

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "H", NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI J.SUDHAKAR REDDY, ACCOUNTANT MEMBER**

I.T.A.No. 2885/DEL/2013 A.Y. 2009-10		
Teletec Finsec India P.Ltd. A-60 Naraina Industrial Area Phase I' New Delhi 110 028 PAN: AA ACT 3720 F	Vs.	ITO, Ward 16(2) New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Rohit Jain, Adv.
and Ms. Deepashree Rao, C.A.

Department by : Sh. JP Chandraker, Sr.DR

ORDER

PER J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the assessee directed against the order of the Ld.CIT(A)-19, New Delhi dated 31.1.2013 pertaining to the Assessment Year (AY) 2009-10.

2. Facts in brief:- The assessee is a Non Banking Finance Company and is engaged in making investments in the telecom centre and relevant ventures to promote the formation and mobilisation of capital and investments on behalf of its promoters. It filed its return of income on 30.9.2009 declaring total income of Rs.16,20,970/-. The AO determined the total income at Rs.91,87,370/- in an order passed u/s 143(3) on 19.12.2011 inter alia making disallowance of Rs.75,12,624/- u/s 14A r.w.s. Rule 8 D.

2.1. Aggrieved the assessee carried the matter in appeal. Before the First Appellate Authority the assessee contended that the AO was required to

record that he has not satisfied with the correctness of the claim of the assessee with respect to expenditure incurred in relation to earning of the tax free income, before invoking provisions of s.14A. The First Appellate Authority has rejected this contention of the assessee by holding that it is factually incorrect to state that the AO has not recorded his non-satisfaction with the amount of expenditure disallowed u/s 14A by the assessee. As per the Ld.CIT(A) in the assessment order paras 4 to 8, the AO has impliedly recorded his dissatisfaction with the disallowance claimed by the assessee. He held that there is no prescribed format for recording satisfaction/dissatisfaction and that the assessment order has to be read in its entirety to see whether satisfaction/dissatisfaction is discernible. He relied on the judgement of Hon'ble Delhi High Court in the case of CIT vs. ECS Ltd. Reported in 336 ITR 162.

2.2. The Ld.CIT(A), on the basis that, he has coterminous powers with the AO, went ahead and recorded that he is not satisfied in terms of S.14A(2) that the correctness of the assessee's claim that no expenditure has been incurred in relation to earning of exempt income and that disallowance u/s 14A has to be made as per Rule 8D. He rejected other contentions of the assessee. Aggrieved the assessee is before us on the following grounds.

“1. That the CIT(A) erred on facts of the case and in law, in upholding the disallowance of Rs.75,12,624 /- made by the assessing officer under section 14A of the Income-tax Act, 1961 ('the Act') read with Rule 8D of the Income-tax Rules, 1962 ('the Rules').

1.1 That the CIT(A) erred on facts of the case and in law, in upholding the aforesaid disallowance made by the assessing officer without appreciating that conditions precedent for applying provisions of Rule 8D, as contained in sub-section (2) and (3) of section 14A were not satisfied in the present case.

1.2 That the CIT(A) erred on facts of the case and in law, in upholding the aforesaid disallowance made by the assessing officer by erroneously holding that the assessing officer had recorded his dissatisfaction in respect of suo motu disallowance made by the appellant under section 14A of the Act.

1.3 That the CIT(A) erred on facts of the case and in law, in upholding the aforesaid disallowance made by the assessing officer by holding that suo motu disallowance of Rs.2,66,480 made by the appellant under section 14A of the Act is incorrect, without stating any reasons in support of such observation.

1.4. That the CIT(A) erred on facts of the case and in law, in not appreciating that the onus was on the AO/CIT(A) to establish that appellant's suo motu disallowance of Rs.2,66,480/- u/s 14A of the Act was incorrect, in order to apply Rule 8D to the present case.

The appellant craves leave to add, alter, amend or vary the above grounds of appeal at or before the time of hearing.”

3. Heard Shri Rohit Jain, the Ld.Counsel for the assessee and Shri JP Chandraker, Ld.Sr.D.R. on behalf of the Revenue.

4. The Ld.Counsel for the assessee Mr.Rohit Jain challenged the action of the AO as well as the First Appellate Authority. The contentions are as follows.

“In the aforesaid facts, it is respectful submission of the appellant that the additional disallowance of Rs.75, 12,624 made by the assessing officer and affirmed by the CJT(A) is erroneous and is liable to be deleted on, inter alia, the following principal grounds:

- a) *Since satisfaction as required under section 14A(2) of the Act was not recorded in the assessment order, the assessing officer had no jurisdiction to apply Rule 8D of the Rules;*
- b) *CIT(A) erred in holding that dissatisfaction in terms of section 14A(2) of the Act can be recorded by the CIT(A) having regard to co-terminus power with that of the assessing officer;*
- c) *Disallowance computed by the assessing officer by applying Rule 8D is, in any case, erroneous;*
- d) *Disallowance under section 14A of the cannot, In any case, exceed actual expenditure incurred and claimed by the appellant;*

It is respectfully submitted that in terms of section 14A(2) of the Act, in a case where the assessee specifies a positive amount of expenditure in relation to exempt income, then, in order to assume jurisdiction to apply the method stipulated in Rule 8D of the Rules, the assessing officer, having regard to the

accounts of the assessee, must record his dissatisfaction with the correctness of the claim of the assessee.

In the present case, it is emphatically submitted that satisfaction required to be recorded for assuming valid jurisdiction in order to apply the formula prescribed in Rule 8D of the Rules is conspicuous by its absence in the assessment order.

The assessing officer has simply proceeded to apply formula prescribed in Rule 80 of the Rules on the ground that the same is applicable in the year under consideration and disallowance has to be mandatorily calculated as per the said formula. The contention of the assessing officer "that what is relevant is whether expenditure incurred by the assessee has resulted into exempt income or taxable income" is, it is submitted, contrary to the mandate of section 14A of the Act. The said section provides determination of the fact whether any exempt income was actually received by the assessee and to thereafter, determine actual expenditure, if any, incurred in relation to such exempt income not vice-versa.

On perusal of the assessment order, it will kindly be appreciated by the Hon'ble Tribunal that the assessing officer has not at examined/verified the "accounts of the assessee",

As regards the contention of the CIT(A) that satisfaction can be recorded by him having regard to co-terminus power of the CIT(A) with that of the assessing officer, it is submitted as under:

It is respectfully submitted that recording of satisfaction in terms of section 14A(2) of the Act is a jurisdictional condition mandated by the said section. Such satisfaction has to be recorded by the "assessing officer" and none else. This is particularly so when disallowance under section 14A of the Act has been made by the assessing officer.

It would, in our respectful submission, be totally fallacious to hold that while the disallowance under section 14A of the Act has been made by the assessing officer, the jurisdictional condition of recording of satisfaction, is satisfied by another authority, i.e .. the CIT(A), that, too, while deciding appeal challenging the very same disallowance.

It is respectfully submitted that jurisdiction has to be assumed by the authority seeking to exercise the same and not by an appellate authority. Meaning thereby, if the disallowance is to be made by the assessing officer, then, satisfaction, which is a jurisdictional condition, cannot be recorded by the CIT(A), while deciding the appeal at a later stage. That would, in tantamount to conferring of jurisdiction to make disallowance, that too, with retrospective date to apply the formula prescribed in Rule 8D of the Rules. which would be contrary to the provisions of the Act.”

4.1. Ld.D.R. Shri J. P. Chandrakar on the other hand strongly opposed the contentions of the assessee and argued that the AO has recorded satisfaction and this is evident from a plain reading of the assessment order. He further submitted that the Ld.CIT(A) has given elaborate reasons on this issue and relied on the same.

5. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, on perusal of material on record, orders of the authorities below, case laws cited, we hold as follows.

6. The assessee submitted the following calculation of disallowance u/s 14A read with Rule 8 D.

Particulars	Amount in Rs.
(i) Disallowance of direct expenses under Rule 8D(2)(i): Interest, Demat charges and bank charges cannot be considered as these have also been incurred in relation to taxable income also.	
(ii) Interest Expenditure under Rule 8D(2)(ii): (A) Expenditure on interest : 9,857 (B) Amount on investments on which exempt dividend income was earned: As on 1.4.2008 5,05,35,749 As on 31.3.2009 23,82,261 Average Investments: 2,64,59,005	

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(C) Total Assets: As on 1.4.2008 21,30,96,841 As on 31.3.2009 19,69,83,035 Average Assets: 20,50,39,938	
A * (B/C)	1,272
(iii) 0.5% of Average Investment (0.5% * B)	1,32,295
(iv) Total:	1,33,567
Suo-moto disallowance made by the assessee u/s 14A r.w.r.8D	2,66,480
Excess disallowance made by the assessee	- 1,32,913.

A perusal of the above demonstrates that the disallowance made by the assessee, is in excess to the disallowance with the working under 14 A r.w.s. 8 D disclosed.

The Ld.DR could not controvert the above stated calculations on merits.

6.1. Under these circumstances we have to uphold these contentions of the assessee and delete the addition. As on merits the assessee gets relief, we do not go into the various legal contentions raised by the assessee as it would be an academic exercise.

7. In the result assessee's appeal is allowed.

Order pronounced in the Open Court on 16th June, 2015.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Sd/-
[J. SUDHAKAR REDDY]
ACCOUNTANT MEMBER

Dt. the 16th June, 2015

- **Manga**

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches