

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

Before Shri Waseem Ahmed, Accountant Member and  
Shri Soundararajan K., Judicial Member

**ITA Nos. 354 to 356/Coch/2023**  
(Assessment Years: 2013-14 to 2015-16)

Condis India Helathcare Pvt. Ltd. Mullassery Tower, Gr. Gloor Punnen Road, Vandross Junction Trivandurm 695033 [PAN: AADCC2525Q]	vs.	ACIT, Circle – 1(1) Aayakar Bhawan Kowdiar Trivandrum 695003
(Appellant)		(Respondent)

Appellant by:	Shri Rajakannan, Advocate
Respondent by:	Smt. Girly Albert, Sr. D.R.

Date of Hearing:	24.09.2024
Date of Pronouncement:	27.09.2024

**ORDER**

Per Bench

These appeals filed by the assessee are directed against separate orders of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 15.03.2023 for Assessment Years (AY) 2013-14 to 2015-16.

2. The only identical issue raised by the assessee in these appeals is that the learned CIT(A) erred in making disallowance of varying amounts under the provisions of section 14A of Income Tax Act (1961) (“the Act”) r.w. rule 8D of the Income Tax rules.

3. First, we shall adjudicate the appeal for AY 2013-14 as the lead case and the findings of this year will mutatis mutandis apply to the other two assessment years.

4. The Assessing Officer (AO) during the course of assessment proceedings found that the assessee has shown dividend income of Rs. 2,88,51,340/- claiming the same as exempted from tax u/s 10(34) of the Act. However, the assessee has not made any disallowance under the provisions of section 14A r.w. rule 8D corresponding to such exempted income. Thus, the AO invoked the provisions of s. 14 r.w. rule 8D and made disallowance of Rs. 60,65,112/- towards administrative expenses being ½% of the average value of investment and added the same to the total income of the assessee.

5. The assessee carried the matter before the learned CIT(A). The assessee, among various contentions, submitted before the learned CIT(A) that the AO has made the disallowance of administrative expenses without recording satisfaction and considering the books of accounts of the assessee. As per the assessee the administrative expenses stand at Rs.65,47,152/- only, out of which the AO had made the disallowance of Rs. 60,65,112/- which is nearly 90% (approx.) of the total administrative expenses. However, the CIT(A) confirmed the order of the AO by observing as under: -

*“6.9 However, as regards the disallowance made by the AO in accordance with Rule 8D (iii) of the Income Tax Rules, 1962, the computation is directly connected with the 0.5% of the average value of investments. There is no requirement for data about whether the funds for investments have been acquired out of own funds or borrowed funds. It is a simple and mandatory computation of 0.5% of the average value of investments. Hence, the ratio of South Indian Bank Ltd. Vs. CIT (supra) (SC) is not applicable while computing the disallowance under Rule 8D (iii). Here the amount computed comes to Rs. 60,65,112/- which is less than the total exempted dividend received. Hence, the AO has correctly computed the disallowance in accordance with the formula laid down in Rule 8D (iii) of the Income Tax Rules, 1962 and I am inclined to agree with the disallowance to the extent computed under Rule 8D(iii). Hence, it is held that the disallowance made under Rule 8D(iii) of Rs. 60,65,112/- is upheld. Thus the Appellant fails in this appeal. The ground of appeal is therefore Dismissed.”*

Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

6. The learned A.R. before us, among various contentions, submitted that the disallowance u/s. 14A r.w. rule 8D has been made without recording proper satisfaction as mandated u/s 14A of the Act. Accordingly, the learned A.R. contended that the disallowance made by the AO and confirmed by the CIT(A) is not sustainable.

7. On the other hand, the learned Sr. D.R. vehemently supported the orders of the authorities below.

8. We have heard the rival contentions and perused the materials available on record. The provisions of section 14A mandates to make disallowance of the expenses claimed by the assessee in relation to the exempted income. However, such disallowance can be worked out after recording satisfaction after having regard to the accounts of the assessee. In the present case the assessee is engaged in consultancy services and has declared a total income of Rs. 40,67,150/- in the return of income filed u/s. 139 of the Act dated 30.09.2013. Thus it transpires that the assessee, besides having exempted income, has also shown income from business to the tune of Rs. 40.67,150/- which implies that the assessee must be incurring expenses against such income from rendering consultancy services, But the AO, without considering the other activities of the assessee, has invoked provisions of rule 8D mechanically for making the disallowance against exempted income which works out at 90% (approx.) to the total administrative expenses. In our considered such action of the AO is not appropriate in the given facts and circumstances. Accordingly, we hold that the AO has made disallowance without recording satisfaction qua the books of account maintained by the assessee. The Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. v. CIT* [2018] 402 ITR 640 (SC) has held that proper satisfaction ought to have been recorded by the AO while making the disallowance

u/s 14A of the Act. The relevant funding of the Hon'ble Supreme Court reads as under: -

*“41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind 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, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.”*

9. In view of the above we hold that the disallowance u/s 14A r.w. rule 8D of Income Tax Rule has been made by the AO in a mechanical manner and without recording proper satisfaction as envisaged u/s 14Ar.w. rule 8D of the I.T. Rules. Accordingly, we set aside the findings of the learned CIT(A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is hereby allowed.

10. The above finding will mutatis mutandis apply to the other two assessment years, 2014-15 & 2015-16.

11. In the result, the appeals ITA Nos. 354 to 356/Coch/2023 filed by the assessee are allowed.

Order pronounced on 27<sup>th</sup> September, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-  
(Soundararajan K)  
Judicial Member

Sd/-  
(Waseem Ahmed)  
Accountant Member

Cochin, Dated: 27<sup>th</sup> September, 2024

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
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By Order

Assistant Registrar  
ITAT, Cochin