

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

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SH.L.P.SAHU, ACCOUNTANT MEMBER**

**I.T.A .No.-755/Del/2014
(ASSESSMENT YEAR-2009-10)**

DCIT, Circle-4(1), New Delhi (APPELLANT)	vs	Jalco Financial Services Pvt.Ltd., Ground Floor, Kalkaji, New Delhi PAN-AAACJ2791E (RESPONDENT)
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Appellant by	Ms. Rishpal Bedi, Sr.DR
Respondent by	None

Date of Hearing	11.01.2016
Date of Pronouncement	09.02.2016

ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the Revenue assailing the correctness of the order dated 13.11.2013 of CIT(A)-VIII, New Delhi pertaining to 2009-10 assessment year on the following grounds:-

1. *“Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting disallowance of Rs.55,42,112/- under section 14A r.w Rule 8D(II) & 8d(iii)?*
2. *That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*
3. *That the appellant craves leave to add, alter, amend or forgo any ground(s) of appeal raised above at the time of hearing.”*

2. No one was present on behalf of the assessee despite that fact that notice was sent to the address given in Column No.10 which has come back “unserved”. The ld. Sr.DR submitted that the impugned order suffers from the infirmity as neither any Remand Report has been sought nor has the CIT(A) verified the facts at his own level. In the facts of the present case it was her submission that mere statements of the assessee without verifying their correctness have been blindly accepted. Accordingly, a prayer was made that the impugned order may be set aside for verification on facts and restore the issue back to the file of the AO.

3. We have heard the rival submissions and perused the material available on record. It is seen that the assessee in the year under consideration declared a loss of Rs.46,13,98,767/- by way of filing its return on 30.09.2009. The said return was processed u/s 143(1). Thereafter, it was selected for scrutiny. A perusal of the record shows that the assessee was stated to be engaged in the business of Investment and trading in shares. Considering the fact that the assessee as per its computation of income had shown it had investments from shares and income which did not from part of the total income he was required to explain why disallowance u/s 14A r.w. Rule 8D should be not made. Considering the explanation offered an addition of Rs. 56,35,431/- was made by the AO by way of disallowance. The assessee agitated the issue in appeal before the CIT(A) where apart from relying upon the orders of the ITAT. The assessee made various submissions including the following submissions:-

“The assessee’s AR argued that the shares are held by appellant as stock in trade. In such case as per the above ITAT order, no disallowance u./s 14A should be made when shares are held as stock in trade. If the shares are held as investment, then disallowance u/s 14A is called for and can be made to the extent of any expenditure attributed to earning of said dividend income.....”

4. In the light of the submission of the Ld. Sr. DR and considering the material available on record wherein we find that apart from referring to certain decision of the ITAT the Ld. CIT(A) failed to address the factual position on record and give his independent finding thereon after verifying the facts from record nor has he sought to verify the position from the AO by way of obtaining a Remand Report. In view of this patent infirmity, we find that the impugned order deserves to be set aside. Accordingly, considering the submissions of the Ld.Sr. DR the issue is restored to the file of the AO as the Ld. Sr.DR has canvassed that verification is to be done at the Assessing Officer’s level.

4.1. For the reasons given hereinabove, the issue is restored to the file of the AO who is directed to pass a speaking order in accordance with law. Needless to say that a reasonable opportunity of being heard should be granted to the assessee.

5. In the result, the appeal of the Revenue is allowed for statistical purposes.

The order is pronounced in the open court on 09 of February, 2016.

Sd/-

Sd/-

**(L.P.SAHU)
ACCOUNTANT MEMBER**

**(DIVA SINGH)
JUDICIAL MEMBER**

Dated: 09/02/2016

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI