

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C": DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA.No.3608/Del./2018
Assessment Year 2014-15

M/s. Hero Corporate Service Pvt. Ltd., E-1, Qutab Hotel Complex, Shaheed Jeet Singh Marg, New Delhi 110016 PAN AAACH1277P	vs.	The DCIT Circle 11(1), New Delhi
(Appellant)		(Respondent)

ITA.No.3607/Del./2018
Assessment Year 2013-14

M/s. Hero Corporate Service Pvt. Ltd., E-1, Qutab Hotel Complex, Shaheed Jeet Singh Marg, New Delhi 110016 PAN AAACH1277P	vs.	The DCIT Circle 11(1), New Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Sumit Bansal, C.A.
For Revenue :	Sh. Jeetandra Kr. Kale, Sr. DR

Date of Hearing :	28.11.2022
Date of Pronouncement :	16.01.2023

ORDER**PER ANIL CHATURVEDI, A.M.**

The above appeals by Assessee are directed against the separate Orders of the Ld. CIT(A)-35, Delhi, dated 06.03.2018 in Appeal No.650/16-17 for A.Y. 2013-14 and order dated 28.02.2018 in Appeal No. 651/16-17 for A.Y. 2014-15.

2. Before us at the outset, Ld. AR submitted that though the appeals of the assessee are for 2 different assessment years but the issues involved in both the appeals are identical and he has common submissions to make. The aforesaid contentions of Ld. AR has not been controverted by Ld. DR. In such a situation since common issues are involved in both the appeals, the appeals were heard together and are being disposed of by this common consolidated order for the sake of brevity. We, however refer to the relevant facts from ITA.No.3608/Del./2018 for the A.Y. 2014-15 which are as under :

2.1. The assessee is a company stated to be engaged in the business of Consultancy, Service Fee, Corporate Insurance Agency and Sale of Windmill Energy etc. Assessee filed its return of income for A.Y. 2014-15 on 21.11.2014 declaring income of Rs. 11,80,27,710/-. The case of the assessee was selected for scrutiny and thereafter assessment was framed u/s. 143(3) of the I.T. Act, 1961 vide order dated 05.12.2016 and the total income was determined at Rs. 13,58,27,310/- inter alia by disallowing Rs. 1,77,99,597/- u/s. 14A r.w.r 8D.

2.2. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A), who upheld the order of the AO. Aggrieved by the Order of the Ld. CIT(A), the assessee is now in appeal and has raised the following grounds :

1. That the Ld. CIT (A) -35 on the facts & circumstances of the case and in law, has erred in upholding the disallowance of Rs. 1,77,99,597/- made u/s 14A of the Income Tax Act read with Rule 8D of Income Tax Rules.

2. That the ld. CIT (A) has wrongly interpreted the decision of Hon'ble Supreme Court in the case of M/s. Maxopp Investments Pt Ltd and confirmed the total disallowance calculated by the Ld. AO irrespective of the different facts of the case.

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

3. Before us, Ld. AR submitted that though the assessee has raised various grounds, but the sole controversy is disallowance u/s. 14A of the Act.

4. During the course of assessment proceedings, AO noticed that assessee had investments to the extent of Rs. 138,01,55,559/- and had paid interest of Rs. 2,14,06,782/-. The assessee was asked to furnish the justification and calculation of disallowance u/s. 14A r.w.r. 8D Income Tax of the Rules and also asked to show cause as to why the disallowance so worked out be not added to the total income of the assessee. In response to the query of

the AO, assessee made detailed submissions which are reproduced by the AO from pages 2 to 15 of the order. The submissions of the assessee was not found acceptable to AO. AO for the reasons stated in the order worked out the disallowance u/s. 14A r.w.r 8D of the Act, at Rs. 1,77,99,957/- and disallowed the same.

5. Aggrieved by the order of AO, assessee carried the matter before the Ld. CIT(A) who vide order dated 28.02.2018 in appeal no. 651/16-17 upheld the order of AO.

6. Aggrieved by the order of Ld. CIT(A), assessee is now in appeal.

7. Before us Ld. AR reiterated the submissions made before AO and Ld. CIT(A) and further submitted that during the year under consideration assessee has earned tax free dividend of Rs. 8.81 lacs and therefore in view of the decision rendered of Hon'ble Delhi High Court in the case of Joint Investments Pvt. Ltd. vs CIT (372 ITR 694) (Del.) and other decisions, the disallowance u/s. 14A r.w.r 8D be

restricted to the exempt income. He therefore submitted that the matter may be remitted back to the file of AO with the direction to restrict the disallowance u/s. 14A to the extent of tax free income earned by the assessee.

8. Learned DR on the other hand supported the order of lower authorities.

9. We have heard the rival submissions and perused the material available on record. The issue in the present grounds is with respect to the disallowance u/s. 14A r.w.r 8D of the Act. Before us it is the contention of the assessee that during the year under consideration assessee had earned tax free dividend of only Rs. 8.81 lacs whereas the disallowance made by AO u/s. 14A r.w.r. 8D and upheld by the Ld. CIT(A) is to the extent of Rs. 1.78 crores (rounded off) which is much in excess of the exempt income earned. We find that Hon'ble Delhi High Court in the case of PCIT vs. Caraf Builders & Construction Pvt. Ltd. (2019) 414 ITR 122 (Del) has held that disallowance u/s. 14A cannot exceed exempt income of the relevant year. This position has also

been upheld by various High Courts including Hon'ble Delhi High Court in various decisions. In view of the settled position of law that the disallowance u/s. 14A cannot exceed exempt income and in view of the fact that the disallowance made u/s. 14A r.w.r 8D is much in excess of the exempt income, we direct the AO to restrict the disallowance u/s. 14 r.w.r 8D to the extent of exempt income earned by the assessee. Before us, though the assessee has stated that it has earned exempt tax free dividend income of Rs. 8.81 lacs but we find that there is no finding by the lower authorities of the exempt income earned by the assessee. AO is therefore directed to work out the disallowance u/s. 14A r.w.r 8D after considering the submissions of the assessee with respect to the exempt income earned and in accordance with law. Needless to state that AO shall grant adequate opportunity of hearing to the assessee. Thus **the ground of the assessee is allowed for statistical purposes.**

10. **In the result, appeal of the assessee ITA.No.3068/Del./2018 for the A.Y. 2014-15 is allowed for statistical purposes.**

ITA.No.3607/Del./2018 – A.Y. 2013-14:

11. Before us, both the parties have admitted that the facts of the case for A.Y. 2013-14 are identical to that of A.Y. 2014-15 except for the year and amount involved. We have hereinabove for the reasons stated, have allowed the ground of the assessee and restored the issue to the file of AO. Since the facts are identical in the present appeal, therefore, following the reasons stated hereinabove while deciding ITA.No.3608/Del./2018 for the A.Y. 2014-15 and for similar reasons, we restore the matter to the file of A.O. to compute the disallowance u/s. 14A r.w.r. 8D. **Thus the grounds of assessee are allowed for statistical purposes.**

12. **In the result, appeal of the assessee ITA.No.3607/Del./2018 for the A.Y. 2013-14 is allowed for statistical purposes.**

13. To sum-up, both the appeals of the Assessee are allowed for statistical purposes.

Order pronounced in the open court on 16.01.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-
[ANIL CHATURVEDI]
ACCOUNTANT MEMBER

Delhi, Dated 16th January, 2023
NV/-

Copy to

1.	The appellant
2.	The respondent
3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT "C" Bench, Delhi
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,
Delhi.