

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No. 5954/Del/2019
(Assessment Year: 2013-14)**

M/s. Indiabulls Real Estate Ltd, M-62 & 63, First Floor, Connaught Place, New Delhi (Appellant) PAN:AABCI5194F	Vs. DCIT, Central Circle-12(1), New Delhi (Respondent)
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Assessee by :	Shri Lalit Mohan, CA Shri Parth Singhal, Adv
Revenue by:	Shri Sandip Kumar Mishra, Sr. DR
Date of Hearing	14/05/2024
Date of pronouncement	/05/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.5954/Del/2019 for AY 2013-14, arises out of the order of the Commissioner of Income Tax (Appeals)-22, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 173/18-19/CIT(A)-22 dated 30.04.2019 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 18.03.2016 by the Assessing Officer, DCIT, Circle-12 (1), New Delhi (hereinafter referred to as 'Id. AO').
2. The only issue to be decided in this appeal is as to whether the Id CIT(A) was justified in restricting the disallowances made u/s 14A of the Act read with Rule 8D of the Income Tax Rules [hereinafter referred to as the Rules] in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the material available on record. During the year, the assessee company was engaged in the business of project management, investment advisory, project marketing, maintenance of completed projects, engineering, industrial and technical consultancy, construction and development of real estate properties and other related and ancillary activities. During the year under consideration, the assessee claimed exempt income of ₹76,58,05,673/- in the return of income in the form of dividend. The assessee made suo moto disallowance of expenditure of Rs. 7,46,680/- u/s 14A of the Act as expenses incurred for the purpose of earning exempt income . Basis of the said disallowance is given as under:-

<i>Nature of Administrative Expense</i>	<i>Amount (in INR)</i>
<i>Salary cost of employees engaged in the activity of coordination with Mutual Funds from where dividend income has been earned by the assessee</i>	<i>373,340/-</i>
<i>Other Administrative expenses incurred by the assessee towards rental value of their workstations space towards this activity, telephone cost towards this activity, conveyance cost towards this activity, Depreciation on the assets (laptop, furniture) towards this activity, Staff welfare towards this activity, etc. (100% of salary cost)</i>	<i>373,340/</i>
TOTAL	740,680/-

4. The Id AO ignored the aforesaid suo moto disallowance and proceeded to disallow expenditure u/s 14A of the Act by applying the computation mechanism provided in rule 8D(2)(iii) of the Rules and worked out the disallowance of ₹5,16,73,689/-. After reducing the suo moto disallowance made by the assessee, the Id AO made the net disallowance u/s 14A of the Act for ₹5,09,27,009/-. This disallowance was reduced by the Id CIT(A) to ₹1,18,44,320/- by considering only those investments which had actually yielded exempt income to the assessee as against the total investments considered by the Id AO.

5. The Ld AO before proceeding to invoke the computation mechanism provided in Rule 8D(2) of the Rules observed that there is no rationale furnished

by assessee for making suo moto disallowances of ₹7,46,680/-. The relevant observation made by the Id AO in this regard is reproduced herein: –

"There is no rationale furnished by the assessee in deciding the amount disallowed at Rs. 7,46,680/-. Further, no separate staff or work station has been deployed / maintained by the assessee towards the investment activities. Further, the earning of exempt income is not in the nature of passive activity having no input. In fact in present situation making of investment, maintaining or continuing of Investment and time to exit from Investment are well informed and well coordinated management decision involving not only inputs from various source but also acumen of senior management functionaries. Therefore cost is inbuilt into even so called "passive" investment. There are incidental expenditures of collection, telephone, follow up etc. Therefore expenses in relation to earning of income are embedded in indirect expenses."

6. The assessee submitted before Id CIT(A) that the Id AO had not recorded objective satisfaction having regard to the accounts of the assessee in terms of section 14A(2) of the Act as to how the suo moto disallowance made by the assessee is incorrect in the facts and circumstances of the instant case. The Id CIT(A), however, dismissed this plea and held that similar disallowance was made in the same manner in AY 2012-13 by the Id AO by making the same observation, but the same were deleted by the Id CIT(A) on the ground that no proper satisfaction was recorded by the Id CIT(A). The Id CIT(A) while addressing the issue in dispute for the year under consideration, sought to ignore the decision of his predecessor for AY 2012-13 and held that the Id AO had indeed recorded proper satisfaction. Although, the Id DR before us vehemently argued that sufficiency of recording of satisfaction cannot be looked into by this tribunal and that what is required to be seen is only the existence of the satisfaction by the Id AO. The Id. DR argued that the Tribunal decision relied upon by the Id AR in assessee's own case should not be followed for the issue in dispute. We are unable to accept this line of argument of the Id DR in as much as law mandated in section 14A(2) of the Act and Rule 8D(1) of the Rules requires the Id AO to record an objective satisfaction having regard to the accounts of the assessee with specific linkage of the expenditure debited by the assessee with the investment activity. The satisfaction for rejecting the

assessee's disallowance should be made in an objective manner with cogent reasons. We find that the very same observations were made by the Id AO for AY 2012-13 also, and the tribunal on appeal preferred by the revenue had deleted the disallowance in ITA No. 6603/Del/2016 dated 11.03.2020 as under:-

"7. The relevant portion of the Assessing Officer is as under:

"Para 2: The assessee company is engaged in the business of projects, engineering, industrial and technical consultancy, construction and development of real estate properties and other related and ancillary activities. The books of accounts were produced which have been examined on text check basis.

"para 4..... During the assessment proceedings, the AR of the assessee was asked to explain as to why the disallowance u/s 14A should not be made in accordance with Rule 8D. In response, the assessee filed Its reply vide letter dated 15.01.2015 wherein it stated that "the assessee has already made disallowance u/s14A amounting to Rs.4,16,933/- being the expenses attributable to exempt income". However, nothing has been furnished by the assessee in this regard. Hence, the claim of the assessee in this regard is not found to be acceptable and the issue is decided on the basis of information available on record.

There is no rationale furnished by the assessee in deciding the amount disallowed at Rs.4,16,933/-. Further, no separate staff or work station has been deployed / maintained by the assessee towards the investment activities. Further, the earning of exempt income is not the nature of passive activity having no input. In fact in present situation making of Investment, maintaining or continuing of investment and time to exit from investment are well informed and well coordinated management decision involving not only inputs from various source but also acumen of senior management functionaries. Therefore cost is inbuilt into even so called "passive" investment. There are incidental expenditures of collection, telephone, follow up etc. Therefore expenses in relation to earning of income are embedded in indirect expenses.

Section 14A of the IT Act, 1961 regulates the expenditure which was incurred in relation to exempt income. By virtue of this section no deduction is allowable in respect of expenditure incurred by the assessee on account of income which does not form part of the total Income under the Act. The CBDT has notified rule 8D to avoid ad-hoc disallowance to impart visibility to the expenditure incurred

for earning exempt income. Moreover, procedure for computation of disallowance has been provided in sub-sections (2) and (3) of section 14A of the IT Act. The Hon'ble ITAT, Special Bench, New Delhi in the case of M/s Cheminvest Ltd. ITA no 87/Del/2008 has also held that the disallowance u/s 14A is to be made even if no exempt income has resulted or earned by the assessee in the year under consideration Therefore in view of the specific provisions for quantification of disallowance as contained in sub-sections (2) and (3) of section 14A, which are procedural, the disallowance is strictly to be made in terms of the specific provisions of Rule 8D. B

Attention is also invited to the language of Rule 8D(2)(ii) wherein it has been clearly mentioned that the average value of assets shall be computed in respect of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.

Rule 8D(1) of Income Tax Rules, 1962 prescribed the applicability of the procedure. In case, the Assessing Officer is not satisfied with the correctness of the claim of the expenditure made by the assessee, the procedural provisions of Rule 8D are very much applicable to compute the expenditure which are Incurred in relation to such Income which does not form part of the total income."

8. The Id. DR argued relying on the following case judicial pronouncement and submitted the arguments in writing.

1. Maxopp Investment Ltd. Vs CIT [2018] 91 taxmann.com 154 (SiC)/[2018] 254 Taxman 325 (SC)/[2018] 402 ITR 640 (SC)/[2018] 301 CTR 489 (SC) where Hon'ble Supreme Court held that

(1) When the shares are held by the assessee not to earn exempt income but to retain controlling stake in the investee company, the dominant purpose test cannot be said to be relevant for the purpose of Sec 14A and disallowance u/s 14A can be made. It is not the dominant purpose test but the principle of apportionment which is ingrained in the provisions of Section 14A. When the assessee itself makes disallowance of certain expenditure incurred to earn dividend income and if the AO does not accept such disallowance, it is necessary for the AO to record satisfaction before rejecting the same.

(2) Section 14A would be applicable only to income arising from the investment portfolio and not from stock-in-trade.

2. *Indiabulls Financial Services Ltd. Vs DCIT [2016] 76 taxmann.com 268 (Delhi)/[2017] 395 ITR 242 (Delhi) where Hon'ble Delhi High Court held that where Assessing Officer after carrying out elaborate analysis and following steps enacted in statute, had determined amount of expenditure incurred for earning tax exempt income, merely because he did not expressly record his dissatisfaction about assessee's calculation, his conclusion could not be rejected.*

3. *Jubilant Securities Pvt. Ltd. Vs DCIT T20181 90 taxmann.com 126 (Delhi)/[2018] 253 Taxman 284 (Delhi)/[2018] 400 ITR 527 (Delhi), 2018-TIQL- 75-HC-DEL-IT where Hon'ble Delhi High Court held that when the CIT(A) reduced the quantum of disallowance made u/s 14A and the assessee did not file appeal against the same, raking up the same issue after four years when there is a favourable judicial decision on record, is akin to raising a dispute against a stale issue.*

4. *Lally Motors India (P.) Ltd. Vs PCIT (T20181 93 taxmann.com 39 (Amritsar Trib:)/[2018] 170 ITD 370 (Amritsar - Trib.) where Hon'ble ITAT Amritsar held that Section 14A would apply even if no dividend was earned by assessee from investments in shares.*

5. *Godrej & Boyce Manufacturing Company Ltd. Vs DCIT [2017] 81 taxmann.com 111 (SC)/[2017] 247Taxman361 (SC)/[2017] 394 ITR 449 (SC)/[2017] 295 CTR 121 (SC) where Hon'ble Supreme Court held that where Assessing Officer after carrying out elaborate analysis and following steps enacted in statute, had determined amount of expenditure incurred for earning tax exempt income, merely because he did not expressly record his dissatisfaction about assessee's calculation, his conclusion could not be rejected.*

6. *Punjab Tractors Ltd Vs CIT [2017] 78 taxmann.com 65 (Punjab & Haryana)/[2017] 246 Taxman 31 (Punjab & Haryana)/[2017] 393 ITR 223 (Punjab & Harvana)/[2017] 293 CTR 50 (Punjab & Haryana), 2017-TIQL-353- HC-P&H-IT where Hon'ble Punjab & Haryana High Court held that AO is bound to apply provisions of Rule 8D where he is not satisfied with the correctness of the claim of assessee in respect of expenditures incurred to earn exempt income.*

7. *Avon Cycles Ltd Vs CIT [2015] 53 taxmann.com 297 (Punjab & Haryana)/[2015] 228 Taxman 368 (Punjab & Haryana HMAG.) where Hon'ble Punjab & Haryana High Court held that where funds utilized by assessee was mixed funds and, hence, interest paid on borrowed fund was also relatable to interest on investment made in tax free funds, interest expenditure relatable to investment in tax free funds was to be computed under provisions of Rule 8D(2)(ii).*

8. *Nahar Spinning Mills Ltd. Vs CIT [2017] 82 taxmann.com 154 (Punjab & Haryana)/[2017] 395 ITR 12 (Punjab & Haryana)* where Hon'ble Punjab & Haryana High Court held that disallowance of proportionate administrative expenditure made for earning exempted dividend Income computed on reasonable basis would be just (A.Y.2006-07).

9. *Dy. CIT v. Viraj Profiles Ltd. f20151 64 taxmann.com 52 (Mumbai Trib.)/[2016] 46 ITR (T) 626 (Mumbai Trib.)/[2016] 156 ITD 72 (Mumbai Trib.)/[2016] 177 TTJ 466 (Mumbai Trib.)* where Hon'ble ITAT Mumbai held that disallowance of expenditure Addition on account of disallowance under S. 14A read with Rule 8D being expenditure in relation to earning of exempt income to book profit under S. 115JB justified. [S.115JB]

10. *Vipin Malik vs ACIT [2017] 88 taxmann.com 415(Delhi Trib)/[2016] 45 ITR(T) 589(Delhi-trib)* Where Hon'ble ITAT Delhi held that disallowance of expenditure -Event income No disallowance was made by the assessee invoking the provision read with rule 8D(2) (iii) was held to be B justified [R.8D] (AY 2009-10)

9. *The Id. AR relied on the order of the Id. CIT (A).*

10. Having gone through the facts on record and applicability of the case laws quoted by the Id. DR to the case before us, we find that the cases referred are mostly where the revenue has gone through the books of accounts, not satisfied with the disallowance made by the Assessing Officer and the reasons of such non-satisfaction has been mentioned in detail in the orders, whereas in the instant case, the books of account have been produced before the Assessing Officer which have been examined on test check basis. (refer Assessing Officer above) While re-computing the disallowance, the Assessing Officer has not followed the provisions of Section 14A(2) of the Income Tax Act, 1961 wherein it is mandated that, if the Assessing Officer having regard to the accounts of the assessee is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to which does not form part of the total income under the Act, then the Assessing Officer shall determine the amount of expenditure incurred in relation to such income. Further, the Act also mandates that such re-computation also applies in relation to a case where the assessee claims that no expenditure has been incurred by him in relation to the income which does not form part of the total income. From the reading of the judgment of the Hon'ble Apex Court in the case of *Maxopp Investment Ltd. Vs CIT* in CA Nos. 104-109 OF 2015, we find that having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the accounts of the assessee suo moto 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, the Assessing Officer will have to record its satisfaction to this effect.

11. In the instant case, we find that no such satisfaction has been recorded by the A.O to come to the conclusion to invoke the provisions of Section 14A(2). Hence, we decline to interfere with the order of the Id. CIT (A) and the disallowance is directed to be deleted.

12. The similar ratio applies to ground no. 1 in ITA No. 6603/Del2016.

7. Further, we find that the same disallowance was made in the same fashion by the revenue for AYs 2009-10, 2010-11 and 2011-12 also. As there is no dispute that the facts and circumstances prevailing in AY 2012-13 are exactly identical with the facts for the year under consideration, the decision relied upon herein above for AY 2012-13 of this Tribunal shall apply mutatis mutandis for AY 2013-14 also. Accordingly, ground raised by the assessee is allowed.

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

Order pronounced in the open court on 17/05/2024.

-Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:17/05/2024
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi