

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 885/Del/2021
(Assessment Year : 2016-17)

DCIT Circle - 1 New Delhi PAN No. AAAAI 0050 M (APPELLANT)	Vs.	Indian Farmers Fertiliser Cooperative Limited C-1, Iffco Sadan, District Centre Sake Place, New Delhi - 110 017 (RESPONDENT)
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And

ITA No. 757/Del/2021
(Assessment Year : 2016-17)

Indian Farmers Fertiliser Cooperative Limited C-1, Iffco Sadan, District Centre Sake Place, New Delhi - 110 017 PAN No. AAAA 10050 M (APPELLANT)	Vs.	DCIT Circle - 31(1), New Delhi (RESPONDENT)
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Assessee by	Shri Tarandeep Singh, Adv.
Revenue by	Smt. Abha Rani Singh, CIT-(DR)

Date of hearing:	06.12.2022
Date of Pronouncement:	10.02.2023

ORDER

PER ANIL CHATURVEDI, AM:

These two cross appeals filed by the Revenue and assessee are directed against the order dated 10.03.2021 passed by the Commissioner of Income Tax (Appeals)-23, New Delhi relating to Assessment Year 2016-17.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a Multi-State Cooperative Society registered under the Multi State Cooperative Societies Act 2002 and is stated to be engaged in the manufacturing and trading of chemical fertilizers through its various operating units. Assessee electronically filed its return of income for A.Y. 2016-17 on 25.11.2016 declaring income of Rs.8,68,94,12,520/-. The case of the assessee was selected for scrutiny and, thereafter, assessment was framed u/s 143(3) of the Act vide order dated 24.12.2018 and the total income was determined at Rs.962,72,12,520/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 10.03.2021 in Appeal No.CIT(A), Delhi-11/10345/2018-19 granted partial relief to the

assessee. Aggrieved by the order of CIT(A), Revenue and Assessee are now in appeal and has raised the following grounds:

Revenue's grounds of appeal in ITA No.885/Del/2021 for A.Y.

2016-17 :

- 1. The Ld. CIT(A) erred in law and on facts in holding that interest-bearing funds had been utilized for making the investments in question even though the provision of Rule 8(2)(ii) talks of 'expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt' meaning thereby that, if interest expenditure which is not directly relating to income which does not form part of total income has been incurred by the assessee, it is mandatory to make proportionate disallowance of the same in accordance with the formula laid down in the said Rule 8(2)(ii).*
- 2. The appellant craves to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.*

Assessee's grounds of appeal in ITA No.757/Del/2021 for A.Y.

2016-17:

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

- 1. That the order dated 10.03.2021 passed u/s 250 of the IT Act by the Ld CIT(A), New Delhi is bad in law to the extent it is prejudicial to the interest of the appellant.*
- 2. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in upholding the action of the Ld AO in assuming jurisdiction to invoke Rule 8D r.w.s 14A(2) of the IT Act by holding that a valid satisfaction has been recorded by the Ld. AO.*

3. *That on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in upholding the disallowance of an amount of Rs.6,25,00,000/- made by the AO under Rule 8D(2)(iii) of the IT Rules.*
4. *That without prejudice to the above grounds the Ld CIT(A) has erred by ignoring the fact that based on the jurisprudence, for the purpose of Rule 8D(2)(iii), Average Value of Investments will include only those investments which have yielded exempt income and thus disallowance could not have exceeded Rs.2.48 crore.*
5. *That the appellant craves leave to reserve to itself the right to add, alter and/or vary any ground(s) at or before the time of hearing."*

First we proceed with Revenue's appeal in ITA No. 885/Del/2021 :

5. During the course of assessment proceedings, assessee was asked to give the details of investments, the income from which has been claimed as exempt so as to disallow any interest expenditure u/s 14A r.w. Rule 8D of the Act. To the query of the AO, assessee made detailed submissions which are noted by the AO in the assessment order. It was *inter alia* submitted that the investments have been made out of the society's own funds comprising of internal accrual and surpluses and no expenditure has been incurred for earning of exempt income and, therefore, no disallowance was called for. The submissions of the assessee was not found acceptable to AO. AO noted that during the year under consideration, the total amount of interest bearing funds

borrowed by the society amounted to Rs.14,116.05 crores whereas its total requirement of Working Capital and Fixed Assets amounted to Rs.26,101.97 crores. He further noted that the investments during the year under consideration was Rs.1701.83 crores as against Rs.798.49 crores in earlier years. AO, therefore, concluded that certain expenses must have been incurred by the assessee to make such investments. He, thereafter, by applying the method prescribed under Rule 8D worked out the aggregate disallowance u/s 14A of the Act at Rs.55.96 crore, and made its disallowance.

6. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) deleted the addition made by AO by observing as under:

“5.3.7 I find no reason to differ with the above findings of CIT(A) as well as Hon’ble ITAT in the appeals of the appellant itself. I have taken note of the fact that the total amount of interest bearing funds borrowed by the appellant Society comprises of Short Term Loans (12012 cr) and CC (2103 Cr) during the year, whereas its total requirement of Working Capital and Fixed Assets amounts to Rs 14.307 crores. Moreover, I have also taken note of the evidences placed on record by the Ld. AR in the form of Sanction letter 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 dated 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 pages [P- 148/168/182/195/201/203/210/211/213 P/B] while sanctioning these Loans and Limits which include use for Business purpose only and specifically prohibit use of the funds for investment in shares of other companies or Capital Markets., 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,

5.3.8 Respectfully following the above decisions and considering above documentary evidences furnished by the appellant, the disallowance made by the Assessing Officer under Rule 8D(2)(ii) amounting to Rs.49.71 Crores is hereby deleted. Ground No. 3 is allowed.”

7. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

8. Before us, Learned DR took us through the order of AO and supported the order of AO.

9. Learned AR on the other hand reiterated the submissions made before lower authorities and further submitted that the borrowings made from the bank were for use of business purpose only and bank had imposed stringent End-Use conditions and limits while sanctioning the loans and its specific prohibition for the use of the funds for investment in shares of other companies and capital markets. He further submitted that Banks monitor

compliance of these conditions through monthly submissions of Stock Statements and the assessee is required to give Certificate for End-Use Compliance. He further submitted that in the case the assessee diverts the funds for the purpose of investment then the Banks have right to recall the loans and levy penal interest in case of any violations. He submitted that during the year under consideration there has been no case of levy of penal interest or the bank had recalled of the loan for violations of End-Use Compliance. Learned AR, therefore, submitted that since no interest bearing funds which has been borrowed during the year under consideration have been used for the purpose of making investment, therefore, no disallowance of interest expenditure could be made by invoking the provision of Rule 8D2(ii) of the Income-tax Rules. He further submitted that in a situation where the assessee has mixed funds and investments are made out of mixed funds, then it is to be presumed that investments have been made out of interest free funds as held by various judicial pronouncements. He further submitted that CIT(A) had followed the order of his predecessor for A.Ys. 2009-10 to 2011-12 and the order of CIT(A) in those years have been affirmed by the Tribunal. He, thereafter, submitted that the order of the Tribunal for A.Y. 2011-12 has also been upheld by Hon'ble Delhi High Court in the case of PCIT vs. IFFCO Ltd. in ITA No.287/2022 order dated 21st August 2022. He placed on record the copy of the aforesaid decision. He, therefore, submitted that since the facts of the case

in the year under consideration are identical to that of earlier years including 2011-12 and the decision for A.Y. 2011-12 has been upheld by the Hon'ble High Court, no interference to the order of CIT(A) is called for.

10. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance under Rule 8D(2)(ii) of the Income-tax Rules with respect to interest. We find that CIT(A) while deciding the issue in favour of the assessee has given a finding that on the loan that have been borrowed by the assessee for working capital purpose, Banks had imposed stringent End- Use conditions which prohibited the use of funds for investments in shares or other companies or capital market. The End-Use of the funds were monitored by considering the auditors certificate for End-Use compliance that were filed by the assessee. He has given a finding that no penal interest has been charged by the bank to the assessee or the loans have been recalled for violating the conditions of diverting the funds for making investments in shares or capital markets. He has thereafter given a finding that the interest bearing funds borrowed by the assessee have not been utilized for making the investments. We further find that identical issue arose in assessee's own case for A.Y. 2011-12 wherein the CIT(A) has decided the issue in favour of the assessee and the order of CIT(A) was upheld by the Co-ordinate Bench of

Tribunal. Against the order passed by the Tribunal, Revenue had carried the matter before Hon'ble Delhi High Court. Hon'ble Delhi High Court vide order dated 25th August 2022 had upheld the order of Tribunal and had held that no substantial question of law arise for consideration. Before us, Revenue has not placed any distinguishing feature in the facts of the case in the year under consideration and that of A.Y. 2011-12 nor has placed any material to demonstrate that the order rendered by Hon'ble Delhi High Court in assessee's case for A.Y. 2011-12 has been set aside, overruled and stayed by higher judicial forum. In such a situation, we find no reason to interfere with the order of CIT(A). **Thus the ground of Revenue is dismissed.**

11. In the result, appeal of Revenue is dismissed.

Now we take assessee's appeal in ITA No.757/Del/2021 for A.Y. 2016-17:

12. Before us, at the outset, Learned AR submitted that though the assessee has raised various grounds but the only effective ground that requires adjudication is **Ground No.4.**

13. During the course of assessment proceedings, AO has noted that assessee has earned tax free income by way of dividend. He also noted that assessee had investment amounting to

Rs.1701.83 crores as against investment of Rs.798.49 crores during the immediate preceding assessment year. AO also noted that assessee had incurred interest expenditure. AO was of the view that interest bearing funds have been used for making investments. He, therefore, by invoking the provision of Rule 8D read with Section 14A of the Act worked out the disallowance under Rule 8D(2)(iii) of the Income-tax Rules at Rs. 6.25 crores and on account of disallowance of interest expenditure under Rule 8D(2)(ii) worked out the disallowance of Rs.49.71 crores and thus the aggregate disallowance worked out by AO was at Rs.55,96,00,000/-.

14. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who granted partial relief to the assessee by deleting the disallowance to the extent of Rs.49.71 crore but upheld the disallowance under Rule 8D(2)(iii) of Rs.6.25 crores. Aggrieved by the order of CIT(A), assessee is now before us.

15. Before us, Learned AR reiterated the submissions made before the lower authorities and submitted that disallowance under Rule 8D(2)(iii) of the Income-tax Rules be restricted to investment, which actually yielded exempt income. He submitted that since the assessee has earned exempt income of Rs.2.48 crores, the disallowance be restricted to that amount. In support of its contention that for the purpose of disallowance under Rule

8D(2)(iii) of the Income-tax Rules, only investments which yield exempt income, are to be considered, he relied on the following decisions:

- Era Infrastructure (India) Limited reported in 288 Taxman 384 (Del)
- Delhi International Airport (P.) Ltd. reported in (2022) 144 taxman.com 80 (Del)
- Delhi High Court order dated 11.10.2022 in case of assessee in ITA No.390/2022

16. He, therefore, submitted that the matter may be remitted back to AO for deciding the issue afresh.

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

18. We have heard the rival submissions and perused the material available on record. The grievance of the assessee in the present ground is with respect to the disallowance under Rule 8D(2)(iii) of the Income-tax Rules. We find that AO has considered the average value of the entire investments for working out the disallowance @ 0.5% of the average investments. It is the contention of the assessee that all the investments have not yielded exempt income. We, however, find that there is no finding of lower authorities on the issue that all the investments have not

yielded exempt income. We find that Hon'ble Delhi High Court in the case of Delhi International Airport (P.) Ltd. (supra) has held that Section 14A of the Act envisages that there should be actual receipt of income and hence Section 14A of the Act will not apply where no exempt income is received or receivable during the relevant previous year. Before us, it is assessee's contention that the AO has considered the average value of the entire investments (which included investments from which no dividend has been received by the assessee) for working out of the disallowance under Rule 8D(2)(iii) of the Income-tax Rules. In view of the aforesaid decisions of Hon'ble Delhi High Court in the case of Delhi International Airport (supra), we find force in the arguments of Learned AR. We, therefore, restore the issue back to the file of AO and direct him to work out the disallowance under Rule 8D(2)(iii) of the Income-tax Rules on the basis of investments, which have yielded exempt income and in accordance with law. Needless to state that AO shall grant adequate opportunity of hearing to the assessee and assessee is also directed to promptly produce relevant document as called for by authorities. **Thus the ground of the assessee is allowed for statistical purposes.**

19. In the result, appeal of the assessee is allowed.

20. In the combined result, appeal filed by the Revenue is dismissed and appeal filed by the assessee is allowed.

Order pronounced in the open court on 10.02.2023

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 10.02.2023

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Copy forwarded to:

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



ASSISTANT REGISTRAR
ITAT NEW DELHI

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