

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No.1370/Del/2023
Assessment Year: 2017-18

ACIT, Circle-10(1), New Delhi	Vs.	M/s. Hero Electronix Pvt. Ltd., 503, Rectangle-1, D-4, Saket District Centre, Saket, New Delhi
PAN :AADCH6305B		
(Appellant)		(Respondent)

Assessee by	Sh. Anil Bhalla, CA
Department by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of hearing	28.05.2024
Date of pronouncement	31.05.2024

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

This appeal by the Revenue is against order dated 20.03.2023 passed by National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2017-18.

2. In ground no. 1, the Revenue has challenged deletion of disallowance of expenditure made by the Assessing Officer invoking the provisions of section 14A of the Income-tax Act, 1961

(in short 'the Act') read with Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules').

3. Briefly the facts are, the assessee is a resident corporate entity and part of Hero group. As stated by the Assessing Officer, the assessee is an investment company. In course of assessment proceedings, the Assessing Officer noticed that as per the financial statement, the assessee has made an investment of Rs.218,60,54,882/- during the year in various securities/shares. Whereas, the assessee has received dividend income of Rs.14,49,391/-, which was claimed to be exempt. Noticing that the assessee has not made any disallowance under section 14A read with Rule 8D, the Assessing Officer called upon the assessee to explain, as to why disallowance should not be made by applying methodology provided under Rule 8D. Though, assessee objected to the proposed disallowance, however, rejecting the objections of the assessee the Assessing Officer proceeded to compute the disallowance under Rule 8D at Rs.2,18,60,548/-. Assessee contested the disallowance before learned first appellate authority. While deciding the issue, learned first appellate

authority restricted the disallowance to the quantum of exempt income earned during the year.

4. We have heard the parties and perused the materials on record. Undisputedly, during the year under consideration, the assessee had earned exempt income by way of dividend amounting to Rs.14,49,391/-. Whereas, applying Rule 8D(2)(iii), the Assessing Officer has computed disallowance at Rs.2,18,60,548/-. It is trite law, disallowance under section 14A read with Rule 8D cannot exceed the quantum of exempt income earned during the year. That being the settled legal position, we uphold the decision of learned first appellate authority on the issue. Ground raised is dismissed.

5. In ground no. 2, the Revenue has challenged deletion of disallowance of Rs.1,93,13,087/- made under section 40A(2) of the Act.

6. Briefly the fact are, in course of assessment proceedings, the Assessing Officer noticed that the assessee had paid Rs.49,68,846/- and Rs.1,43,44,241/- to one of its Directors and the CEO, respectively. Being of the view that the payments made are excessive and unreasonable having regard to fair market

value of the goods, services provided or facilities availed, the Assessing Officer disallowed them. However, such disallowances were deleted by the first appellate authority on the reasoning that without establishing the fact that the payments made are excessive or unreasonable having regard to the fair market value, the Assessing Officer has disallowed them.

7. Having considered rival submissions, we find, the Assessing Officer has invoked the provisions of section 40A(2)(b) of the Act to disallow the expenses. On a reading of the said provision, it is very much clear that if the Assessing Officer is of the opinion that the expenditure claimed by the assessee on account of payment made to some specified person is excessive or unreasonable having regard to the fair market value of such goods, services or facilities, such expenditure can be disallowed under the said provision. However, the crucial fact which needs to be examined is, what is the fair market value of the goods, services or facilities for which payment is being made.

8. On going through the observations of the Assessing Officer, we find, except making a general observation that the payment made is excessive or unreasonable having regard to the fair

market value of the goods, services or facilities, the Assessing Officer has not brought any comparable instances or any other material on record to establish what is the fair market value of the services rendered by the payees so as to demonstrate that the payments made are excessive and unreasonable having regard to the fair market value.

9. That being the factual position emerging on record, learned first appellate authority was justified in deleting the disallowance. Ground raised is dismissed.

10. In the result, appeal is dismissed.

Order pronounced in the open court on 31st May, 2024

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 31st May, 2024.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi