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

BEFORE SHRI C. N.PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

ITA No.5531/Del/2019, A.Y. 2012-13

Eltek SGS Pvt. Ltd. B-17, Maharani Bagh, New Delhi PAN: AAACE2920L		ACIT, Circle-8(1), New Delhi
(Appellant)		**(Respondent)**

Appellantby	Sh. Anil Bhalla, CA
Respondent by	Sh. Sanjay Tripathi, Sr. DR and Sh. Sahil Kumar Bansal, Sr. DR

Date of Hearing	20/12/2024
Date of Pronouncement	19/02/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal of the Assessment Year (hereinafter, the 'AY') 2012-13 filed by the assessee is against the order dated 11.04.2019 of the Commissioner of Income Tax (Appeals)-34, New Delhi [hereinafter, 'the CIT(A)'].

2. The assessee has raised three issues in this appeal. These are (i) disallowance of expenditure under section 14A of the Income Tax Act, 1961 (hereinafter 'the Act'), (ii) disallowance of expenditure under section

40(a)(ia) of the Act and (iii) disallowance of depreciation/amortization of goodwill.

3. The relevant facts giving rise to this appeal are that the assessee, engaged in the business of manufacturing and trading of electronics/electrical goods, filed its Income Tax Return (hereinafter, the 'ITR') on 29.11.2012 declaring income of Rs.7,82,23,760/-. This ITR was later on revised on 29.03.2014 declaring income of Rs.6,38,34,620/-. The case was picked up for scrutiny and consequential assessment was completed at income of Rs.6,56,10,314/- vide order dated 21.03.2016 passed under section 143(3) of the Act, wherein the Assessing Officer (hereinafter, the 'AO') made following disallowances:

i. Rs.15,71,334/- under section 14A of the Act,
ii. Rs.2,04,350/- under section 40(a)(ia) of the Act and
iii. Claim of amortization of goodwill of Rs.8,23,07,136/-.

3.1 Aggrieved, the assessee preferred appeal before the CIT(A), who upheld the disallowance made under section 40(a)(ia) of the Act and the disallowance of claim of amortization of goodwill. Further, the Ld. CIT(A) allowed relief of Rs.1,50,000/- out of the disallowancemade under section 14A of the Act.

4. With respect to disallowance of Rs.14,21,234/- made under section 14A of the Act, the Ld. Authorized Representative (in short, the

'AR') submitted that the appellant/assessee while computing its income for the ITR, following the decision of Maxopp Investment Ltd. 203 taxman 364, had already made disallowance of Rs.1,50,000/-in accordance with the Rule 8D of the Income Tax Rules. Therefore, further disallowance on this score was not called for. Our attention was also drawn to the fact that similar disallowance made in AY 2010-11 and 2011-12 had been knocked off by the Ld. CIT(A) on the reasoning that the AO didn't record any satisfaction for making the disallowance under section 14A of the Act. It was contended that the appellant/assessee had not incurred any specific expenditure for earning the dividend income of Rs.1,91,91,335/-. It was categorically submitted that the entire investment made by the appellant/assessee was being managed by the Portfolio Manager;Alfa Capital and as such the appellant/assessee was not required to do anything, after making initial investment in mutual fund, to earn the dividend income during the relevant year. Further, it was also submitted that the appellant/assessee, a manufacturing company, had not claimed any exclusive expenditure in its Profit& Loss Account for earning the dividend income.

4.1 The Ld. AR further submitted that the AO had not given any specific finding regarding the disallowance made under section 14A of the Act except mentioning that the reply furnished by the assessee placed on record was considered and was not found satisfactory. The live nexus

between the dividend income and expenditure incurred with respect thereof claimed in the Profit & Loss Account of the appellant/assessee was demonstrated by the AO. Reliance was placed on the decisions of the Hon'ble Courts in the cases of (i) Walfort Share and Stock Brokers P Ltd.; 326 ITR 1, (ii) Birla Corporation Ltd.; [2014] 55taxman33, (iii) Development credit Bank Ltd.; [2013] 40taxman.com532, (iv) Wella India Hair Cosmetics Pvt Ltd.; [2014] 51 taxman.com 203, (v) Hero Cycle; 323 ITR 518, (vi) Eichear; 101 TTJ (Del.) 369,(vii) Godrej & Boyce Mfg. Co. Ltd.; 328 ITR 81 (Mum), (ix) Taikisha; 370 ITR 338 (Del.), (x) Priya Exhibitors (P) Ltd.; [2012] 54 SOT 356, (xi) Pukhraj Chunnilal Bafna; [2014] 47 taxman.com 288 and (xii) Magarpatta Township Development and Construction Company Ltd. [2014].

5. The second issue is in respect of the disallowance of Guarantee Commission of Rs.2,04,350/- under section 40(a)(ia) of the Acton the reasoning that the appellant/assessee had not deducted tax at source (hereinafter, the 'TDS') while paying the same to the bank. It was submitted that the AO had not mentioned any specific section for the said disallowance as there was no provision in the Act forTDS on bank guarantee. Hence, it was vehemently argued that the provision of section 40(a)(ia) of the Act did not get attracted here. The Ld. AR argued that the AO had disallowed this expenditure placing emphasis on the CBDT Circular which was clarificatory in nature. It was contended that there was

no provision in the Act mandating TDS on payment of bank guarantee commission. Hence, it was prayed for deletion of the disallowance.

6. The next issue is in respect of the disallowance of claim of the Depreciation/amortization of goodwill of Rs.8,23,07,136/-. It was contended that the AO did not allow this deduction stating that the appellant/assessee had not claimed such amortization of goodwill in the original and revised ITR. The Ld. AR submitted that this issue was a covered matter by the decision of the Hon'ble Delhi High Court in the appellant/assessee's own case in the ITA 475/2022 (order dated 01.08.2023) wherein it had been held that the depreciation on goodwill resulting from an amalgamation could be allowed even if no actual cash payment was made and also held that goodwill is an intangible asset eligible for depreciation. It was submitted that the depreciation on goodwill was claimed by filing the revised ITR on 29.03.2024 only after the approval of amalgamation by the Hon'ble High Court on05.02.2014.The Ld. AR placed reliance on the decision of the Hon'ble Bombay High Court in the case of Pruthvi Brokers & shareholders 23 taxmann.com 23 wherein it has been held that the assessee is entitled that the assessee can raise additional legal ground or claim before the appellant/assessee.

7. On the other hand, the Ld. Sr. DR, placing reliance on the orders of lower authorities, prayed for dismissal of appeal. In particular, the Ld.

Sr. DR drew our attention to the para 5.4 of the impugned order of the Ld. CIT(A), which reads as under:

> *"5.4 I have considered the facts of the case, finding of the AO and submissions of the appellant. Appellant has earned dividend income of Rs.1,91,91,335/- during the year and made total investment in mutual fund and others at Rs.38,87,47,847/-. The appellant has made suo moto disallowance of Rs.1,50,000/- as per the provisions of section 14A but appellant failed to justify the basis of making disallowance of Rs.1,50,000/-. The appellant has not computed the disallowance as per section 14A read with Rule 8D. There is specific procedure laid down for calculating disallowance as per the provisions of Rule BD of the Rules. The AO has given an opportunity to the appellant to explain why disallowance should not be made as per the provisions of Rule BD. The appellant has tried to justify the expenses that it has disallowed proportionate expenses related to salary, telephone, stationery, etc. attributable to earning of exempt income. The appellant failed to justify why it has not computed the disallowance as per the procedure laid down in the Act. The AO has recorded the satisfaction in the order that for making investment and earning tax free income men hours and expenses which are inherent and embedded in the complete business process are required and constant monitoring is required to make Investment. Since appellant has not computed the disallowance as per the provisions of the Act and not filed the detail of expenses which are having direct nexus of earning exempt Income, the AO, not being satisfied with the suo moto disallowance made by the appellant, has computed disallowance as per Rule 8D(2)(iii) and disallowed 0.5% of average value of investment ie. Rs.15,71,334/-. The appellant has also filed the computation during the appellate proceedings as per the provisions of Rule BD after excluding strategic investment and computed disallowance at Rs. 13,47,702/-. Strategic Investment is also the part of total investment and disallowance u/s 14A has to be worked out taking into account the strategic investment as held by the Hon'ble Supreme Court in the case of Mexopp Investment (2018) 402 ITR 640. Considering the above facts, addition made by the AO at Rs.15,71,334/-is confirmed, however since appellant has already*

made disallowance to Rs.1,50,000/-, therefore addition is restricted to Rs.14,21,334/- (Rs.15,71,334 - Rs.1,50,000/-).”

8. We have heard both parties and have perused the material available on the record.

9. The 1st issue is in respect of the disallowance under section 14A of the Act. The investment resulting exempted income as on 01.04.2011 was Rs.23,97,85,964/- whereas it was Rs.38,87,47,847/- as on 31.03.2012. Such investments haveresulted exempted income of Rs.1,91,91,335/- in the relevant year. The upward variation in investment portfolios and resultant quantum of exempted income clearly show that the appellant assessee is actively involved in the investments resulting exempted income. The appellant assessee has disallowed expenses of Rs.1,50,000/- under section 14A of the Act. The said disallowance has been claimed to have been made based on the proportionate salary of two employees (one from senior management and one routine staff who coordinate with the portfolio manager) and overheads expenses; such as stationery, telephone and other expenses. However, the detailed working of the said disallowance has not been made available to lower authorities but to us also. The assessee’s reasoning for disallowance of Rs.1,50,000/- under section 14A of the Act has been held untenable by the AO. Further, the Ld. CIT(A) has given the detailed justification in para 5.4 of his order for sustaining the disallowance made by the AO in this regard. The finding of the Ld. CIT(A) has not been controverted by the Ld. AR. It is found that the

appellant assessee has not taken into account the administrative, establishment and managerial expenditure for working out the disallowance under section 14A of the Act.

9.1 There is specific Rule prescribed for working out the quantum of disallowance under section 14A of the Act. The appellant assessee has not worked out the disallowance under section 14A of the Act as per the income Tax Rules. The impugned order has held that the AO has recorded his dissatisfaction about the suo-moto disallowance made by the appellant assessee under section 14A of the Act. Hence, the Rule 8D comes into effect and the disallowance under section 14A of the Act has to be worked out accordingly. After careful consideration of facts of the case and orders of lower authorities, we do not find any infirmity in the finding of the Ld. CIT(A) on the issue of disallowance under section 14A of the Act. Hence, we decline to interfere with the finding of the Ld. CIT(A) on this issue. Accordingly, we sustain the disallowance of expenses of Rs.14,21,334/- under section 14A of the Act.

10. The 2nd issue is in respect of the disallowance of Guarantee Commission of Rs.2,04,350/- under section 40(a)(ia) of the Act. We find merit in the argument/submission of the Ld. AR. This issue has been decided by the coordinate bench in the case of National Fertilizers Ltd in the ITA No. 3437/DEL/2018 (Date of the order: 30/09/2021), wherein it has been held as under:

“7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the similar issue is decided by the Tribunal in case of DCIT vs. M/s Nalwa Steel and Power Ltd. 2021 (6) TMI 66 - ITAT Delhi - dated - 31 May, 2021 considering the Notification No. 56/2012 dated 31.12.2012 wherein it is held that "6. We have carefully considered the rival contention and find that the assessee has paid guarantee commission charges of state bank of India for giving guarantee in favour of the seller of coal to the assessee. It is one of the banking services provided by the state bank of India to the assessee. It cannot be said to be a "commission" as intended to u/s 194H of the but it is in the nature of Bank charges charged by the bank for provision of services to the assessee. Now this issue has been decided by the honourable Bombay High Court in case of CIT - TDS (1), Bombay versus Larsen and Toubro Ltd 101 taxmann.com 83 wherein the honourable High Court while dealing with the case for assessment year 2010 - 11 held as Under:-

> *"3. Learned counsel for the Revenue stated that the Revenue had filed an appeal against the judgment of the Tribunal in case of Kotak Securities Ltd but that the appeal was withdrawn on the ground of low tax effect. He has, however, made available a copy of the judgment of the Tribunal in the said case which contains a detailed discussion on the issue at hand. In the said judgment, the Tribunal referred to Section 194H of the Act which requires an assessee responsible for paying any income by way of commission or brokerage to deduct tax at source. The Tribunal was of the opinion that the words "commission or brokerage" must take colour from each other. The Tribunal was of the opinion that the payment in question, though categorized as "bank guarantee commission" is not strictly speaking payment of commission since there is no principal to agent relationship between the payer and the payee. The Tribunal, therefore, held that the requirement of deducting tax at source emanating from Section 194H of the Act in the present case does not arise.*
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> *4. We are broadly in agreement with the view of the Tribunal. The so- called bank guarantee commission is not in the nature of commission paid to an agent but it is in the nature of bank charges for providing one of the banking services. The requirement*

of Section 194H of the Act, therefore, would not arise. No question of law arises. The Income Tax Appeal is dismissed."

7. Therefore, respectfully following the decision of the honourable Bombay High Court rendered in case for assessment year 2010 - 11 and also the Notification No 56/2012 of CBDT which has been considered by several coordinate benches and held that same also applies to earlier period then the date of issue of notification, we hold that the assessee was not required to withheld any tax on bank guarantee charges paid to state bank of India and therefore no disallowance would have been made u/s 40 a (ia) of the act. So we confirm the order of the ld CIT (A). In view of this ground number (1) of the appeal is dismissed."

In the present case, the assessee has paid Bank Guarantee Commission to Scheduled Banks approved by RBI and issue of Bank Guarantee is part of Banking services. Vide Finance Act, 2012 following has been inserted in Section 40(a)(ia) of the Income Tax Act, 1961:

"Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the proviso to Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the proviso of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first provision of sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date furnishing of return of income by the resident payee referred to in the said proviso."

In the present case also, it is one of the banking services provided by the Scheduled Banks to the assessee as per the norms of the RBI. It cannot be said to be a "commission" as intended to u/s 194H of the but it is in the nature of Bank charges charged by the bank for provision of services to the assessee. Now this issue has been decided by the Hon'ble Bombay High Court in case of CIT - TDS (1), Bombay versus Larsen and Toubro Ltd 101 taxmann.com 83 as well as per Notification No. 56/2012 of the CBDT the said provisions will also applied to earlier period than the date of issue of notification. Thus, the Ground No. 2(a) and 2(b) of the Assessee's appeal are allowed.

Hence appeal of the assessee being ITA No. 3437/Del/2018 is allowed."

10.1 In view of the above and facts of the case, we are of the considered opinion that this issue gets squarely covered by the decision of the coordinate bench in the case of National Fertilizers Ltd. (supra). Hence following the reasoning therein, we set aside the finding of the Ld. CIT(A) on this score and delete the disallowance of Guarantee Commission of Rs.2,04,350/- under section 40(a)(ia) of the Act.

11. The last issue is in respect of the disallowance of claim of amortization of goodwill of Rs.8,23,07,136/-. We find merit in the argument of the Ld. AR that this issue is covered by the decision of the Hon'ble Delhi High Court in the appellant/assessee's own case in the ITA 475/2022. The appellant assessee has the genuine reason for not claiming the amortization of goodwill of Rs.8,23,07,136/- in the original ITR. Unless the scheme of amalgamation was finalized, the claim of the amortization of goodwill could not be made. The same was claimed during the assessment proceedings just after approval of the amalgamation by the Hon'ble High Court. Following the ratio laid down by the Hon'ble Supreme Court in the case of Dalmia Power Ltd. (order dated: 18 December, 2019) AIRONLINE 2019 SC 1924 and the decision of the Hon'ble Delhi High Court in the appellant/assessee's own case (supra), we hold that there is no infirmity in the claim of amortization of goodwill of Rs.8,23,07,136/-. Ordered

accordingly. The AO therefore, is directed to allow the claim of amortization of goodwill of Rs.8,23,07,136/-.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in open Court on 19th February, 2025

Sd/-	**Sd/-**
(C.N.PRASAD)	**(AVDHESH KUMAR MISHRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 19/02/2025
Binita, Sr. PS
Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI