

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

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.128/DEL/2021
(Assessment Year: 2016-17)**

Fast Movers Logistics Private Limited,
E-188, E – Block, Greater Kailash,
New Delhi – 110 065.

vs.

ITO, Ward 9 (1),
New Delhi.

(PAN : AABCF7319R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Kalrav Mehrotra, Advocate
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 07.05.2025
Date of Order : 06.08.2025

ORDER

PER S.RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. This appeal is filed by the assessee against the order of ld. Commissioner of Income-tax (Appeals), Delhi-13 [hereinafter referred to as 'ld. CIT (A)] dated 04.02.2020 for Assessment Year 2016-17.
2. Brief facts of the case are, during assessment proceedings, AO observed that assessee has paid interest and bank charges of Rs.41,99,598/- during the year against the loan taken by the assessee from NBFC. He also observed that assessee has received exempt income of Rs.32,29,58,236/- from partnership firm, namely, Great Value Foods against the investment of Rs.86,39,14,055/-.

After considering the submissions of the assessee, the AO rejected the same and observed that provisions of section 14A of the Income-tax Act, 1961 (for short 'the Act') read with Rule 8D are applicable. Accordingly, he determined the disallowance under Rule 8D(2)(ii) of Rs.39,29,130/- and disallowable under Rule 8D(2)(iii) of Rs.20,38,452/-.

3. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT(A), Delhi-13 and filed detailed submissions. After considering the submissions of the assessee, Id. CIT (A) sustained the additions made by the AO by observing as under:-

“4.7 A perusal of the assessment records reveals that the appellant is a partner with approximately 33% share of profit in the partnership firm M/s Great Value Foods. The appellant had an opening balance in the capital account of Rs.55,09,24,919/- (as on 01.04.2015) with a further addition (investment) of Rs.1,40,00,000/- during the year, resulting in a profit of Rs.32,29,56,236/-. This was exempt u/s 10(2A) of the Act in hands of the appellant, hence covered under the provision of section 14A r.w.r. 8D of IT Rule, 1962. Reference is also made to the ruling of Hon'ble ITAT Ahmedabad in the case of Vishnu Anand Mahajan vs. ACIT T5 396 ITAT 2012 (SO). It was held as follows:

"The Special Bench had to consider two issues: (i) given that a firm pays tax on its profit, whether the share of profit received by a partner from the firm, which is exempt in his hands u/s 10(2A), can be said to be not "tax-free" so as to not attract s. 14A & (ii) whether depreciation can be said to be "expenditure" so as to be disallowable u/s 14A. HELD by the Special Bench:

1. Though a firm and its partners are not different entities in general law, under the Act, they are treated as separate entities. The salary and interest paid by the firm to the partners is deductible in the hands of the firm and taxable in the hands of the partners u/s 28(v). The balance profits are taxed in the hands of the firm and exempt in the hands of the partners u/s 10(2A). As s. 10(2A) provides that the share of profit of the partner shall not be included in his total income, it is not possible to hold that the share income is not excluded from the total income of the partner because the firm has already been taxed thereon. When s. 10(2A) speaks of its exclusion from the total income it means the total income of the

person whose case is under consideration i.e. the partner. As the share income is excluded from his total income, s. 14A would apply and any expenditure incurred to earn the share income will have to be disallowed."

In light of the above judicial interpretation and since the facts of the present case are similar to the referred case its finding is clearly applicable.

4.8 There are numerous other case laws supporting the findings of the AO, wherein even if no exempt income is earned, the provisions of section 14A is still applicable, for example:

- i. Lally Motors India (P) Ltd. vs. PCIT ITAT Amritsar 2018 (170 ITD 370)
- ii) Punjab Tractors Ltd. vs. CIT P & H High Court 2017 according to which the AO is bound to apply the provisions of Rule 8D where he is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred to earned exempt income.
- iii) Vipin Malik vs. ACIT IT AT, Delhi 2016 wherein no disallowance of expenditure was made by the assessee, hence invoking the provisions of Rule 14A r.w.r. 80(2)(iii) was held to be justified.

4.9 In light of the above facts and findings, the appellant's claim that no expenditure was incurred for earning the income not included in total taxable income u/s 10, amounting to Rs.32,29,56,236/- does not hold force, as far as disallowance made by the AO of Rs.59,67,582/- is concerned. This disallowance has been computed as per provisions of Rule 14A r.w.r. 8D(2)(iii) which appears to be in order. The arguments put forth by the appellant as well as the rulings relied upon, do not address the basic facts of this particular case nor challenges the applicability of the provisions of the statute invoked by the AO. Accordingly, the addition/ disallowance of Rs.59,67,582/- computed by the AO is hereby confirmed."

4. Aggrieved, assessee is in appeal before us raising following grounds of appeal :-

"The learned Commissioner of Income Tax (Appeal) has erred in law as well as on facts in confirming the addition of Rs.59,67,582/- made by Learned Assessing Officer by invoking provisions of Section 14A of the Income Tax Act, 1961 read with Rule 8D."

5. At the time of hearing, ld. AR of the assessee brought to our notice page 160 of the paper book which is Balance Sheet of the current assessment year

wherein the assessee has taken long term borrowing of Rs.1.24 crores against which assessee has incurred financial costs of Rs.41,99,598/-. He submitted that the interest cost claimed by the assessee is directly linked to the operations of the assessee and assessee has taken the carriage loan for purchase of carriages which did not have any bearing on the earning of exempt income. Further he submitted that exempt income is earned from a partnership firm in which assessee has invested capital, assessee has sufficient interest free funds to cover those investments. He submitted that the provisions of section 14A are not applicable in the present case.

6. On the other hand, ld. DR of the Revenue brought to our notice findings of the lower authorities and relied on the same.
7. Considered the rival submissions and material available on record. We observe that assessee has earned exempt income from the partnership firm and assessee has borrowed certain funds for the purpose of business and claimed the same as expenditure. After considering the submissions of the assessee, the borrowing of funds for the purpose of business has no linked to the investment in the partnership firm. The assessee has borrowed the money for purchase of carriages and there is a direct link to the fixed assets, therefore, the disallowance made by the AO under Rule 8D(2)(ii) is uncalled for.

8. With regard to disallowance made under Rule 8D(2)(iii) is concerned which is for the purpose of administration expenditure, we observe that the formula is 0.5% of the average investment which comes to Rs.35,12,180/- whereas the assessee has incurred expenditure of Rs.20,38,452/- as administration expenses. We observe that assessee is having its own running business and incurred employee expenditure of Rs.10,80,000/- and other administration expenses of Rs.9,58,452/-. In this case, we observe that AO has restricted the disallowance to total expenditure claimed by the assessee of Rs.20,38,452/-. In our considered view, disallowing the whole administration expenses against the earning of exempt income, there is no running expenditure for the existing company. This is absolutely not fair and just. In our considered view, it should be restricted to 10% of the administration expenses actually incurred by the assessee. Accordingly, we direct the AO to restrict the disallowance to the extent of 10% of the total administration expenses incurred by the assessee i.e. Rs.2,03,845/-. This is due to peculiar facts of the case. Accordingly, the ground raised by the assessee is partly allowed.
9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on this 6th day of August, 2025.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 06.08.2025

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI