

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.5320/DEL/2013  
(Assessment Year: 2009-10)**

Sahara One Media & Entertainment Ltd.,  
(Formerly known as Sahara India Mass  
Communication Limited),  
CTS 40-44, Sahara India Point,  
S.V. Road, Goregaon (W),  
Mumbai – 400 104.

vs. DCIT,  
Central Circle 6,  
New Delhi.

**(PAN : AAACP3047R)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Adhitya Vohra, Advocate  
Shri Arpit Goyal, CA  
REVENUE BY : Shri Kanav Bali, Sr. DR

Date of Hearing : 24.06.2024  
Date of Order : 26.06.2024

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the ld. CIT  
(Appeals)-I, New Delhi dated 11.07.2013 for the assessment year 2009-10.

2. Grounds of appeal taken by the assessee read as under :-

“1. That the ld. CIT (A) has erred in law and on facts and circumstances of the case in conformity the disallowance of Rs.9,82,452/- under section 14A in respect of alleged expenditure incurred for earning of income exempt from tax.

2. That the Id. CIT (A) has erred in law and on facts and circumstances of the case in not appreciating the fact that no new investment has been made by the appellant and the sufficient interest free funds available and that there was no nexus between the investment made the income from which in not chargeable to tax and any interest hearing funds in the hands of the appellant.

3. That the Id. CIT (A) has erred in law and on facts and circumstances of the case in observing that wherever it is undisputed that some expenditure is to be apportioned to exempt income, the only guiding rule would be as prescribed by law under Rule 8D for working out the disallowance of expenditure for alleged earning of income not chargeable to tax.

4. That in any view of the matter the Id. CIT(A) has erred in law and on facts and circumstances of the case in confirming the action of the Assessing Officer in invoking provisions of Rule 8D(2) of the Income Tax Rules, 1962 for working out the disallowance of expenditure under section 14A of the Income Tax,1961.”

3. Assessee has also filed an additional ground which read as under :-

"Without prejudice, that the CIT(A) erred on facts and in law in confirming the disallowance computed by the assessing officer under section 14A of the Income-tax Act, 1961 read with Rule 8D of the Income-tax Rules, 1962 not appreciating that for the purposes of disallowance under clause (ii) and clause (iii) of Rule 80(2), only those investments which yielded exempt income ought to have been considered while calculating 'average value of investment'."

4. Upon careful consideration, we note that the additional ground raised is having legal issue and goes to the root of the matter, hence we admit the aforesaid ground.

5. In this case, assessee declared a sum of Rs.12,84,187/- as dividend income from its investment made in companies. He also claimed exemption under section 10 (34) of the Income-tax Act, 1961 (for short 'the Act'). In a query in this regard, assessee responded that the assessee company had *suo motu* made disallowance of Rs.12,842/- being 1% of dividend income under section 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 (for short 'the Rules') in respect of the pro-rata expenses attributable to earning of dividend. However, AO was not satisfied. He made a disallowance u/s 14A read with Rule 8D totalling to Rs.9,95,294/-.

6. Against this order, assessee appealed before the ld. CIT (A). Ld. CIT(A) elaborately noted the submissions of the assessee but he was not convinced. He upheld the order of AO.

7. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

8. Ld. Counsel for the assessee submitted that assessee has sufficient own funds to make the investment. Hence, he pleaded that no disallowance under Rule 8D(ii) is permissible.

9. Per contra, ld. DR for the Revenue submitted that there is no one to one connection with the interest free funds and the investment.

10. Upon hearing both the parties and perusing the records, we are of the considered view that assessee has sufficient interest free funds. No disallowance under Rule 8D (ii) is to be made. Right of attribution lies with the assessee. There is no one to one connection required. This proposition finds support from the order of Hon'ble Bombay High Court in the case of CIT vs. Glenmark Pharmaceutical Ltd. 85 DTR (Bom.) 169. Accordingly, we direct the AO in this regard to examine whether assessee has sufficient interest free funds and if that be so, no disallowance under Rule 8D(ii) be made.

11. As regards addition under Rule 8D (iii), assessee filed aforesaid additional ground that disallowance should be made only with regard to exempt income.

12. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below.

13. Upon careful consideration, we find considerable cogency in the submissions of the ld. Counsel for the assessee. It was held by Special Bench of the ITAT in the case of ACIT vs. Vireet Investment (P) Ltd. (2017) 188 TTJ 1 that for the purpose of disallowance under clause (ii) and (iii) of Rule 8D, only those investments which yielded exempt income should be considered while calculating average value of investment. We order accordingly. AO is directed to compute disallowance under Rule 8D (iii) by

considering only investments which have earned exempt income. Needless to add on both the issues, AO should pass an order in accordance with our above directions after providing an opportunity of being heard to the assessee.

14. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on this 26<sup>th</sup> day of June, 2024.**

**Sd/-  
(SUDHIR PAREEK)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 26<sup>th</sup> day of June, 2024  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-I, New Delhi
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**