

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

**BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
AND**

**SMT. BEENA A. PILLAI, JUDICIAL MEMBER
I.T.A .No.6389/DEL/2013
ASSESSMENT YEAR-2007-08**

DCIT, Circle-12(1), New Delhi. (Appellant)	vs	Genesis Colors Pvt. Ltd., 1A-2, Rao Tula Ram Marg, New Delhi-110022 (PAN: AABCG4825H) (Respondent)
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Appellant by	Shri Raman Kant Garg, Sr.DR
Respondent by	Shri Ajay Wadhwa, Adv.

Date of Hearing	08.01.2016
Date of Pronouncement	18.01.2016

ORDER

PER BEENA A. PILLAI, JM

The present appeal has been filed by the assessee against the order of learned CIT(A)-VIII, New Delhi dated 27.09.2013 for the AY 2007-08 on the following grounds of appeal:-

“1. Whether Ld. CIT (A) was correct on facts and circumstances of the case and in law in deleting the addition of Rs. 5,07,766/- made by the AO u/s 14A r.w.r 8D?

2. Whether Ld. CIT (A) was correct on facts and circumstances of the case and in law in holding that no disallowance u/s 14A could be made by the AO as Rule 8D was effective from A.Y. 2009-10, even though the assessee had not suo-moto disallowed any amount u/s 14A of the Act?

3. Whether Ld. CIT (A) was correct on facts and circumstances of the case and in law in deleting the addition of Rs.27,53,365/- made on account of capitalization of design and consultancy charges despite the fact that these expenses yield enduring benefits to the assessee?

4. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.”

2. Brief facts narrated by the ld. Assessing Officer are as under:-

The assessee had filed its return of income declaring a total income of Rs. 18,20,62,310/- on 29.10.2007. During the course of assessment proceedings, the Assessing Officer, while passing the assessment order, made a disallowance of Rs.5,07,766 u/s 14A and the amount of Rs.27,53,365/- towards the capitalisation of design and consultancy events charges.

3. Aggrieved by the order of the ld. Assessing Officer, the assessee filed an appeal before the ld. CIT(A) in respect of all the other additions.

3.1. Ld. CIT(A) deleted the addition u/s 14A by observing that Rule 8D has been inserted in the rule book on 24.4.2008 and hence disallowance u/s 14A r/w Rule 8D is applicable from 2009-10. Since the assessment year under consideration is 2007-08, the disallowance cannot be calculated by the Assessing

Officer u/ Rule 8 D for the purposes of Section 14A. In respect of the capitalisation of consultancy designs, the ld. CIT(A) has recorded certain facts, however, the findings given the ld. CIT(A) in respect of the addition made by the ld. Assessing Officer are not relatable.

3.2. Aggrieved by the order of the ld. CIT(A), the revenue is in appeal before us.

Ground no.1&2

4.1 These grounds relates to the deletion of addition made by the ld. Assessing Officer u/s 14A r/w Rule 8D. We are in agreement with the findings of the ld. CIT(A) that Rule 8D cannot be applied retrospectively in view of the ratio laid down by Hon'ble Bombay High Court in the case of Godrej Boyce & Others vs DCIT reported in (2010) 328 ITR 81 (BOM)

4.2. The present assessment year in consideration is 2007-08, Rule 8D is not applicable to the facts of the present case as Rule 8 D has been inserted with effect from 24.03.2008 and does not apply retrospectively. We, therefore, uphold the decision of ld. CIT(A) in respect of this ground.

Ground No. 3

5. This ground relates to the deletion of addition amounting to Rs.27,53,365/- made on account of capitalisation of design and consultancy charges. Ld. DR pointed out that the ld. CIT(A) has not given a clear finding in respect of this issue. Though he has discussed this issue in his order, the findings given by the ld. CIT(A) are not relatable to this ground. We, therefore, set aside this issue to the ld. CIT(A) to decide upon this ground on the basis of documents filed by the assessee. Accordingly, the grounds of appeal filed by the stand partly allowed.

5. In the result, the appeal stands partly allowed.

Order pronounced in the open court on 18.01.2016

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Dated: 18th JANUARY 2016
'GS'

Copy forwarded to:

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

Asstt. Registrar