

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

**BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.352/Del./2014  
(ASSESSMENT YEAR : 2008-08)**

M/s. Sunrays Properties & Investment Co. Pvt. Ltd.,  
414/1, 4<sup>th</sup> Floor, DDA Comm. Complex,  
District Centre, Janakpuri,  
New Delhi – 110 058. vs. DCIT, Circle 9 (1),  
New Delhi.

**(PAN : AAACS3655C)**

**(APPELLANT)**

**(RESPONDENT)**

**ASSESSEE BY : Shri Manu Giri, Advocate  
REVENUE BY : Smt. Anima Barnwal, Senior DR**

Date of Hearing : 31.05.2016  
Date of Order : 03.06.2016

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, M/s. Sunrays Properties & Investment Co. Pvt. Ltd. (hereinafter referred to as 'the assessee'), by filing the present appeal sought to set aside the impugned order dated 03.10.2013 passed by the Commissioner of Income-tax (Appeals)-XI, New Delhi qua the assessment year 2008-09 on the grounds inter alia that :-

“2. That the learned Commissioner of Income Tax (Appeal), erred in rejecting assessee's contention that the sections 14A r. w. rule 8D was not applicable to the appellant company, because the company neither borrowed any amounts nor earned any Dividend Income during the year by

the assessee company, thereby confirming the addition of Rs. 1,72,92,279/-, made by the assessing officer u/s 14A of the Income Tax Act, resulting in reduction to returned Loss to that extent.

3. Without to the prejudice to appellant contention that rule 8D is not applicable, the learned Commissioner of Income Tax (Appeals) erred in holding that disallowance under Rule BD has been correctly worked out in accordance with the provisions of Rule 8D.

4. The learned Commissioner of Income Tax (Appeal) erred in invoking the provisions of Section 14A of the Income Tax act, 1961 read with Rule 8D of the Income Tax Rules, 1962, since the assessee has not earned dividend income during the year under assessment which has been claimed as exempt u/s 10(34) of the I.T. Act, 1961.”

2. Briefly stated the facts of this case are : in response to the notice issued under section 143(2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act') along with questionnaire issued during the scrutiny proceedings, Shri Anil Srivastava, FCA/AR put in appearance from time to time and filed requisite details, which have been test checked. From the perusal of Schedule 5 annexed with balance sheet, it is transpired that as on 31.03.2008, assessee has made investment to the tune of Rs.28,28,54,572/- in equity shares of listed companies. Assessee claimed that no expenses can be apportioned concerning exempt dividend income, which is found to be not tenable by the Assessing Officer. AO observed that the assessee has claimed no expenditure for the purpose of earning exempt dividend income and thereby computed the disallowance u/s 14A of the Act read with Rule 8D of the Income-

tax Rules, 1962 (for short 'the Rules') to the tune of Rs.1,72,92,279/- and added the same to the total income of the assessee.

3. Assessee carried the matter before the Id. CIT (A) who has dismissed the appeal. Feeling aggrieved, the assessee has come up in appeal before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. AR for the assessee challenging the impugned order contended inter alia that since the assessee company is engaged in the business of trading in shares provisions contained u/s 14A are not applicable to the assessee company; that since the assessee has not earned any dividend income during the year under assessment to be exempted u/s 10 of the Act, provisions contained u/s 14A read with Rule 8D of the Rules are not applicable.

6. During the appellate proceedings, the assessee company was called upon to file copy of annual accounts, tax audit report, computation of income and copy of acknowledgement for filing the return of income qua the year under assessment, which it has filed along with following reply :-

“ It may be relevant to mention that the assessee company is an investment and finance company and is engaged in the business of trading in shares and borrowing and lending of money. During the year under assessment, the

assessee company has not borrowed any money which have been invested in shares all which dividend has been received by the assessee company. In fact no dividend has been received by the assessee company during the year under assessment. Further, a part of shares held by the assessee company are held as stock in trade. Since the assessee company is engaged in the business of trading in shares, the provisions of section 14A are not applicable to the assessee company.

It may further be relevant to mention that the assessee company has not earned any dividend income during the year under assessment which has been claimed as exempt u/s 10(34) of the Income Tax Act and since no income has been claimed to be exempt u/s 10 of the assessee company, the disallowance made by the assessing officer u/s 14A is totally unwarranted and uncalled for and requires to be deleted. Reliance is placed in this regard on the/allowing case laws wherein it has been held that the disallowance u/s 14A cannot exceed the amount of exempt income.”

7. Undisputedly, annual accounts, tax audit report and books of account furnished by the assessee company has not been disputed by the AO. It is also not in dispute that assessee has also claimed no expenditure incurred to earn the exempt dividend income during the year under consideration, but the AO worked out the disallowance u/s 14A Income-tax Act, 1961 (for short 'the Act') accordance with sub-rule (2) and (3) read with Rule 8D of the Rules to the following effects :-

	Amount
<b>A. Directly Attributed expenses-Demat Charges</b>	30137
<b>B. Interest expenses</b>	20738894
Interest or other expenses which cannot be directly attributed	
Average Value of investment related to tax free income	
Opening investment	282854572
Closing investment	282854572    282854572
Average total Assets in BS	

Opening Total Assets	377518034	
Closing Total Assets	<u>362782187</u>	<u>370150110</u>
<b>Interest expenses</b>		<b>15847870</b>
<b>C. Deemed Expenses</b>		
Average Value of investment related to tax free income		
Opening investment	282854572	
Closing investment	<u>282854572</u>	
0.5% of Average Investment		<b><u>1414272</u></b>
<b>D. Total 14A Disallowance</b>		<b>17292279</b>

8. Ld. CIT (A) affirmed the findings returned by the AO by making following observations :-

“9.1. ....On examination of the facts of the case, it is observed that the appellant company has received dividend income during immediately preceding year as well as in the next assessment year succeeding the year under consideration. The perusal of balance sheet of the appellant company shows that it is the holding company and shares of its subsidiary company are held by it on which dividend is received on regular basis. For managing these investments direct expenses in the shape of demat charges are paid by the appellant company on annual basis. Besides that the company is having common pool of financial resources since beginning, and from such common hotch-pot, investment in the shares of subsidiary companies have been made from which the exempt income in the shape of dividend is received by it. Therefore, a portion of financial expenses claimed by the appellant company is definitely attributable to the exempt income. Thirdly, the appellant is utilizing its administrative as well as managerial machinery to maintain the investments in a prudent manner. These administrative and managerial expenses are also inseparable from the expenses relating to earning of taxable income. Thus, all the three components of Rule 8D are applicable in appellant's case. The relevant question to decide is whether disallowance u/s 14A is permissible, when no dividend income is received during the year. The appellant has relied upon certain decisions and based on the analogy that the disallowance u/s 14A cannot exceed the amount of exempt income. It is emphasized that since exempt income during the year is NIL, no disallowance u/s 14A should be made. Such analogy of the appellant from

the cited case does not have much force since admittedly the appellant has incurred direct and indirect expenses in managing the investments which shall yield exempt dividend income.....”

9. Now, the sole question arises for determination in this case is, **“as to whether section 14A read with Rule 8D is applicable when the assessee company has neither borrowed any money to be invested in shares nor earned any exempt dividend income during the year under assessment?”**

10. Bare perusal of the impugned order passed by the Id. CIT (A) shows that he has affirmed assessment order on three grounds – one : that the assessee company has received dividend income during the immediately preceding assessment year as well as the next assessment year i.e. 2009-10; two : that assessee company is the holding company and share of its subsidiary companies are held by it on which dividend is received on regular basis; and third : that for managing these investments, direct expenses in the share of demat charges are paid by the assessee company on annual basis and as such, the portion of financial expenses claimed by assessee company is attributable to the exempt income.

11. Identical issue has come up for consideration before the Hon’ble jurisdictional High Court in case cited as **Cheminvest Ltd. vs. CIT - (2015) 378 ITR 33 (Delhi)** wherein it is held as under :-

“Held, that no exempted income was earned by the assessee in the relevant assessment year and since the genuineness of

the expenditure incurred by the assessee was not in doubt, no disallowance could be made under section 14A.”

12. Similarly, Hon’ble jurisdictional High Court in case cited as **Maxopp Investment Ltd. & Ors. Vs. CIT - (2012) 247 CTR 162** also held that, *“the expression “expenditure incurred” refers to actual expenditure and not to some imagined expenditure but the ‘actual’ expenditure that is in contemplation under s.14A (1) is the ‘actual’ expenditure in relation to or in connection with or pertaining to exempt income. The corollary to this is that if no expenditure is incurred in relation to the exempt income, no disallowance can be made under s.14A.”*

13. Merely, on the basis of fact that during the preceding years as well as succeeding years, assessee company has earned the dividend income, the disallowance u/s 14A read with Rule 8D cannot be made because earning of dividend on investment in shares depends upon the company performance etc. AO, without rejecting the books of account, computed the deemed expenses at 0.5% of average investment and also computed the interest expenses in the face of the undisputed facts that assessee has not borrowed any funds for the purpose of investment in shares during the year under assessment.

14. Admittedly, when the AO and Id. CIT (A) have not disputed the books of account as well as tax audit report and computation of income which apparently proved the contention of the assessee that no dividend income has been received during the year under assessment nor it has

borrowed any funds to invest in the share to earn the dividend income, the question of making disallowance by invoking provisions u/s 14A read with Rule 8D does not arise.

15. So, in view of what has been discussed above, when the assessee company has not incurred any expenditure to earn the exempt income, no disallowance can be made u/s 14A of the Act read with Rule 8D of the Rules, hence the impugned order passed by the Id. CIT (A) is not sustainable in the eyes of law. Consequently, present appeal filed by the assessee is hereby allowed.

**Order pronounced in open court on this 3<sup>rd</sup> day of June, 2016.**

**Sd/-  
(J.S. REDDY)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 03<sup>rd</sup> day of June, 2016  
TS**

Copy forwarded to:

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

**AR, ITAT  
NEW DELHI.**