

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : "F" NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No: 1250/Del/2014  
AY : - 2009-10

Pradeep Khanna  
W-60, Greater Kailash-1  
New Delhi – 110 048.  
PAN AAQPK0771J  
(Appellant)

vs.

ITO  
Ward-23(1)  
New Delhi.

(Respondent)

Assessee by : Shri Rajesh Mahna, Adv.  
Deptt. by : Shri Sharvan Gotru, Sr. DR

Date of hearing : 5.4. 2016

Date of pronouncement : 2.6.2016

**ORDER**

PER PRASHANT MAHARISHI, ACCOUNTANT MEMBER

1. This appeal is filed by the assessee against the order of Ld. CIT(A)-XXIII

New Delhi vide order dated 29.1.2014 on the following grounds :

1. (a) *The Ld. Assessing Officer Ward 23(1) New Delhi has erred in law and on facts in making of disallowance of expenditure under section 14A of Income Tax Act, 1961 of Rs. 1,46,271/- without recording any satisfaction or relying on the evidence of expenditure so incurred on the scrutiny of the accounts.*  
  
*(b) Further the CIT(A) has further failed to appreciate that the assessee has not incurred any expenditure against the earning of exempted income and the expenditure can not be presumed as the entire investment has been made from the personal a/c of the appellant.*
2. *That the CIT(A) and AO both have failed to appreciate that all the investment have been made by the appellants out of the spare funds available with the appellants and there are no presumption of expenditure – reference*

***ACIT vs. MAXXOP LTD 347 ITR 272 (DELHI)***

3. *The order of the CIT(A) and AO are bad in law and against the facts of the case."*
2. The brief facts of the case are that assessee is an individual filed return of income declaring income of Rs. 18,72,890/- on 29.2.2009. Assessee is engaged in the business of export of ladies garments. During the year assessee has earned exempt income and therefore Ld. AO asked the assessee to furnish details of disallowance u/s 14A read with Rule 8D of the Income Tax Rules 1962. Assessee stated that it has not incurred any expenditure on earning exempt income. However Ld. AO applied Rule 8D and disallowed Rs. 1,46,271/- u/s 14A of the Act. Aggrieved by this assessee preferred an appeal before CIT(A) and submitted that Rule 8D is not applicable and AO has not recorded any satisfaction about the correctness of the claim of the assessee before invoking provisions of Rule 8 D of the IT Rules 1962. It was stated that in absence of such satisfaction such disallowance cannot survive. However Ld. CIT(A) rejected the contention of the assessee and held that as in the past year assessee has accepted the disallowance u/s 14A of the act the argument of the assessee for the current year cannot be accepted and therefore the disallowance was upheld. Assessee aggrieved by the order of CIT(A) has filed an appeal before us.
3. The first ground of appeal is that Ld. AO before making any disallowance u/s 14A applying Rule 8D has not recorded any satisfaction that there is no expenditure disallowable u/s 14A as claimed by appellant in his return of income. Ld. AR of the assessee submitted that now this issue is covered by

the decision of Hon'ble Delhi High Court in the case of Taikisha Engineering Pvt. Ltd. Therefore, the disallowance is not sustainable.

4. Ld. DR relied on the orders of the lower authority.
5. We have carefully considered the rival contentions. On reading of the assessment, order we do not find that AO has recorded any satisfaction on the claim of the assessee that no expenditure has been incurred which is disallowable u/s 14A of the Act. Hon'ble Delhi High Court in case of CIT V Taikisha Engineering Pvt. Ltd. [ 370 ITR 338 (del) ] has held as under :-

"11. Section 14A of the Act is relevant and reproduced below :

"14A. (1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001."

Section 14A of the Act postulates and states that no deduction shall be allowed in respect of expenditure incurred by an assessee in relation to income which does not form part of the total income under the Act. Under sub-section (2) of section 14A of the Act, the Assessing Officer is required to examine the accounts of the assessee and only when he is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to exempt income, the Assessing Officer can determine the amount of expenditure which should be disallowed in accordance with such method as prescribed, i.e., rule 8D of the Rules

(quoted and elucidated below). Therefore, the Assessing Officer at the first instance must examine the disallowance made by the assessee or the claim of the assessee that no expenditure was incurred to earn the exempt income. If and only if the Assessing Officer is not satisfied on this count after making reference to the accounts, that he is entitled to adopt the method as prescribed, i.e., rule 8D of the Rules. Thus, rule 8D is not attracted and applicable to all assessees who have exempt income and it is not compulsory and necessary that an assessee must voluntarily compute the disallowance as per rule 8D of the Rules. Where the disallowance or nil disallowance made by the assessee is found to be unsatisfactory on examination of accounts, the Assessing Officer is entitled and authorised to compute the deduction under rule 8D of the Rules. This pre-condition and stipulation, as noticed below, is also mandated in sub-rule (1) of rule 8D of the Rules.

12. Rule 8D of the Rules, again for the sake of convenience, is reproduced below :

8D. (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with—

(a) the correctness of the claim of expenditure made by the assessee ; or

(b) the claim made by the assessee that no expenditure has been incurred,

in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely :-

(i) the amount of expenditure directly relating to income which does not form part of total income ;

(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :-

$$\begin{array}{ccc}
 A & * & B \\
 & & - \\
 & & C
 \end{array}$$

Where A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year ;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year ;

C = the average of total assets as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year ;

(iii) an amount equal to one-half per cent. of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year.

(3) For the purposes of this rule, the 'total assets' shall mean, total assets as appearing in the balance-sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets."

Sub-rule (1) categorically and significantly states that the Assessing Officer having regard to the account of the assessee and on not being satisfied with the correctness of the claim of expenditure made by the assessee or claim that no expenditure was incurred in relation to income which does not form part of the total income under the Act, can go on to determine the disallowance under sub-rule (2) to rule 8D of the Rules. Sub-rule (2) will not come into operation until and unless the specific precondition in sub-rule (1) is satisfied. Thus, section 14A(2) of the Act and rule 8D(1) in unison and affirmatively record that the computation or disallowance made by the assessee or claim that no expenditure was incurred to earn exempt income must be examined with reference to the accounts, and only and when the explanation/claim of the assessee is not satisfactory, computation under sub-rule (2) to rule 8D of the Rules is to be made.

13. We need not, therefore, go on to sub-rule (2) to rule 8D of the Rules until and unless the Assessing Officer has first recorded the satisfaction, which is mandated by sub-section (2) of section 14A of the Act and sub-rule (1) of rule 8D of the Rules."

6. Respectfully following the decision of Hon'ble Delhi High Court we are of the view that disallowance of Rs. 1,46,271/- made by the Ld. AO and confirmed by the Ld. CIT(A) as unsustainable. Hence we reverse the finding of Ld. CIT(A) and delete the above disallowance.

7. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 2<sup>nd</sup> June 2016.

SD/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

SD/-  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated: the 2<sup>nd</sup> June, 2016

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Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

By order  
AR Registrar