

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

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-273/Del/2015
(Assessment Year: 2010-11)**

DCIT Circle 7(1) New Delhi.	vs	Decent Financials Services Pvt. Ltd. A-86, DDA Shed, Okhla Industrial Area, Phase-1, New Delhi. AAACD2899P
Assessee by		Sh. F.R. Meena, Sr. DR
Revenue by		Sh. Ved Jain, CA Ms. Devina Sharma, Adv.

Date of Hearing	25.10.2017
Date of Pronouncement	03.11.2017

ORDER

PER SHRI K.N. CHARY, JUDICIAL MEMBER

Aggrieved by the order dated 11.11.2014 in appeal no. 144/2012-13 passed by the Ld. Commissioner of Income Tax (Appeals)-XIII, Delhi (hereinafter for short called as the "Ld. CIT (A)") Revenue preferred this appeal on the following grounds:

1. *"Whether on the facts and in the circumstances of the case and in law, Ld. CIT (A) has erred in deleting the disallowance of interest of Rs. 75,93,474/- made by the AO u/s 14A of the Act.*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in restricted the disallowance of Rs. 37,58,360/-*

made by the AO to Rs. 2,65,500/- under Rule 8D(iii) read with Section 14A read with Rule 8D(ii) of the Act/Rules.

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

2. Briefly stated facts are that the assessee is engaged in the business activities in shares and securities during relevant time and for the AY 2010-11 they have filed their return of income on 15.10.2010 declaring the total income as Nil under the Income Tax Act and Rs. 1,22,87,615/- u/s 115JB of the Income Tax Act, 1961 (for short referred to as the ‘Act’). During the scrutiny u/s 143(3) of the Act AO made an addition of Rs. 113.51 lacs by making disallowance u/s 14A of the Act and computed the income of the assessee at Rs. 113.51 lacs under the normal provisions of the Act and at Rs. 236.39 lacs under 115JB of the Act. AO calculated the disallowance by invoking Rule 8D of the Act and he reached a sum of Rs. 75,93,474/- under Rule 8D(ii) and a sum of Rs. 37,58,360/- under Rule 8D(iii) of the Rules, the aggregate of which comes to Rs. 1,13,51,834/-. In appeal Ld. CIT (A) reduced the disallowance to Rs. 2,65,500/-, by totally deleting the addition under Rule 8D(ii) of the Rules and reducing the addition under Rule 8D(iii) of the Rules. The Revenue, therefore, filed this appeal challenging the same.

3. It is the argument of the Ld. DR that merely because the assessee had their own funds derived out of sale of investments, it cannot

automatically be presumed that no part of borrowed amount was used for investment. As far as the addition under Rule 8D(iii) is concerned, it is his submission that after Rule 8D coming into force no discretion is left with the authorities to reduce the amounts that were calculated by applying the formula under Rule 8D. He further submitted that the observation of the CIT that no travelling expenditure can be allocated to the investment portfolio is unwarranted and is not based on any record. He, therefore, submitted that AO's order may be restored. Per contra, it is the submission of the Ld. AR that Ld. CIT (A) is perfectly justified in deleting the addition calculated under Rule 8D(ii) of the Rules because on facts, he found not only that the own funds of the assessee are far exceeding the investment inasmuch as an amount of Rs. 3.86 crores released on the sale of investment was available with the assessee as against the 1.37 crores of new investments, but the funds borrowed during the year were used for the business of shares and securities. In so far as the Rule 8D(iii) is concerned, it is his submission that Ld. CIT (A) was right in deleting the travelling expenses and apportioning the balance between trading and investment activities.

4. We have gone through the orders of the authorities below. Order of the Ld. CIT (A) vide paragraph no. 2.1 clearly shows that on consideration

of the evidence adduced before him, Ld. CIT (A) found that an amount of Rs. 3.86 crores was available with the assessee on the sale of the investment out of which the assessee made fresh investment of Rs. 1.3 crores. Ld. CIT (A) further found from the record that the funds borrowed during the year were used for the business purposes and no part of borrowed funds was used for earning the exempt income. Ld. CIT (A) further noted that there is no finding of fact in respect of earlier years that the disallowance of interest was made in the earlier years in connection with the investments carried forward and held during the year. Basing on these factual findings, Ld. CIT (A) thought it fit to delete the addition of Rs. 75,94,474/- made under Rule 8D(ii) of the Rules. We see no reason to disturb this finding of fact based on record.

5. Now coming to the addition made under Rule 8D(iii) of the Rules, both the authorities below have recorded a finding that the *suo moto* disallowance of Rs. 44,143/- towards the expenditure incurred for earning the exempt income, cannot be correct in view of the fact that huge amount of Rs. 75,16,71,942/- was in investment to earn the exempt income. On this aspect, we are in agreement with the authorities below that in view of the fact that making investment, maintaining or continuing with any investment in a particular share/mutual fund etc. and the time when to exit

from one investment to another are all the activities requiring well coordinated and well informed management decisions, involving not only inputs from various sources but it also involves acumen of senior management functionaries. We further agree with the reasoning of the Ld. CIT (A) that there are incidental administrative expenses on collecting the information, research, etc. which helps in arriving at particular investment decisions and these expenses, relating to earning of income are embedded in the indirect expenses without which it would not be possible to carry out this herculean task. We, therefore, agree with the authorities below that the expenditure of Rs. 44,143/- does not reflect the true nexus between the actual expenditure required and the task to be performed.

6. Now coming to the argument of the Ld. DR that after Rule 8D coming into force on 24.03.2008, no discretion is left with the authorities to meddle with the amount of expenditure reached by applying the formula prescribed under Rule 8D(iii) of the Rules. Here, in this matter, no error in calculation of the amount under Rule 8D(iii) is pointed out. Ld.CIT (A) also did not disturb the quantification of this amount. However, with reference to Rs. 31.85 lacs, the administrative expenditure debited to profit and loss account, Ld. CIT (A) stated that out of this Rs. 31.85 lacs a

sum of Rs. 26.54 lacs being spent on travelling cannot be allocated to the investment portfolio and has to be excluded from consideration. He apportioned the balance amount of 5.31 lacs to trading and investment and reached the figure of 2,65,500/- under Rule 8D(iii) of the Rules read with Section 14A of the Act. In our opinion this discretion is not available with the Ld. CIT (A) and only cap that could be put on the quantum of disallowance is the administrative expenditure debited to profit and loss account which is Rs. 31.85 lacs in this matter. Finding of the Ld. CIT(A), that the travelling expenses are excludable does not base on any material, much less a convincing one. We, therefore, find that the Ld. CIT (A) is not justified in exercising any discretion with the figure reached by the AO under Rule 8D(iii) of the Rules. However, keeping in view the fact that the total administrative expenses debited to the profit and loss account is only Rs. 31.85 lacs, we hold that the disallowance under Rule 8D(iii) of the Rules could be restricted to 31.85 lacs. To this extent, we allow the grounds of appeal.

7. In the result, the appeal of the Revenue is allowed in part.

Order pronounced in the open court on 03.11.2017

Sd/-
(G.D. AGRAWAL)
ACCOUNTANT MEMBER

Dated: 03.11.2017

*Kavita Arora

Sd/-
(K.N. CHARY)
JUDICIAL MEMBER

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI