividend income had been received by the assessee from strategic investments and the same need to be eliminated is misconceived 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). To this extent, the argument advanced by the ld.AR is dismissed.

13.5. We further find lot of force in the alternative argument advanced by the ld. AR that only those investments which had yielded exempt income is to be considered while working out the computation mechanism provided in Rule 8D(2) of the Rules. This view of ours is further fortified by the decision of Hon'ble Jurisdictional High Court in the case of ACB India Ltd vs ACIT reported in 374 ITR 108 (Del) and PCIT vs Caraf Builders & Constructions P Ltd reported in 414 ITR 122 (Del).

13.6. Further we find from the financials of the assessee for the year under consideration, the loan funds had become zero and interest expenditure (Rs 98.62 lakhs) if netted off with interest income (Rs 1.73 crores), there is no interest expenditure at all that is available for invoking the computation mechanism provided in Rule 8D(2)(ii) of the

Rules. Reliance in this regard is placed on the decision of Hon'ble Gujarat High Court in the case of PCIT vs Nirma Credit & Capital P Ltd reported in 300 CTR 286 (Guj). Even otherwise, the assessee is having sufficient interest free funds in its kitty to make investments which had yielded exempt income. Accordingly, by placing reliance on the decision of Hon'ble Supreme Court in the case of CIT vs Reliance Industries Ltd reported in 410 ITR 466 (SC), the disallowance of interest made thereon is hereby directed to be deleted on merits for more than one reason as stated supra.

13.7. In view of the aforesaid observations, we hold that the ld. AO had not recorded any objective satisfaction having regard to the accounts of the assessee as to why the suo moto disallowance made by the assessee is incorrect. Respectfully following the decision of Hon'ble Jurisdictional High Court in the case of H T Media Ltd referred supra, we hold that the disallowance u/s 14A of the Act should be restricted only to Rs 2,00,000/- for the year under consideration. Accordingly, the Original Ground Nos. 1 to 1.4. and Additional Ground No. 1.5. & 1.6. are disposed of in the abovementioned terms. Since relief is granted to the assessee on merits for disallowance of interest under Rule 8D(2)(ii) of the Rules, the ground raised for incorrect computation of average assets for the purpose of Rule 8D(2)(ii) of the Rules need not be gone into.

14. The Ground Nos. 3 & 3.1. raised by the assessee for the Asst Year 2009-10 are identical to Ground Nos. 2 to 2.2. raised for the Asst Year 2008-09 and the decision rendered thereon for Asst Year 2008-09 shall apply mutatis mutandis for Asst Year 2009-10 also. Hence we hold that only a sum of Rs

2,00,000/- is to be disallowed for the purpose of section 115JB of the Act. Accordingly, the Ground Nos. 3 & 3.1. raised by the assessee are partly allowed.

15. In the result, the appeal of the assessee in ITA No. 6512/Del/2013 for Asst Year 2009-10 is partly allowed.

ITA No. 1226 & 1227/Del/2015 – Asst Year 2010-11

16. In these two appeals for the Asst Year 2010-11, the following three issues are in dispute before us:-

a) Disallowance u/s 14A of the Act read with Rule 8D(2) of the Rules

b) Cost of Paintings – Whether Depreciation to be allowed or to be allowed as revenue expenditure

c) Disallowance u/s 14A of the Act while computing book profits u/s 115JB of the Act.

16.1. We have heard the rival submissions and perused the materials available on record. The facts prevailing in Asst Year 2009-10 are exactly identical to the facts prevailing in this Asst Year 2010-11. We find that the disallowance u/s 14A of the Act was made by the ld. AO by considering the workings given by the assessee under Rule 8D(2)(iii) of the Rules. The ld. AO thereafter passed an order u/s 154 of the Act dated 27.2.2014 wherein he corrected the disallowance made under Rule 8D(2)(iii) of the Rules to Rs 1,87,68,278/- as against Rs 5,68,448/- made in the order u/s 143(3) of the Act. The ld. CIT(A) confirmed the disallowance and also made further disallowance under Rule 8D(2)(ii) of the Rules.

16.2. At the outset, we find from the financials of the assessee for the year under consideration, interest expenditure (Rs 0.57 crores) if netted off with interest income (Rs 1.25 crores), there is no interest expenditure at all that is

available for invoking the computation mechanism provided in Rule 8D(2)(ii) of the Rules. Reliance in this regard is placed on the decision of Hon'ble Gujarat High Court in the case of PCIT vs Nirma Credit & Capital P Ltd reported in 300 CTR 286 (Guj). Even otherwise, we find that the assessee is having sufficient interest free funds in its kitty to make investments which had yielded exempt income. Hence following the decision of the Hon'ble Supreme Court in the case of CIT vs Reliance Industries Ltd reported in 410 ITR 466 (SC), the disallowance of interest made under Rule 8D(2)(ii) of the Rules is hereby directed to be deleted on merits.

16.3. We further find lot of force in the alternative argument advanced by the ld. AR that only those investments which had yielded exempt income is to be considered while working out the computation mechanism provided in Rule 8D(2) of the Rules. This view of ours is further fortified by the decision of Hon'ble Jurisdictional High Court in the case of ACB India Ltd vs ACIT reported in 374 ITR 108 (Del) and PCIT vs Caraf Builders & Constructions P Ltd reported in 414 ITR 122 (Del).

16.4. Further the argument of the ld. AR that major dividend income had been received by the assessee from strategic investments and the same need to be eliminated is misconceived 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). To this extent, the argument advanced by the ld.AR is dismissed.

16.5. We find that the ld. AO had rejected the basis of disallowance u/s 14A of the Act submitted by the assessee without recording any satisfaction thereon as to why the said basis is incorrect. The assessee had explained that it had taken DGM Accounts salary at 10% as attributable to investment activity and the Director who is incharge of taking investment decisions was not paid any remuneration. Further the assessee had the history in its favour wherein in earlier years, the disallowance at Rs 2,00,000/- alone was made by the ld. AO

u/s 14A of the Act. Hence the assessee had a proper basis for its suo moto disallowance. The ld. AO did not even bother to discuss about this aspect in the order. As per the provisions of section 14A(2) of the Act read with Rule 8D(1) of the Rules, the ld. AO is duty bound to first record satisfaction in an objective manner having regard to the accounts of the assessee as to why the suo moto disallowance made by the assessee u/s 14A of the Act is incorrect, before resorting to computation mechanism provided in Rule 8D(2) of the Rules. Reliance in this regard has been rightly placed on the decision of Hon'ble Jurisdictional High Court in the case of H T Media Ltd vs PCIT reported in 399 ITR 576 (Del).

16.6. In view of the aforesaid observations, we hold that the ld. AO had not recorded any objective satisfaction having regard to the accounts of the assessee as to why the suo moto disallowance made by the assessee is incorrect. Respectfully following the decision of Hon'ble Jurisdictional High Court in the case of H T Media Ltd referred supra, we hold that the disallowance u/s 14A of the Act should be restricted only to Rs 2,00,000/- for the year under consideration. Accordingly, the Original Ground No. 3 and Additional Ground No. 3.1. are disposed of in the abovementioned terms.

17. We hold in line with the decision taken by us hereinabove for Asst Years 2008-09 and 2009-10, that the disallowance u/s 14A of the Act for the purpose of computation of book profits u/s 115JB of the Act would be Rs 7,68,448/- being the actual amount of expenditure identified by the assessee itself during the course of assessment proceedings.

18. With regard to the cost of paintings to be allowed as revenue expenditure, we have already held the same in favour of the assessee for Asst Years 2008-09 and 2009-10 hereinabove and the same shall be applicable for Asst Year

2010-11 also. Accordingly, the depreciation on paintings claimed by the assessee which had been disallowed is hereby confirmed.

19. In the result, both the appeals of the assessee for the Asst Year 2010-11 are partly allowed.

20. To sum up,

ITA No. 1629/Del/2012 – Asst Year 2008-09 – Assessee Appeal is partly allowed for statistical purposes

ITA No. 6512/Del/2013- Asst Year 2009-10 – Assessee Appeal is partly allowed

ITA No. 1226/Del/2015 – Asst Year 2010-11 – Assessee Appeal is partly allowed

ITA No. 1227/Del/2015 – Asst Year 2010-11 – Assessee Appeal is partly allowed

Order pronounced in the open court on 31/01/2024.

-Sd/-	-Sd/-
(SAKTIJIT DEY)	**(M. BALAGANESH)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated: 31/01/2024
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi