

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

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.954/Del/2024
(ASSESSMENT YEAR 2017-18)

Delite Infrastructure Pvt. Ltd. 607, Rohit House-3, Tolstoy Marg, New Delhi-110001. PAN-AACCD6735A	Vs.	Asst. CIT, Circle-7(1), Delhi.
(Appellant)		(Respondent)

Assessee by	Shri Salil Kapoor, Adv., Shri Utkarsh Gupta, Adv.
Department by	Shri Rajesh Kumar Dhanesta, Sr. DR
Date of Hearing	18/11/2025
Date of Pronouncement	16/01/2026

ORDER

PER MANISH AGARWAL, AM:

This appeal is filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ('Ld. CIT(A)' in short) dated 19.01.2024 in Appeal No. CIT(A), Delhi-3/10176/2019-20 arising out of the order passed u/s 143(3) of the Income Tax Act, 1961 ('the Act' for short) dated 26.11.2019 for Assessment Year 2017-18.

2. Brief facts of the case are that the assessee company had filed its return of income on 23.08.2017 declaring Nil income and claimed capital loss of Rs.1,25,78,349/- comprising of business loss of Rs.27,962/- and short term capital

loss of Rs.1,29,57,330/-. The AO observed that assessee is having dividend income of Rs. 75,78,783/- and incurred expenses on such investment in the shape of interest which was claimed against the short term capital gain, therefore, he invoked the provisions of section 14A of the Act and disallowed the entire amount of loss expenses claimed of Rs.1,29,85,292/-.

3. Against the said order, the assessee filed an appeal before Ld. CIT(A) who vide impugned order dated 19.01.2024 has confirmed the additions and dismissed the appeal of the assessee.

4. Aggrieved by the said order, assessee is in appeal before the Tribunal by taking following grounds of appeal:

- “1. That in the facts and circumstances of the case and in law, the assessment order dated 26.11.2019 under section 143(3) of the Income Tax Act, 1961 ('the Act') passed by the Assessing Officer ('AO') and the disallowance/addition made are illegal, bad in law, unjust, without jurisdiction and barred by time limitation and as such the same is liable to be quashed*
- 2 That in the facts and circumstances of the case and in law the AO has erred in making illegal, unjust, highly excessive disallowance and grossly erred in computing the total income at Rs. 2,55,63,640/- and the Ld. CIT(A) has erred in confirming the assessment order dated 26.11.2019 vide order dated 19.01.2024 under section 250 of the Act.*
- 3. That in the facts and circumstances of the case, the AO/CIT(A) grossly erred in disallowing a sum of Rs. 1,29,85,292/- under section 14A of the Act by applying the formula prescribed under Rule 8D of the Income Tax Rules, 1962 ('the Rules')*
- 4 That the AO/CIT(A) grossly erred in computing the disallowance under section 14A of the Act by invoking Rule 8D of the Rules without appreciating that conditions precedent for applying provisions of the said Rule as prescribed in sub-section (2) and (3) of the said section were not satisfied and adequate satisfaction as mandated in terms of section 14A of the Act read with Rule 8D of the Rules was not recorded. Hence the same is liable to be deleted.*

5. *That in the facts and circumstances of the case, the AO/CIT(A) failed to appreciate that the Appellant had not incurred any expenditure to earn exempt income during the year and as such no disallowance under section 14A of the Act is to be made.*
6. *That in the facts and circumstances of the case, the AO/CIT(A) erred in misconstruing the material placed on record and explanation offered by the Appellant in treating the sum of Rs. 1,25,84,314/- as expenditure incurred towards earning exempt income, when in fact the said sum was on account of payment of interest on loan taken for business activities and the same was duly accounted for while offering income to tax*
7. *That, in the facts and circumstances of the case, and without prejudice to the grounds taken above, the AO/CIT(A) grossly erred in treating the sum of Rs.1,25,78,349/- as the income of the Appellant for the year under consideration and aggregating the said amount with the sum of Ha. 1,29,85,292 as computed for the purposes of disallowance under section 14A of the Act to ascertain total income of the Appellant, whereas, in fact, the sum of Rs. 1,25,78,349 is the returned loss of the Appellant and disallowance, if any, can only result into total taxable income of the Appellant to be computed at Re 4,06,943/*
8. *That in the facts and circumstances of the case and in law, the disallowance made and the observations made are unjust, unlawful and based on mere surmises and conjunctures. The disallowance made cannot be justified by any material on record and the computation of total income shows lack of application of mind and the perfunctory approach of the AO/CIT(A).*
9. *The explanation given in the evidence produced, material placed that has been made available on record has not been properly considered and judicially interpreted and the same do not justify the additions/ allowances made.*
10. *The AO has erred in charging interest under section 23413 of the Act. The same has been unjustly and illegally charged and also wrongly worked out.*
11. *The AO has erred in initiating of proceedings under section 270A (1) r.w.s. 270(A) (9) of the Act.*
12. *That the Appellant craves leave to add, amend, alter and or delete any of the above grounds of appeal at or before the time of hearing.”*

5. Since all the grounds of appeal are in relation to addition of Rs.1,29,85,292/- made by invoking the provisions of section 14A r. w. Rule 8D, therefore, all the grounds of appeal are taken together and decided as under:

6. Before us, Ld. AR for the assessee submits that assessee has filed its return of income at a loss and while invoking the provisions of section 14A, AO has not recorded the satisfaction as envisaged in section 14A of the Act. The Ld. AR claimed that assessee has not claimed any expenditure for earning the dividend income which was received on the investments made in Mutual funds and the interest was paid at a later stage on the loan taken after the redemption of Mutual funds. The Ld. AR submits that the satisfaction has to be recorded before invoking the provisions of 14A and placed reliance on the judgment of *Hon'ble Jurisdictional High Court* in the case of *DCIT vs. Jagson International Ltd.* in *ITA Nos.1234/2018 and 1179/2018 dated 02.11.2018*.

7. The Ld. AR further submits that interest was paid during the period from November, 2016 to March, 2017 and dividend income was received during the period from April,2016 to August, 2016. He further submitted that investments in mutual funds were made out of the fund received from holding company and no borrowed funds were involved in such investments and, therefore, provisions of section 14A are not applicable. In support of this argument, ld. AR drew our attention to the ledger account of holding company available in the PB pages 140 to 143, according to which, funds received from holding Co. namely Martin and Harris Laboratories Ltd. were received by the assessee were transferred to Barclays Securities (India) Pvt. Ltd. for investment in mutual funds. The said funds were repaid in the month of August, 2016 upon redemption of Mutual funds. The Ld. AR submits that the AO has disallowed entire expenses claimed which include bank charges, audit fee and other office expenses and interest of loan totaling to Rs.1,25,84,314/-. The Ld. AR submits that loans taken were utilized in working in progress and further given to Barclays Securities (India) Pvt. Ltd. from where no

income was received. It is therefore submitted that AO has wrongly made the disallowance. He prayed accordingly.

8. On the other hand, Ld. Sr. DR submits that AO in para 3.2 of the assessment order has specifically recorded the satisfaction wherein the AO observed that assessee there is direct nexus between borrowed funds utilized for earning exempt income. Regarding the judgment of Hon'ble High Court in case of Jagson International (supra), ld. SR. DR submits that in that case, AO had not examined the details and *suo moto* disallowance made by assessee and simply applied Rule 8D of the Income Tax Rules, 1962 ("the Rules") whereas, in the instant case, since the AO has recorded his satisfaction after considering financials of the assessee, therefore, ratio laid down by the Hon'ble Jurisdictional High Court in case of DCIT vs. Jagson International Ltd (supra) are not applicable in the facts of the present case. The Ld. Sr. DR further submits that Ld. CIT(A) had followed the judgment of Hon'ble Supreme Court in the case of CIT vs. United General Trust reported in 200 ITR 455 (SC) wherein it is held that when the expenditure has been incurred by the assessee on earning of dividend income in absence of another better method, method suggested by Rule 8D of the Rules should be adopted. He further submits that as per Rule 8D, disallowance was worked out at Rs.1,53,94,154/-, however, the assessee has claimed expenditure of Rs.1,29,85,292/-, therefore, the AO has rightly restricted the disallowance to the extent of expenditure claimed. He thus prayed for the confirmations of the orders of the lower authorities.

9. Heard both the parties and perused the material available on records. Regarding first arguments of the assessee that no satisfaction was recorded by the Assessing Officer as provided in section 14A of the Act, it is observed that AO issued show cause notice to the assessee wherein it is proposed to invoke the

provisions of section 14A of the Act and after considering the submissions made by the assessee, he recorded his satisfaction at page 4 of the order. The Assessing Officer has given four reasons for invoking the provisions of section 14A of the Act which are as under:

- (i) The assessee has no Revenue from operations.
- (ii) The only expenses shown are administrative expenses and financial costs.
- (iii) The assessee has shown an amount of Rs.62,76,70,161/- as borrowed funds (Rs.40 Crs. from Barclays Securities (India) Pvt. Ltd.) and
- (iv) borrowed funds have been invested in Barclays Securities.

10. It is therefore established that the AO has recorded proper satisfaction before invoking the provisions of section 14A of the Act that there is direct nexus between borrowed funds utilized for earning exempt income. In view of these facts, the argument of the assessee that no satisfaction was recorded by the AO before invoking the provisions of section 14A cannot be not accepted.

11. Regarding the judgment of hon'ble jurisdictional high court in the case of **DCIT vs. Jagson International Ltd (supra)** relied upon by assessee, it is observed that the Hon'ble Court has given its finding when the Assessing Officer has not made any discussions about the amount *suo motu* disallowed by the assessee however, in the instant case as observed above, Assessing Officer before invoking the provisions of section 14A of the Act had recorded his satisfaction and thereafter proceeded to make the disallowance as per Rule 8D of the Rules. Therefore, the ratio laid down by the Hon'ble Jurisdictional High Court is not applicable to the facts of present case.

12. Now coming to another argument of the assessee that no borrowed funds were involved in earning exempt income, from the perusal of financial statements available at pages 131 and 132 of the PB, it is seen that assessee has taken loan of Rs. 40 Crs. from Barclays bank during the year which was transferred to Barclays Securities (India) Pvt. Ltd. alongwith other funds available totaling to Rs. 49.99 Crs. in the previous year. Further from the perusal of ledger account of holding company M/s Martin and Harris Laboratories Ltd., it is seen that there was opening balance of Rs.18,03,47,531/- of loan taken from it and fresh funds were also received during the year under appeal which were invested in Mutual funds from where dividend income was earned and a sum of Rs. 54.45 Crs. was repaid in the month of August, 2016 when the assessee has redeemed the investments in the mutual funds. It is further seen that no interest is paid on the funds borrowed from holding company.

13. Further total dividend income of Rs.75,78,783/- from mutual funds was received during the period from 07.04.2016 to 16.08.2016 which is evident from the Ledger Account of dividend available at PB page 147 to 152. It is also seen that loan of Rs. 40 crores was taken on 15.11.2016 which was transferred to Barclays Securities (India) Pvt. Ltd. which is evident from PB page 162 and 165 to 178. It is further seen that during the year under appeal, assessee has made investments in mutual funds up to 16.08.2016 when the whole investment in mutual funds was redeemed. It is further seen that on these investments' assessee has received dividend income as is evident from the copy of ledger Account of investments in mutual funds available at PB page 180 to 190.

14. In view of the above facts, we find that borrowed funds were not utilized for making investments in Mutual funds which yielded exempt income in the shape of dividend and, therefore, disallowance made by invoking section 14A is contrary to

the facts available on record. It is further observed that assessee while computing income from short term capital gain/loss from redemption of mutual funds, claimed interest paid on loan as expenses. As observed above, since, loan taken from bank on which assessee has paid interest has no direct or indirect relation with the investments made in mutual funds, therefore, this claim of the assessee against the gain declared under the head short term capital gain from mutual funds cannot be allowed and the assessee entitled to carry forward the interest paid to next year and we order accordingly. Grounds of appeal No. 1 to 9 of the assessee are thus partly allowed.

15. Ground of appeal No.10 is regarding charging of interest u/s 234A, 234B and 234C which are consequential in nature.

16. Ground of appeal No.11 is regarding initiation of penalty proceedings which is premature.

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

Order is pronounced in the Open Court 16.01. 2026.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 16.01.2026

PK/PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI