

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

**BEFORE SHRI A.T. VARKEY, JUDICIAL MEMBER  
and  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

**ITA No.4245/Del./2013  
(ASSESSMENT YEAR : 2007-08)**

M/s. HPL Additive Limited,  
803, Vishal Bhawan,  
95, Nehru Place,  
New Delhi – 110 019.

vs. DCIT, Circle 12 (1),  
New Delhi.

**(PAN : AAACH0110P)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Manish Kumar, Advocate  
REVENUE BY : Shri Amit Jain, Senior DR

Date of Hearing : 26.11.2015  
Date of Pronouncement : 11.12.2015

**ORDER**

**PER A.T. VARKEY, JUDICIAL MEMBER :**

This appeal, at the instance of the assessee, is filed against the order of the CIT (Appeals)-XV, New Delhi dated 13.05.2013 for the assessment year 2007-08.

2. The assessee is engaged in the business of manufacturing of chemical blowing agents. During the assessment proceedings, the AO observed that the assessee had made certain investments in shares, on which dividend income of Rs.15,98,318/- was earned, however, it had not disallowed any

expenditure u/s 14A of the Income Tax Act, 1961 (hereinafter 'the Act'). Before the AO, the assessee's explanation was that it had not incurred any expenditure for earning the tax exempt income and that provisions of Rule 8D was not applicable in AY 2007-08 which was not accepted by the AO and accordingly, the AO invoked the provisions of Rule 8D made disallowance of Rs.13,19,552/-. The Id. CIT (A) upheld the order of the AO on this issue.

3. Aggrieved, the assessee has come in appeal before us against the confirmation of addition made under Rule 8D.

4. We have heard both the sides on the issue. We find that the assessment year involved in the present case is 2007-08 and the issue whether Rule 8D is prospective or retrospective was decided by the Hon'ble Mumbai High Court in its decision in the case of Godrej & Boyce vs. DCIT, 328 ITR 81 (Mum.)

The Hon'ble Mumbai High Court in the aforesaid case held as under :-

**“Rule 8D r.w. S. 14A (2) is not arbitrary or unreasonable but can be applied only if assessee's method not satisfactory. Rule 8D is not retrospective and applies from AY 2008-09. For earlier years, disallowance has to be worked out on “reasonable basis” u/s 14A (1)**

The aforesaid decision was also considered by the Hon'ble jurisdictional High Court in the case of Maxopp Investment Ltd. vs. CIT – 347 ITR 272 (Delhi) wherein the Hon'ble High Court has concurred with the above view and held that the provisions of Rule 8D has prospective operation only and so, shall apply with effect from the assessment year 2008-09 onwards, therefore, the

invocation of Rule 8D by the AO is legally untenable. Thus, we find that the Id. CIT (A) erred by wrongly relying on the aforesaid decision of Hon'ble Bombay High Court in Godrej & Boyce (supra) by holding that Rule 8D is applicable in the instant assessment year 2007-08, when the decision of Hon'ble High Court was that it was not applicable for assessment year 2007-08. Thus, we set aside the decision of the Id. CIT (A) on the applicability of Rule 8D on this score alone. We take note that the Hon'ble jurisdictional High Court in the case of Maxopp Investment Ltd. (supra) has directed the procedure which should be followed for the period prior to introduction of Rule 8D in paras 42 and 43 as under:-

“42. How is section 14A to be worked for the period prior to the introduction of Rule 8D?

Sub-section (2) of section 14A, as we have seen, stipulates that the Assessing Officer shall determine the amount of expenditure incurred in relation to income which does not form part of the total income “in accordance with such method as may be prescribed”. Of course, this determination can only be undertaken if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. This part of section 14A(2) which explicitly requires the fulfillment of a condition precedent is also implicit in section 14A(1) [as it now stands] as also in its initial avatar as section 14A. It is only the prescription with regard to the method of determining such expenditure which is new and which will operate prospectively. In other words, section 14A, even prior to the introduction of sub-sections (2) & (3) would require the assessing officer to first reject the claim of the assessee with regard to the extent of such expenditure and such rejection must be for disclosed cogent reasons. It is then that the question of determination of such expenditure by the assessing

officer would arise. The requirement of adopting a specific method of determining such expenditure has been introduced by virtue of sub-section (2) of section 14A. Prior to that, the assessing was free to adopt any reasonable and acceptable method.

43. Thus, the fact that we have held that sub-sections (2) & (3) of section 14A and Rule 8D would operate prospectively (and, not retrospectively) does not mean that the assessing officer is not to satisfy himself with the correctness of the claim of the assessee with regard to such expenditure. If he is satisfied that the assessee has correctly reflected the amount of such expenditure, he has to do nothing further. On the other hand, if he is satisfied on an objective analysis and for cogent reasons that the amount of such expenditure as claimed by the assessee is not correct, he is required to determine the amount of such expenditure on the basis of a reasonable and acceptable method of apportionment. It would be appropriate to recall the words of the Supreme Court in Walfort (supra) to the following effect:-

“The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14A.”

So, even for the pre-Rule8D period, whenever the issue of section 14A arises before an Assessing Officer, he has, first of all, to ascertain the correctness of the claim of the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income under the said Act. Even where the assessee claims that no expenditure has been incurred in relation to income which does not form part of total income, the assessing officer will have to verify the correctness of such claim. In case, the assessing officer is satisfied with the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, the assessing officer is to accept the claim of the assessee insofar as the quantum of disallowance under section 14A is concerned. In such eventuality, the assessing officer cannot embark upon a determination of the amount of expenditure for the purposes of section 14A(1). In case, the assessing officer is not, on the basis of objective criteria and after giving the

assessee a reasonable opportunity, satisfied with the correctness of the claim of the assessee, he shall have to reject the claim and state the reasons for doing so. Having done so, the assessing officer will have to determine the amount of expenditure incurred in relation to income which does not form part of the total income under the said Act. He is required to do so on the basis of a reasonable and acceptable method of apportionment.”

Respectfully following the decisions of Hon'ble High Court, we set aside the orders of the authorities below and the matter is restored to the file of Assessing Officer to decide this issue following the steps outlined in the order of the Hon'ble jurisdictional High Court as above and as per law. We order accordingly.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in open court on this 11<sup>th</sup> day of December, 2015.**

**Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER**

**sd/-  
(A.T. VARKEY)  
JUDICIAL MEMBER**

**Dated the 11<sup>th</sup> day of December, 2015  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XV, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**