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

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.4463/Del/2013
Assessment Year : 2009-10

M/s Crown Corporation Pvt.Ltd., D-5, Defence Colony, New Delhi. PAN : AAACC8688D. (Appellant)	Vs.	Assistant Commissioner of Income Tax, Central Circle-13, New Delhi. (Respondent)

ITA No.4634/Del/2013
Assessment Year : 2009-10

Assistant Commissioner of Income Tax, Central Circle-13, New Delhi. (Appellant)	Vs.	M/s Crown Corporation Pvt.Ltd., D-5, Defence Colony, New Delhi. PAN : AAACC8688D. (Respondent)

Assessee by : Ms. Aruna Mittal, CA.
Revenue by : Shri V.R. Sonbhadra, Senior DR.

Date of hearing : 08.06.2016
Date of pronouncement : 27.06.2016

ORDER

PER G.D. AGRAWAL, VP :-

These cross-appeals by the assessee and the Revenue for the assessment year 2009-10 are directed against the order of learned CIT(A)-1, New Delhi dated 30th May, 2013.

ITA No.4634/Del/2013 – Revenue's appeal :-

2. It is observed that the tax effect involved in this appeal by the Revenue is below ₹10 lakhs. The CBDT in its Circular No.21/2015 dated 10th December, 2015 has revised the monetary limit for filing of

the departmental appeals to the ITAT at ₹10 lakhs which is evident from paragraph 3 of the Circular, which reads as under:-

> *"3. Henceforth, appeal/SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:-*

S.No.	*Appeals in Income-tax matters*	*Monetary Limit (in Rs)*
1.	*Before Appellate Tribunal*	*10,00,000/-*
2.	*Before High Court*	*20,00,000/-*
3.	*Before Supreme Court*	*25,00,000/-*

> *It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case."*

3. In paragraph 10 of the Circular, such monetary limits have been made applicable retrospectively. For ready reference, we reproduce paragraph 10 below:-

> *"10. This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/Tribunals. Pending appeals below the specified tax limits in para 3 above may be withdrawn/not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed."*

4. Therefore, the above Circular would be squarely applicable to the appeal under consideration before us.

5. Learned Senior DR who appeared at the time of hearing before us stated that he needs some time to call for the report from the Assessing Officer as well as instructions from Administrative CIT for withdrawing this appeal because the appeal was filed with the approval of Administrative CIT. Learned DR further pointed out that in paragraph 7 of the said Circular, it has been clarified by the CBDT that

withdrawal of this appeal by the Revenue on account of low tax effect should not be considered as a precedent in the subsequent years of the acceptance of issues involved in this appeal and, therefore, if in the subsequent year similar issue arises before the ITAT where the appeal is above the tax limit as prescribed in this Circular, the same should be decided on merits.

6. Learned counsel for the assessee, on the other hand, stated that the Circular is squarely applicable to the facts of the assessee's case.

7. After considering the submissions of both the sides, we are of the opinion that there is no necessity for adjourning the appeal and calling the report from the Assessing Officer because, apparently, the tax effect involved in this appeal of the Revenue is below ₹10 lakhs. However, we add here that if on receipt of order the Assessing Officer finds that the tax effect is above ₹10 lakhs or, in any other manner, the Circular is not applicable, he will be at liberty to file the miscellaneous application. We also agree with the contention of the learned DR that this order would not be considered as an acceptance by the Revenue on the issue involved in this appeal and will not be an estoppel for the Revenue to take up the issue involved in this appeal before the ITAT on merits if the tax effect in those years is more than ₹10 lakhs. With this remark, we deem it proper to dismiss the appeal in the light of the Circular No.21/2015 of CBDT dated 10th December, 2015.

ITA No.4463/Del/2013 – Assessee's appeal :-

8. Ground No.1 of the assessee's appeal is of general nature and needs no adjudication.

9. Ground Nos.2 & 3 are against the disallowance of ₹89,650/- sustained by learned CIT(A) u/s 14A as against ₹1,000/- disallowed by the assessee company.

10. We have heard the arguments of both the sides and have perused the material placed before us. At the time of hearing before us, the main contention of the learned counsel for the assessee was that the assessee has *suo motu* disallowed a sum of ₹1,000/- u/s 14A. During the course of assessment proceedings, the Assessing Officer asked the assessee to give the detailed note on the applicability of provisions of Section 14A read with Rule 8D and also asked to furnish the working of the disallowance under Rule 8D. The assessee filed the written reply dated 13th October, 2011 wherein the assessee has claimed that, in fact, no expenditure was incurred by the assessee for earning of dividend income because the investment was made through account payee cheque in mutual fund and dividend was accounted for on accrual basis at the year end. The Assessing Officer, without recording any satisfaction how the assessee's working is incorrect, worked out the disallowance under Rule 8D. She stated that in the absence of such satisfaction, the disallowance cannot be worked out under Rule 8D.

11. Learned DR, on the other hand, relied upon the order of learned CIT(A) and he stated that the assessee has not given the working how the disallowance has been made at ₹1,000/- u/s 14A.

12. We have carefully considered the submissions of both the sides and have perused the material placed before us. Section 14A of the Act reads as under:-

> *"**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.].”*

13. As per sub-section (2) of Section 14A, the Assessing Officer is empowered to determine the expenditure incurred in relation to exempt income provided he is not satisfied with the correctness of the claim of the assessee in relation to the incurring of expenditure for earning of exempt income. As per sub-section (3), the Assessing Officer is empowered to determine the expenditure even when the assessee claims that no expenditure has been incurred by him in relation to earning of exempt income provided the Assessing Officer is not satisfied with the correctness of the claim of the assessee. From a combined reading of sub-section (2) & (3) of Section 14A, it is evident that first the assessee has to state whether any expenditure was incurred by him for earning of exempt income, if yes, then, he has to specify the expenditure which was incurred for earning of exempt income. Thereafter, the Assessing Officer is required to examine the assessee’s claim with regard to incurring of no expenditure or with regard to the amount of expenditure claimed to have been incurred by the assessee for earning of exempt income. If the Assessing Officer is satisfied with the claim of the assessee, then, no further action under

Section 14A is required except to disallow the amount of expenditure, if any, which assessee claimed to have incurred for earning of exempt income. However, when the Assessing Officer is not satisfied with the claim of the assessee with regard to incurring of no expenditure or the amount of expenditure specified by the assessee for earning of exempt income, then, he is required to determine the amount of expenditure incurred by the assessee in relation to earning of exempt income. Such expenditure is to be determined by him in accordance with such method as may be prescribed. That Hon'ble Jurisdictional High Court has considered this aspect in the case of Maxopp Investment Ltd. – 347 ITR 272 (Del) and, their Lordships held as under:-

> *"The requirement of the Assessing Officer embarking upon a determination of the amount of expenditure incurred in relation to exempt income would be triggered only if the Assessing Officer returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Therefore, the condition precedent for the Assessing Officer entering upon a determination of the amount of the expenditure incurred in relation to exempt income is that the Assessing Officer must record that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure."*

14. In view of the above language of Section 14A(2) and (3) and also relying upon the decision of Hon'ble Jurisdictional High Court in the case of Maxopp Investment Ltd. (supra), we hold that the Assessing Officer is required to record the satisfaction that he is not satisfied with the claim of the assessee with regard to incurring of no expenditure or the amount of the expenditure as specified by the assessee for earning of exempt income before embarking upon the determination of the amount of expenditure incurred in relation to exempt income under Section 14A(2).

15. In the case under consideration before us, the assessee has claimed that it has incurred an expenditure of ₹1,000/- for earning of

exempt income and has offered the same as disallowable u/s 14A. We find that during the course of assessment proceedings, the Assessing Officer asked the assessee to furnish the detailed explanation with regard to disallowance made by him at ₹1,000/-. The assessee was also asked to give the working of disallowance which would have worked out as per Rule 8D. The assessee, vide reply dated 13th October, 2011, furnished the explanation saying that no expenditure was incurred for earning of exempt income. He has also relied upon the decision of Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Hero Cycles Ltd. – [2010] 323 ITR 518 (P&H) so as to buttress its claim that the expenditure can be disallowed u/s 14A only if it is clearly identified to be incurred for the purpose of earning exempt income. He also submitted the statement of calculation under Rule 8D as was directed by the Assessing Officer. The Assessing Officer did not at all consider the assessee's submission and simply worked out the disallowance as per Rule 8D. Thus, there is no finding by the Assessing Officer that he is not satisfied with the claim of the assessee that it incurred an expenditure of ₹1,000/- for earning of exempt income. Without recording such satisfaction, the Assessing Officer cannot proceed to work out the disallowance under Rule 8D as per Section 14A(2) of the Act. We, therefore, delete the disallowance sustained by learned CIT(A) u/s 14A amounting to ₹89,650/-.

16. Ground No.4 of the assessee's appeal reads as under:-

> *"That on the facts and in the circumstances of the case, the ld.CIT(A) has erred in disallowing club expenses of Rs.10,529/- incurred for the purpose of business."*

17. We have heard the arguments of both the sides and have perused the material placed before us. During the course of hearing before us, learned DR pointed out that this ground of appeal was not pressed by the assessee at the time of hearing before the learned

CIT(A). On perusal of the order of learned CIT(A), we find his submission to be correct. No reason has been given by the assessee that when the assessee has not pressed the disallowance of club expenses before the learned CIT(A), how it is aggrieved with the order of learned CIT(A) in this regard. Accordingly, we do not find any justification to interfere with the order of learned CIT(A) in this regard and reject ground No.4 of the assessee's appeal.

18. In the result, the appeal of the assessee is partly allowed and the appeal of the Revenue is dismissed.

Decision pronounced in the open Court on 27.06.2016.

Sd/-	Sd/-
(KULDIP SINGH)	**(G.D. AGRAWAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

VK.

Copy forwarded to: -

1. Assessee : **M/s Crown Corporation Pvt.Ltd., D-5, Defence Colony, New Delhi.**
2. Revenue : **Assistant Commissioner of Income Tax, Central Circle-13, New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar