

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI  
(THROUGH VIRTUAL COURT HEARING)**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.8202/Del/2018  
Assessment Year: 2012-13

|  |     |                                     |
|--|-----|-------------------------------------|
| Anamica Portfolio Pvt. Ltd.<br>206-207, Ansal Satyam RDC,<br>Rajnagar<br>Ghaziabad UP 201001 | Vs. | DCIT<br>Circle – 2 (2)<br>New Delhi |
| <b>(APPELLANT)</b>   |     | <b>(RESPONDENT)</b>                 |

ITA No.8203/Del/2018  
Assessment Year: 2013-14

|   |     |                                     |
|---|-----|-------------------------------------|
| Anamica Financial Services<br>Pvt. Ltd. 206-207, Ansal<br>Satyam RDC, Rajnagar<br>Ghaziabad UP 201001 | Vs. | DCIT<br>Circle – 2 (2)<br>New Delhi |
| <b>(APPELLANT)</b>  |     | <b>(RESPONDENT)</b>                 |

|               |                            |
|---------------|----------------------------|
| Appellant by  | Sh. Rajeev Khandelwal, CA  |
| Respondent by | Sh. M. Baranesl, Senior DR |

|                        |            |
|------------------------|------------|
| Date of hearing:       | 02/07/2020 |
| Date of Pronouncement: | 14/07/2020 |

## **ORDER**

### **PER R.K PANDA, AM:**

The above two appeals filed by the respective assesseees are directed against the separate orders of the CIT(A) – 1, New Delhi relating to A.Y. 2013-14.

2. Since identical issues are involved in both these appeals, therefore, these were heard together and are being disposed of by this common order for the sake of convenience.

### **ITA No. 8202/Del/2018**

3. Facts of the case, in brief, are that the assessee is a company engaged in various activities relating to the NBFC Company, Investment activity and advisory / consultancy services.

4. It filed its return of income on 27.09.2013 declaring total income of Rs.93,19,810/-. During the course of assessment proceedings the AO noted that the assessee has earned dividend income of Rs.17,54,046/- which has been claimed as exempt u/s. 10 (34) of the IT Act. He observed from the balance sheet that the value of investment as on the first day of the year was shown at Rs. 3,08,76,900/- and at the close of the year it was shown at Rs. 15,06,70,375/-. He, therefore, asked the assessee to explain

as to why disallowance u/s. 14A read with rule 8D of the IT Rules 1962 should not be made. It was explained by the assessee that disallowance of interest u/s. 4 A is not applicable on the assessee company because the interest received is more than interest paid during the year. Therefore, sub rule 2 of Rule 8 D is not applicable to the assessee company. Further, the assessee company has suomoto disallowed Rs.86,351/- towards administrative expenses.

5. However, the AO was not satisfied with the explanation given by the assessee. Relying on CBDT circular No.05/2014 and the provisions of section 14 A read with Rule 8D of the I. T. Rules, 1962, the AO determined the disallowance at Rs. 12,35,075/-. After considering the suomoto disallowance made by the assessee at Rs. 86,351/- the AO made disallowance of Rs. 11,48,724/-.

6. In appeal the Ld. CIT(A) upheld the disallowance made by the AO.

7. Aggrieved with such order of the CIT(A) the assessee is in appeal before the Tribunal by raising the following grounds of appeal :-

*1. That order of lower authority is bad in law and is against the facts and circumstances of the case and total addition and tax on LTCG is unsustainable.*

2. *That Ld. CIT(A) erred in sustaining the disallowance of Rs.11,48,724/- made u/s. 14A, without appreciating the fact that the same is without complying with the mandatory conditions of said provision,*

*(a) Without recording 'satisfaction about incurring of expenditure relating to exempt income with regard to accounts.*

*(b) Without even considering the disallowance made by assessee and demonstrating same as wrong etc.*

*(3) That Ld. CIT(A) further erred in not considering the fact that assessee is having more interest free funds than the investment under dividend bearing securities.*

*(4) That Ld. CIT(A) grossly erred in not even addressing the issue of wrongly taxing LTCG Rs. 70,99,681/- on STT paid shares which is exempt u/s. 10 (38) of the Act.*

8. The Ld. Counsel for the assessee referring to the copy of the assessment order submitted that the AO has not recorded any satisfaction having regards to the accounts of the assessee as to why the claim of disallowance made by the assessee u/s. 14 A is not correct, which is a pre-requisite for making any disallowance u/s. 14 A of the Act.

9. Referring to the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT reported in 402 ITR 640 and various other decisions he submitted that in absence of

recording of satisfaction by the AO as to why the claim of disallowance made by the assessee u/s. 14A is not correct, no disallowance can be made u/s. 14A.

10. He also relied on the following decisions :-

1. *Vedanta Ltd. [2019] 261 Taxman 179 (Del)*
2. *H. T Media Ld. [ 2018] 399 ITR 576 (Del)*
3. *U. K. Paints ( India) (P) Ltd. [ 2017] 392 ITR 552 (Del)*

11. Without prejudice to the above the Ld. Counsel for the assessee submitted that the AO has determined the disallowance u/s.14 A read with Rule 8 D of the IT Rules 1962 at Rs. 12,35,075/- which is as under :-

| <i>Particulars</i>   | <i>Amount ( Rs.)</i>    |
|--|-------------------------|
| <i>Rule 8 D (2) (i) - expenses directly attributable</i>     | <i>Nil</i>              |
| <i>Rule 8 D (2) (ii) – interest expenses</i>                 | <i>8,12,707</i>         |
| <i>Rule 8 D (2) (iii) – expenses indirectly attributable</i> | <i><u>4,22,368</u></i>  |
| <i>Total</i>   | <i><u>12,35,075</u></i> |

12. He submitted that from the above it is clear that the AO has not made any disallowance under rule 8D (2) (i) on account of expenses directly attributable. So far as the disallowance of interest expenses under rule 8 D (2) (ii) is concerned, the Ld. Counsel for the assessee referring to page- 5 of the paper book which is balance sheet of the assessee company as on 31.03.2013, submitted that the interest free funds i.e. share

holder funds are more than enough to cover the investment which is verifiable from the financial details.

| <u>Particulars</u>     | <u>As at 31.03.2012 (Rs.)</u> | <u>As at 31.03.2013</u> |
|------------------------|-------------------------------|-------------------------|
| Share holders' funds   | 8,80,43,752                   | 15,05,77,070            |
| Interest bearing funds | Nil                           | Nil                     |
| Investments            | 3,08,76,900                   | 13,80,70,375            |

13. Referring to the decision of Hon'ble Bombay High Court in the case of HDFC Bank Limited reported in 366 ITR 505 and the decision of the Hon'ble Supreme Court in the case of Reliance Industries Limited reported in 410 ITR 466 he submitted that when the interest free funds are more than the investments made, the dividend income of which is exempt from tax, no disallowance of interest expenses can be made.

14. So far as Rule 8 D (2) (iii) is concerned the Ld. Counsel for the assessee drew the attention of the Bench to the dividend received of Rs. 17,54,046/- the details of which are as under :-

| <i>Sr. No.</i> | <i>Particulars</i>                    | <i>Amount (Rs.)</i>       |
|----------------|---------------------------------------|---------------------------|
| 1.             | <i>Reliance Mutual Funds</i>          | <i>17,48,611</i>          |
| 2.             | <i>State Bank of India</i>            | <i>3,500</i>              |
| 3.             | <i>Reliance Communication Limited</i> | <i>1,875</i>              |
| 4.             | <i>JSW</i>                            | <i><u>60</u></i>          |
|                | <i>Total</i>                          | <i><u>17,54,046/-</u></i> |

15. Referring to the decision of the Delhi (Special Bench) of the Tribunal in the case of Vireet Investment Private Limited reported in 165 ITD 27, he submitted that only those investments can be considered for computing the average value of investment that have yielded exempt income during the year under reference. Therefore, the AO should have considered the opening and closing balance of the investment of only those equity shares and funds that have earned dividend income. He submitted that applying the above principle the assessee has computed the suo-moto disallowance of Rs. 86,351/- u/s. 14 A of the IT Act.

16. Referring to the details of expenses other than interest expenditure he submitted that such expenses comes to Rs.7,57,100/-. He submitted that if the expenses incurred on account of increase in authorized capital, stamp duty and gratuity expenses amounting to Rs.2,93,206/- are deducted the total expenses incurred by the assessee company comes to Rs.4,63,894/- against which the assessee has suo-moto disallowed an amount of Rs. 86,351/- which is 18.61% of the total administrative expenses. Therefore, no further disallowance is warranted and the disallowance made by the AO under rule 8 D (2) (iii) should be deleted.

17. The DR on the other hand strongly supported the orders of the AO and CIT(A). Referring to para-3.3 of the assessment order he submitted that the AO has considered the various decisions and has held that expenses in relation to the exempt income have

to be disallowed irrespective of the fact that they are direct or indirect, fixed or variable, managerial or financial in accordance with the law.

18. Referring to the decision of Hon'ble Delhi High Court in the case of India Bulls Housing Finance Services Limited Vs. DCIT reported in 395 ITR 232 he submitted that the Hon'ble High Court in the said decision has held that the fact that the AO did not expressly record his dissatisfaction with the assessee's working does not mean that he cannot make the disallowance. The AO need not pay lip service and formally record dissatisfaction. It is sufficient if the order shows due application of mind to all aspects. He submitted that similar view has been taken by Hon'ble Punjab and Haryana High Court in the case of Punjab Tractors Limited Vs. CIT reported in 246 taxmann 31 (393 ITR 223).

19. The Ld. Counsel for the assessee in his rejoinder submitted that the decision in the case of India Bulls Financial Services (supra) was rendered on 29.11.2016 whereas the decision in the case of Punjab Tractors Limited was rendered in the year 2017. However, the decision of Hon'ble Apex Court in the case of Maxopp Investment Limited (supra) was pronounced in the year 2018, therefore, the Hon'ble Courts had no benefit of the decision of Hon'ble Supreme Court and, therefore, the decisions relied on by the Ld. DR cannot be accepted.

20. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case has earned dividend income of Rs. 17,54,046/- and made suo-moto disallowance of Rs.86,351/- u/s. 14 A of the IT Act in the computation of the total income filed alongwith the return of income. We find the AO computed the disallowance u/s. 14A r.w. rule 8 D at Rs. 12,35,075/-. After deducting the suo-moto disallowance of Rs. 86,351/- the AO made addition of Rs. 11,48,724/- to the total income of the assessee which has been upheld by the CIT(A). It is the submission of the Ld. Counsel for the assessee that since the AO has not recorded satisfaction having regard to the accounts of the assessee as to why the claim of the disallowance made by the assessee u/s.14A is not correct, which is a pre-requisite for making any disallowance u/s. 14 A of the Act, the disallowance made by the AO should be deleted.

21. We find force in the above argument of the Ld. Counsel for the assessee. A perusal of the details filed in the paper book shows that the AO has not made any disallowance under rule 8 D (2) (i) being expenses directly attributable. So far as the computation of disallowance of Rs.8,12,707/- under rule 8 D (2) (ii) is concerned, we find from the balance sheet of the assessee that the share holder's funds at the beginning as well as at the end of the year is much more than the investment made by the

assessee. It has been held by Hon'ble Bombay High Court in the case of HDFC Bank Limited reported in 366 ITR 505 that where interest free funds are more than enough to cover the investments, no disallowance can be made under rule 8 D (2) (ii) of the IT Act. Similar view has been held by the Hon'ble Supreme Court in the case of Reliance Industries Limited. Since the share holder's funds in the instant case is much more than the investments made by the assessee both at the beginning as well as at the end of the year, therefore, no disallowance of interest under rule 8 D (2) (ii) is called for.

22. A perusal of the details furnished by the assessee shows that it has received dividend income of Rs. 17,54,046/- from investment made in four companies. The Delhi (Special Bench) of the Tribunal in the case of Vireet Investment Private Limited (supra) has held that for computing disallowance under rule 8 D (2) (iii) only those investment are to be considered for computing the average value of investment that have yielded exempt income during the year under reference. From the details furnished by the assessee we find that it has computed suo-moto disallowance of Rs.86,351/-. Further a perusal of the details of the expenses other than interest expenses shows that assessee has incurred expenditure of Rs.7,57,100/- towards administrative expenses. After deducting expenses incurred by the assessee on account of increase in share capital, stamp duty expenses and gratuity expenses at Rs.2,93,206/- the total administrative expenses comes to Rs. 4,63,894/- against which the assessee has made

suo-moto disallowance of Rs.86,351/- which is approximately 18.61% of the administrative expenses. However, without recording any satisfaction the AO has made the disallowance u/s. 14 A read with Rule 8 D of the IT Rules 1962 which in our opinion is not justified.

23. The Hon'ble Supreme Court in the case of Maxopp Investment Limited (supra) has held that when suomoto disallowance are shown by the assessee, without recording the satisfaction as to why the working shown by the assessee is not acceptable, disallowance cannot be made. The relevant observation of the Hon'ble Supreme Court at para 41 of the order reads as under :-

*“41) Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo-moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.”*

24. However, a perusal of the assessment order nowhere shows that the AO has recorded any satisfaction as to why the suo-moto disallowance made by the assessee is not correct. Therefore, we find merit in the argument of the Ld. Counsel for

the assessee that in absence of recording of any satisfaction by the AO having regard to the accounts of the assessee as to why the claim of disallowance made by the assessee u/s. 14 A is not correct, no disallowance can be made.

25. The various decisions relied by the Ld. DR are not applicable to the facts of the present case. We find both the decisions relied on by him are prior to the decision of Hon'ble Supreme Court in the case of Maxopp Investment Limited (supra). In view of the above discussion we hold that no further disallowance u/s. 14 A r.w.r 8 D could have been made. Therefore, ground of appeal No.2 and 3 by the assessee are allowed.

26. So far as ground of appeal No.4 is concerned the assessee is aggrieved by the order of the Ld. CIT(A) in not adjudicating the grounds raised before him regarding the addition made by the AO of Rs.70,97,681/-.

27. After hearing both the sides we find the AO without any discussion in the body of the assessment order made addition of Rs.70,97,681/- under the head "income from capital gain". We find although the assessee has raised specific ground before the CIT(A), however, the Ld. CIT(A) has not adjudicated the same. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the AO with a direction to grant one more opportunity to the assessee

to substantiate its case. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct according. The ground No. 4 by the assessee is allowed for statistical purpose. The ground No.1 being general in nature is dismissed.

28. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

**ITA No. 8203/Del/2018 (A. Y. 2013-14)**

The grounds raised by the assessee are as under :-

1. *That order of lower authority is bad in law and is against the facts and circumstances of the case and total addition and tax on LTCG is unsustainable.*
2. *That Ld. CIT(A) erred in sustaining the disallowance of Rs.13,80,676/- made u/s. 14A, without appreciating the fact that the same is without complying with the mandatory conditions of said provision,*
  - (a) *Without recording 'satisfaction about incurring of expenditure relating to exempt income with regard to accounts.*
  - (b) *Without even considering the disallowance made by assessee and demonstrating same as wrong etc.*
3. *That Ld. CIT(A) further erred in not considering the fact that assessee is having more interest free funds than the investment under dividend bearing securities.*

*4. That Ld. CIT(A) grossly erred in not even addressing the issue of wrongly taxing LTCG Rs.63,61,718/- on STT paid shares which is exempt u/s. 10 (38) of the Act.*

2. After hearing both the sides we find ground of appeal No. 2 and 3 by the assessee are identical to ground appeal No. 2 and 3 in ITA No. 8202/Del/2018. We have already decided the issue and grounds raised by the assessee have been allowed. Following similar reasoning the grounds raised by the assessee are allowed.

3. So far as ground of appeal no.4 is concerned we find the above ground is identical to ground No.4 in ITA No.8202/Del/2018. We have already restored the issue to the file of the AO for adjudication of the issue afresh after giving due opportunity of being heard to the assessee. Following similar reasoning the issue raised in ground of appeal no.4 is restored to the file of the AO for adjudication of the issue afresh after giving due opportunity of being heard to the assessee. Accordingly appeal No.4 is allowed for statistical purpose.

4. Ground of appeal No.1 being general in nature is dismissed.

5. In the result, both the appeals filed by the respective assesseees are partly allowed for statistical purpose.

Order pronounced in the open court on 14.07.2020.

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.K PANDA)**  
**ACCOUNTANT MEMBER**

\*Neha\*

Date:- 14.07.2020

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

|  |            |
|--|------------|
| Date of dictation  | 02.07.2020 |
| Date on which the typed draft is placed before the dictating Member                  | 09.07.2020 |
| Date on which the approved draft comes to the Sr.PS/PS                               | 14.07.2020 |
| Date on which the fair order is placed before the Dictating Member for Pronouncement | 14.07.2020 |
| Date on which the fair order comes back to the Sr. PS/ PS                            | 14.07.2020 |
| Date on which the final order is uploaded on the website of ITAT                     | 16.07.2020 |
| Date on which the file goes to the Bench Clerk                                       | 16.07.2020 |
| Date on which file goes to the Head Clerk.   |            |
| The date on which file goes to the Assistant Registrar for signature on the order    |            |
| Date of dispatch of the Order  |            |