

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member  
and Shri Rajesh Kumar, Accountant Member**

I.T.A. No.2168/Kol/2019  
Assessment Year: 2007-08

CESC Ltd.....Appellant  
CESC House, Chowringhee  
Square, W.B-700001.  
[PAN: AABCC2903N]

vs.

DCIT, Circle-6(1), Kolkata.....Respondent

**Appearances by:**

Shri J. P. Khaitan, Sr. Counsel and P. Jhunjhunwala, Advocate, appeared on behalf of the appellant.

Shri S. Datta, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 29, 2024

Date of pronouncing the order : March 05, 2024

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 14.08.2019 of the Commissioner of Income Tax Appeals)-20, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has mentioned as many as nine grounds of appeal. However, the ld. Counsel for the assessee has submitted that as per the instructions of his client, he presses for Ground Nos.4, 5 & 6 only, which are relating to disallowance u/s 14A of the Act r.w.r. 8D of the Income Tax Rules in respect of disallowance of expenditure incurred in relation to earning of tax exempt income i.e. for proportional disallowance of expenditure incurred for earning of tax exempt income out of total expenditure claimed.

3. The brief facts of the case are that the Assessing Officer during the assessment proceedings noted that the assessee had claimed tax exempt dividend income of Rs.30,00,000/- but no amount was offered for

disallowance u/s 14A on account of expenditure incurred for earning of tax exempt income. He, therefore, computed the disallowance u/s 14A in accordance with the formula as prescribed under Rule 8D of the Income Tax rules at Rs.68,20,000/- and disallowed the same. He also made adjustments u/s 115JB of the Act in relation to the said disallowance for the purpose of computing book profits u/s 115JB of the Act.

4. In appeal, the ld. CIT(A) observed that since the assessment year involved was A.Y 2007-08 and that Rule 8D is applicable for assessment year 2008-09 onwards, he, therefore, held that for the purpose of computing of disallowance u/s 14A, the formula prescribed under Rule 8D cannot be applied. He, therefore, restricted the disallowance to 1% of the tax exempt income at Rs.30,000/-. Being aggrieved by the said action of the CIT(A), the assessee has come in appeal before us.

5. At the outset, the ld. Counsel for the assessee has invited our attention to the Income Tax Return along with computation of income to submit that the assessee suo moto had offered the disallowance u/s 14A of the Act at Rs.3.52 lakhs. He has further submitted that Rule 8D was not applicable for the year under consideration. That the tax exempt dividend income of the assessee was Rs.30 lakhs only and that the disallowance offered by the assessee at Rs.3.52 lakhs was much more than the disallowance confirmed by the CIT(A). He submitted that the Assessing Officer and even the ld. CIT(A) have failed to take note of the above facts and recomputed the disallowance resulting into double disallowance on the same issue.

6. The ld. DR could not controvert the aforesaid submissions made by the ld. Counsel for the assessee.

7. In this case, the assessment year involved is A.Y 2007-08. The Hon'ble Supreme Court in the case of "CIT vs. Essar Teleholdings Ltd."

reported in (2018) 401 ITR 445 (SC) has held that the application of Rule 8D is prospective and the same cannot be applied retrospectively to an assessment year prior to A.Y 2008-09. That disallowance u/s 14A for an assessment year prior to A.Y 2008-09 should be on reasonable basis. Since, in this case, the assessee has already offered suo moto disallowance of Rs.3.52 lakhs and the Assessing Officer has not pointed any defect in the suo moto calculation of disallowance by the assessee, rather, the Assessing Officer has proceeded on the footing that the assessee has not made any suo moto disallowance. Therefore, there was no question of computing the disallowance again by the Assessing Officer or the CIT(A), which has resulted into double disallowance. Therefore, the disallowance made by the lower authorities u/s 14A of the Act is not sustainable in the eyes of law and the same is accordingly ordered to be deleted. The corresponding adjustments made to the book profits by the Assessing Officer u/s 115JB of the Act in respect of disallowance made by him u/s 14A of the Act is also not sustainable and the same is also set aside.

8. In the result, the appeal of the is treated as partly allowed.

***Kolkata, the 5<sup>th</sup> March, 2024.***

Sd/-  
**[Rajesh Kumar]**  
**Accountant Member**

Sd/-  
**[Sanjay Garg]**  
**Judicial Member**

Dated: 05.03.2024.

RS

*Copy of the order forwarded to:*

1. CESC Ltd
2. DCIT, Circle-6(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches