

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “E”: NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMEBR**

**ITA No. 4890/DEL/2024
Asstt. Yr. 2018-19**

Vinay Dua Proprietor M/s Gemini Industrial Corporation, 16/78, Punjabi Bagh, New Delhi-110026. PAN- AADPD 0927 C	<u>Vs</u>	Assessing Officer National e-Assessment Centre, Delhi.
APPELLANT		RESPONDENT
Assessee represented by		Shri Ankit Msdnani, CA
Department represented by		Sh. Virender Kumar Singh, Sr. DR
Date of hearing		07.05.2025
Date of pronouncement		25.06.2025

ORDER

PER MS. MADHUMITA ROY, JM:

The instant appeal, filed by the assessee, is directed against order dated 23.08.2024 passed by the Ld. CIT(A)/NFAC, Delhi, arising out of the order dated 21.04.2021 for A.Y. 2018-19 passed by the Assessing Officer, National e-Assessment Centre, Delhi under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

The assessee has raised the following grounds of appeal:

“1. That the Learned CIT(A) has erred both on facts and in law for making addition u/s 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Act, 1962 amounting to Rs. 1,82,260/- while ignoring the following :-

a) The assessee is maintaining consolidated books of accounts of his proprietorship concern and of his personal transactions/personal assets and liabilities.

b) The assessee on year to year basis is investing in equities and mutual funds out of the profits earned from his proprietorship concern in his personal name and not in the name of his proprietorship concern.

c) The majority of investments are old and being brought forward from earlier years.

d) The Investments so made by the assessee are not financed by taking loans but from own funds comprising of accumulated balance in capital account.

e) Neither any investment nor any exempt income is generated by assessee's proprietorship concern namely M/s Geminy Industrial Corporation, Ludhiana.

2. That the Learned CIT(A) has erred both on facts and in law while making disallowance of Diwali Expenses of Rs. 90,698/- inspite of the fact that payment was made by account payee's cheque.”

3. Facts of the case, in brief, are that the assessee filed return of income for the AY 2018-19 on 30/10/2018 declaring total income of Rs 6,38,61,730/-. The assessee is a proprietor of M/s. Geminy Industrial Corporation, Ludhiana, engaged in the business of manufacturing & trading of all kinds of domestic and industrial sewing machines, embroidery and knitting machines. The case was selected for scrutiny and statutory notices were issued. During assessment proceedings the AO noticed that the assessee had earned exempt dividend income of Rs.1,60,783/- and

interest on PPF of Rs.4,32,031/- totaling to Rs.5,92,814/-, however, no disallowance was made under Section 14A read with Rule 8D. Rejecting the reply furnished by the assessee, the AO calculated the disallowance under Section 14A of Rs. 1,82,260/- and added to the total income of the assessee. Further, the AO disallowed diwali expenses claimed by the assessee at Rs.90,698/- by observing that no documentary evidence was furnished. Thus, the AO completed the assessment at Rs. 6,44,13,262/- against the returned income of Rs. 6,38,61,730/-. Aggrieved against it the assessee preferred appeal before the Ld. CIT(A) who vide impugned order dated 23.08.2024 dismissed the appeal by affirming the action of the Ld. AO. Feeling aggrieved now the assessee is in appeal before us.

4. In short assessee submitted as follows:

- “1. The Balance Sheet as on 31.03.2018 of proprietorship concern namely M/s Geminy Industrial Corporation, Ludhiana is prepared while clubbing the personal transactions/Asset & Liabilities of the assessee.
2. The personal assets and the liabilities of the assessee as on 31.03.2018 shows the following statistics :-

(i) Assessee Own Fund	= Rs. 57,14,150/-
(ii) Investments in Shares & Securities	= Rs. 2,42,27,350/-
3. The Assessee own funds are in excess of the investments yielding exempt income and hence investments have come from the interest free funds available with the assessee.
4. Investments to earn exempt income were made out of interest free funds and no direct and indirect expenses were incurred and the Assessing Officer has also not brought on record of any such expenses.
5. Out of the total investment as on 31.03.2018 of Rs. 2,42,27,350/-, the investment of Rs. 1,26,31,783/- was made upto the year ending 31.03.2017. During the year, the assessee had

interest free funds, more than the investment made, the said investments were made out of accumulated balance in assessee's saving bank account.

In view of the above an addition made of Rs. 1,82,260/- u/s 14A r.w Rule 8D by Assessing Officer is not in accordance with the spirit of said section and hence it is therefore prayed that the abovesaid addition of Rs. 1,82,260/- made in the returned income shared be deleted.”

5. The Ld. CIT(a) while rejecting the claim of the assessee observed following the judgment passed by the Hon’ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT reported in 254 taxmann 325 the relevant portion is reproduced as under:

6.2.7 The assessee has earned exempt dividend income however no disallowance was made u/s 14A r.w. Rule 8D of the Act. The assessee has shown dividend income amounting to Rs.1,60,783/- and interest on PPF amounting to Rs.4,32,031/- totalling to Rs.5,92,814/-. The assessee's argument is not relevant since no direct expense were disallowed but only the indirect expenses were considered for the disallowance of 14A read with rule 8D of the Act. Further, the assessee did not furnish the necessary documentary evidence in support of his contention. The case laws relied upon by the assessee are not applicable to the facts of the case.

6.2.8 As laid out by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd vs CIT 254 taxmann 325, AO can invoke section 14A after recording his dissatisfaction with the expenditure calculated by the appellant. Once the AO invoked section 14A, calculation as prescribed in rule 8D applies. The assessee has earned exempt dividend income however no disallowance was made u/s 14A r.w. Rule 8D of the Act. Since, no disallowance has been made by the assessee and as per the facts and circumstances of the case, the AO arrived at the satisfaction for disallowance u/s 14A r.w. Rule 8D of the Rules that there are indirect expenses relatable to the earning of exempt income. Therefore, I am of the considered of the opinion that the A® rightly made the disallowance u/s. 14A r.w. Rule 8D of the Act. Thus, the ground raised by the assessee on this issue is dismissed.”

6. In this respect the assessee had made investment from the interest free fund available with the assessee and no direct and indirect expenses were incurred and neither the AO has brought on record any such expenses, the addition made to the tune of Rs.1,82,260/- under Section 14A r.w.Rule 8D of the Act is not in

accordance with spirit of the said section and therefore, the addition is liable to be deleted. In this regard he has relied upon the judgment passed by the Hon'ble Apex Court in the case of The South Indian Bank Ltd. Vs. The CIT, wherein it has been held that what cannot be denied is that the requirement for attracting the provisions of Section 14A(1) of the Act is proof of the fact that the expenditure sought to be disallowed/deducted had actually been incurred in earning the dividend income. We note that the judgment passed in the matter of Maxopp Investment Ltd. (supra) is not applicable to the case in hand. Having regard to the ratio laid down by the above judgment we find no reason in making disallowances of the impugned amount under Section 14A of the Act, when the assessee had made investment out of its interest free fund available with it and no direct and indirect expenses were incurred in making such investment to earn exempt income. With the above observation, we therefore, delete the addition made by the Ld. AO.

7. So far as the addition to the tune of Rs.90,698/- in respect of the diwali expenses is concerned the assessee submitted as follows:

“1. The assessee during the assessment proceedings vide has Authorised Representative letter dated 04.04.2021 has submitted as under:-

"The requisite copy of ledger account of Diwali Expenses and copies of bill are hereby enclosed except the bill of Reliance Mart amounting Rs. 90,698- which is at present not traceable. However, the payment has been made by account payee cheque and in evidence to the same, we are hereby indicating the payment made to Reliance Mart on 10.10.2017."

2. The detail of Diwali Expenses debited to Profit & Loss Account as under:-

Date	Particulars	Amount (in rupees)
10.10.2017	To Cheque - Reliance Retail Limited	90,698-
15.10.2017	To bill SohanLalaRasturi	28,795/-
The above said expenses were incurred for the purchase of sweets and gifts which		
17.10.2017	To bill Prem Prakash	1,28, 100/-
	Total	2,47,593/-

were provided to all the employees on Diwali Festival.

3. The action of Assessing Officer while disallowing an amount of Rs. 90,698-out of the total diwali expenses of Rs. 2,47,59% because of no availability of bill is not justified because of the following:

- a) The payment in this case was made by account payee cheque to M/s Reliance Retail Limited.
- b) During the assessment year under reference the number of employees were as under:-

Particulars	Number of employees
Administrative	20
Workers at Factory	220
Total	240

The above said is evident from the details of salary and wages submitted during assessment proceedings vide AR letter dated 24.03.2021.

4. Diwali expenses were always incurred for providing sweets and gifts to employees during all the earlier previous years as per following details and no part of said expenses were disallowed:-

Financial Year	Sales	Diwali Expenses	Claimed Percentage to Sales Claim (%)
2014-15	84,80,36,502/-	5,91,114/-	0.06 (Page 47 to 48)
2015-16	94,24,70,602/-	2,82,048/-	0.02 (Page 47 to 48)
2016-17	1,02,25,88497/-	2,47,459/-	0.02 (Page 7 to 8)

2017-18 1,00,64,46,699/- 2,47,593/ 0.02 (Page 7 to 8)

From the above said data, it is evident that there is no increase in percentage of Diwali expenses incurred during the assessment year under appeal as compared earlier years. While going through the number of employees/workers and turnover, diwali expenses incurred are very reasonable and any disallowance out of it is not justified. It is therefore prayed that addition of Rs. 90,698/- (being paid by account payee cheque to M/s Reliance Mart) out of total diwali expenses of Rs. 2,47,593/- should be deleted.”

8. The fact that there is no increase in the percentage of diwali expenses incurred during the year under consideration compare to the other years and having regard to the number employees and the turnover the diwali expenses is found to be reasonable which has been particularly made by account payee cheques to M/s Reliance Mart, the addition is found to be not sustainable in the eyes of law and therefore, deleted.

9. The appeal of the assessee is allowed.

Order pronounced in the open court on 25.06.2025

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMEBR

Sd/-

(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Dated: 25.06.2025

Rohit, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI