

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'C', NEW DELHI**

**BEFORE SHRI N.K.SAINI, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 4490/Del/2014
AY: 2009-10**

ACIT Circle 23(1) New Delhi	vs.	Indian Farmer Fertilizer Cooperative Ltd. IFFCO Sadan C-1, District Centre Saket New Delhi 110 017 PAN: AAAA10050M
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**ITA No. 4168/Del/2014
AY: 2009-10**

Indian Farmer Fertilizer Cooperative Ltd. IFFCO Sadan C-1, District Centre Saket New Delhi 110 017	vs.	ACIT Circle 23(1) New Delhi
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(Appellant)

(Respondent)

Assessee by : Sh. Tarandeep Singh, Adv.
Department by : Sh. Sanjit Singh, CIT, D.R.
Date of Hearing : 10.05.2018
Date of Pronouncement: 15.05.2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

The present Cross Appeals are filed by revenue and assessee against order dated 27th May, 2014 passed by Ld.CIT(A)-23, New Delhi for A.Y. 2009-10 on the following grounds of appeal.

ITA 4490/Del/2014 (Revenue's appeal)

“On the fact and circumstance of the case the Ld. CIT(A) has erred in restricting the addition made by AO on account on account of prior period expenses of Rs.1,70,02,048/- out of total disallowance of Rs. 3,23,02 360/-, since as per the provision of the Income Tax Act, the expenditure of the relevant previous year is eligible for the deduction in the immediately following assessment year and hence prior period expenses are not allowable in the next financial year as the assessee is following mercantile system of accounting.

(ii) On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the disallowance made u/s 14A read with rule 8D to Rs. 19,35,95,000/-, as disallowance was made by the assessing office under section 14A as per the provision of section 14A read with rule 8D(2)(ii) & 8D(2)(iii).

(iii) The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.

ITA 4168/Del/2014 (Assessee's appeal)

“That the Grounds raised hereunder are without prejudice of one another.

1. That on the facts and in the circumstances of the case, the learned CIT (A) erred in upholding the disallowance of Rs. 1,05,48,0001- without appreciating the assessee's submissions that assessee has not incurred any expenditure to earn the income which do not form part of the total income.

2. That the appellant craves leave to reserve to itself That on the facts and in the circumstances of the case, the learned CIT (A) has erred in upholding the action of the AO in straightway applying Rule 8D automatically without the AO first giving cogent reasons for rejecting the assessee's claim in this regard.

3. *the right to add, alter and/or vary any ground(s) at or before the time of hearing.”*

2. Facts in brief are as under.

Assessee filed its return of income on 30.09.2009 declaring total income of Rs.511,94,40,890/-. Assessee is a Cooperative Society engaged in manufacture of chemical fertilisers through its operating units at various places. Assessment for year under consideration was completed by making following disallowances.

Net taxable income as shown		Rs.505,65,58,227/-
Add: (a)	Disallowance u/s 43B as discussed in para 3	Rs 209,93,450/-
(b)	Disallowance on account of excess depreciation	Rs 556,32,317/-
(c)	Disallowance of prior period expenses as discussed in para 10	Rs. 3,23,02,360/-
(d)	Disallowance u/s 14A read with Rule 8D(2)(ii) as discussed in para 17	Rs.20,91,37,000/-
	Net taxable income	Rs.537,47,23,354/- Or Rs.537,47,23,350/-

3. Aggrieved by order of Ld.AO, assessee preferred appeal before Ld.CIT(A) who partly allowed the appeal of assessee.

4. Aggrieved by the order of Ld.CIT(A) revenue as well as assessee are in appeal before us.

5. At the outset both the parties submitted that **Ground no.1** raised by revenue stands squarely covered by various orders of this Tribunal in assessee's own case for A.Y. 2004-05, 2005-06, 2006-07 and 2008-09 wherein it has been held that assessee was entitled to deduction u/s 43B of the Income Tax Act, 1961 (the

Act) irrespective of payments. It has further been submitted that *Hon'ble Delhi High Court* has dismissed revenue's appeal against order of the *Tribunal for A.Y. 2006-07 in ITA 1291/2011 vide order dt. 22.12.2011*. *Ld.A.R.* has placed relevant orders before us for perusal.

6. We have perused the submissions advanced by both the sides in the light of orders passed by this Tribunal in assessee's own case for preceding A.Ys as well as order passed by *Hon'ble High Court* for AYs 2005-06 and 2006-07. *Ld.CIT(A)* has decided the issue in favour of assessee considering the entire facts as under.

"In Ground No. 2, the appellant has impugned the disallowance made by the AO of a sum of Rs.2 09 93,450/- u/s. 43B on account of statutory dues outstanding as on 01.04.2008 but paid during the F.Y. 2008-09 on various dates, ignoring the dates of payment duly certified by the Tax Auditors. The Id. AR of the appellant has submitted that the issue is squarely covered by the decision of Hon'ble ITAT in ITA Nos. 3350/Del/2009 and 1194/De1/2011 for A.Ys. 2005-06 and 2006-07 in the appellant's own case. The respective orders of the Hon'ble ITAT, Delhi mentioned above have been placed on record by the Id. AR at Annexure B/Pg. 52/PB and Annexure C/Pg, 69/PB. In these orders, on similar facts, Hon'ble ITAT has given its decision in favor of the appellant by holding that the payments have been audited by the Tax Auditors and the assessee has filed the details of payments, hence the assessee is entitled for deduction u/s. 43B of the Act. In fact, in the appellant's own case for A.Y. 2006-07, the Hon'ble Delhi High Court has also dismissed the Revenue's appeal on this issue in ITA No. 1291/2011 vide order dt. 22.12.2011, placed on record at Annexure E/Pg. 84/PB. In the light of the above mentioned judgments of Hon'ble ITAT, Delhi and Hon'ble Delhi High Court in the case of the appellant itself for various assessment years on the

same facts, it is held that the appellant is entitled to deduction of the amount of Rs.2,09,93,450/- and that the disallowance made by the AO u/s. 43B was incorrect. The disallowance made is therefore deleted.”

7. In the proceedings before us revenue could not neither demolish the factual findings recorded by Ld.CIT(A) nor could bring any evidence on record to bring out any factual differences between Preceding Years and the year under consideration. We, therefore, find no reason to interfere with the same. Accordingly, ground no.1 raised by Revenue stands dismissed.

8. **Ground no.2** raised by Revenue is against deleting the disallowance made by Ld.AO u/s 14A r.w Rule 8D (2)(ii)& (iii) amounting to Rs.19,35,95,000/-.

Ld.D.R. referred to observations of Ld.CIT(A) which are as under.

“I have carefully considered the submissions made by the appellant, the arguments of the Ld.AR, the case laws cited by him in his favour and the evidences placed on record by him. I have taken note of the fact that the total amount of interest bearing funds borrowed by the appellant Society amounts to Rs.12,802 crores during the year, whereas its total requirement of Working Capital and Fixed Assets amounts to Rs.13,589 crores. Moreover, I have also taken note of the evidences placed on record by the Id. AR in the form of Sanction Letters of various Banks etc., wherein, it has been clearly mentioned that the funds are being sanctioned specifically for capital expenditure and/or other purposes in compliance with End-Use Guidelines dt.01.07.2005 of the RBI as amended from time to time and that the funds borrowed were not permitted for on-lending or investment in capital market including subscription/purchase of shares or any other speculative business and that End-Use of fund was to be certified by the auditors of the Society. In fact, such a certificate has also been placed on record at page 112/PB, wherein, the auditors of the Society have certified such End-Use in accordance with the RBI policy.

Under these circumstances, I am inclined to believe that the interest bearing funds borrowed by the appellant Society during the year under consideration have not been utilized for the purpose of making investments, the income from which did not form part of the total income of the appellant during the year. Therefore, the interest expenditure incurred by the appellant was not hit by the provisions of Rule 8D(2)(ii) of Income Tax Rules, 1962. Accordingly, the disallowance made by the AO under Rule 8D(2)(ii) amounting to Rs.19.35,95,000/- is hereby deleted.

4.11 As regards the arguments put forth by the Id. AR regarding incorrect inclusion in Section 14A category investments of the amounts invested by the appellant Society in OMIFCO, Oman and in other Co-operative Societies, income from which is deductible u/s, 80P(2)(d), the Id. AR of the appellant has submitted as under:

(a) The investment in OMIFCO, Oman was governed by the provisions of Article 25 of DT AA between Government of India and Government of Sultanate of Oman and therefore, the dividend received from such investment made by the appellant society would not be hit by the provisions of Sec.14A r.w. Rule 8D(2)(iii). He has relied upon the decision of Hon'ble ITAT, Mumbai in the case of DCIT vs. Trigyn Technologies Ltd. (2013) TII-169-ITAT-Mum-TP, and in the judgment of Hon'ble Gujarat High Court in the case of Suzlon Energy Ltd. (2013) 354 ITR 630 (Guj).

(b) The income arising out of investment in other Co-operative Societies made by the appellant Society is eligible for deduction u/s. 80P(2)(d) of the Act and therefore, such investments would not form part of investments for the purpose of calculation of disallowance under Rule 8D(2)(iii). Reliance has been placed in the judgment of Hon'ble Delhi High Court in the case of CIT Vs. KRIBHCO 349 ITR 618 (Del).

I have carefully considered the submissions of the appellant, the arguments of the Id.AR and the judgments cited by the Id. AR in favor of his client. In the light of the above discussion and the judgments cited above, I am of the considered opinion that the

investments made by the appellant Society in its joint venture in OMIFCO, Oman, the income from which is chargeable to tax under DT AA with Sultanate of Oman and also its investments in other Co-operative Societies, income from which is deductible u/s. 80P(2)(d), will not form part of the investments, which are to be taken into account for the purpose of calculation of disallowance in accordance with Rule 8D(2)(iii).

4.12 However, I have taken into consideration the fact that the total investment made by the appellant Society during the year under consideration in 14A investments amounted to Rs.392.64 crores, as against similar investments during the immediately preceding assessment year at Rs.229.02 crores. Looking at the increase in such investments, income from which does not form part of total income of the appellant Society, it is clear and apparent that certain expenses must have been incurred to make such investments. Therefore, I am not in agreement with the contention of the Id. AR of the appellant that no expenses were incurred for making such investments either in the terms of manpower or other administrative expenditure, despite the fact that such investments have increased from Rs.229 crores last year to Rs.392 crores in the current year. Therefore, I am of considered opinion that the AO was correct in invoking provisions of Sec.14A r.w. Rule 8D(2)(iii), although, he was not correct in including the investments made by the appellant in OMIFCO, Oman and in other Co-operative Societies. The AO is therefore, directed to recalculate the disallowance u/s. 14A r.w. Rule 8D(2)(iii) after excluding the above mentioned two investments. As regards the contention of the Id. AR of the appellant that the total exempt income of the appellant Society during the year under consideration amounts to Rs.1,05,48,000/- only and that the total disallowance u/s. 14A cannot exceed the total amount of exempt income, I am in agreement with this contention in principle.

However, it is for the AO to go through the accounts of the appellant Society and to come to a conclusion as to what

constitutes the total amount of exempt income and then take a decision accordingly.”

9. Ld.CIT, DR submitted that this Tribunal for A.Y. 2008-09 in assessee's own case has set aside the issue to Ld.AO to verify the interest expenditure that is attributable to earning of exempt income under Rule 8D(2)(iii). He submitted that assessee has been maintaining a common pool wherein interest bearing and non-interest bearing funds are kept together. He submitted that before the authorities below assessee has not provided any bifurcation and from the records it is apparent that assessee had borrowed funds amounting to Rs.12802 crores during the year on which interest was payable by assessee against investments of Rs.392.64 crores. Ld.CIT DR placed reliance on specific observations of this Tribunal for A.Y. 2008-09 in ITA no.2394/Del/2013 in order dated 05.04. 2018 which is as under.

“3.2. Now coming to the 2nd part of the argument in respect of interest expenditure that is attributed under R 8D (2) (iii) is concerned, it is observed from the financial statements placed in the paper book that assessee does not have bifurcations of interest in the profit and loss account. As the entire interest is kept in a common pool, it is very difficult to bifurcate interest expenditure that is attributable to earning of exempt income. It is observed that assessee during the year has taken loans and advances to the tune of Rs.59.96 crores. Further in Schedule 18 to the profit and loss account assessee is paying interest on loan of Rs.118.99 crores, bank charges to an extent of Rs.265.57 crores and other charges to an extent of Rs. 4.81 crores.

3.3. *As this issue has already been set aside by this Tribunal vide order dated 30/11/16 to be recomputed by Ld.AO, we also set aside this issue back to ld. AO. Assessee shall file all relevant details in order to establish its claim regarding interest expenditure not to be attributable for the purposes of earning the dividend income. Assessee shall furnish all the details in respect of interest expenditure before Ld. AO thereafter Ld. AO shall verify the same having due consideration of the audited accounts of assessee and recompute the claim of assessee.”*

10. On the contrary Ld.AR submitted that Ld.A.O. computed disallowance under Rule 8D(2)(ii) and (i i). In so far as disallowance under Rule 8D(ii) is concerned Ld.Counsel submitted that the dividend earned from foreign investments cannot be considered for the purpose of disallowance under 14A. He submitted that this issue has been decided by this Tribunal for A.Y. 2008-09 vide order dated 30.09.2016. It was submitted by Ld.AR that investments made in foreign companies being OMIFCO, Oman should be excluded since, no dividend income has been earned. It was also submitted that dividend if any received from this company is chargeable to tax in India under the head ‘income from other sources’ and forms part of total income as has been observed by Ld.CIT(A).

11. In so far as the disallowance of interest expenditure under Rule 8D(iii) is concerned, Ld.Counsel contended that in the preceding AYs no details were placed before the authorities below and therefore the issue was remanded back to Ld.AO to recomputed attribution, which is not the case for the year under

consideration. He submitted that all the details were placed before Ld.CIT(A) and upon verifying the same Ld.CIT(A) has directed A.O. to recalculate the disallowance.

12. We have perused the submissions advanced by both the sides in the light of records placed before us. On perusal of categorical observations by Ld.CIT(A) which has been reproduced hereinabove, it is observed that Revenue has not been able to establish by way of documentary evidences that the interest bearing funds were utilised for the purposes of investments. The Certificate issued by the auditors which was verified by Ld.CIT(A) has not been found fault with by Revenue. Even though assessee has kept all the funds in one common pool, the presumption that the investment has been made from interest bearing funds cannot be appreciated, since for the year under consideration assessee has substantially demonstrated before Ld.CIT(A) regarding sufficient funds being available for investment purposes other than the interest bearing funds which has not been refuted by Ld.CIT,D.R. Ld.CIT(A) has observed that the funds are to be strictly utilised by assessee as per guidelines issued by RBI. Further we have verified records in the context of both orders dt. 30.09.2016 as well as 05.04.2018 and are convinced with the submissions advanced by Ld.Counsel regarding there being no details that was filed by assessee in order to demonstrate the non-utilisation of interest bearing funds for the purpose of investments that could yield dividend income. Considering the totality of facts, we do not find any infirmity in Ld.CIT(A) deleting disallowance computed by Ld.AO under Rule

8D (iii). We therefore uphold the order of Ld.CIT(A) on this ground.

13. Accordingly appeal filed by Revenue stands dismissed.

14. ITA 4168/Del/2014

In respect of grounds raised by Assessee are concerned, **Ground No.1** is in respect of disallowance u/s 14A. Since we have upheld the order of Ld.CIT(A) this ground now becomes infructuous.

15. In respect of ground no.2 Ld.Counsel did not raise any arguments and hence we dismiss the same.

16. In the result appeal filed by assessee stands partly allowed.

Order pronounced in the Open Court on 15th May, 2018.

Sd/-

(N.K.SAINI)
ACCOUNTANTMEMBER

Dt. 15th May, 2018

- Mv

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Copy forwarded to: -

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

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By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

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