

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D": NEW DELHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

ITA No. 5157/Del/2015
A Y 2006-07

ACIT
Circle - 31 (1) Room
No. -1309, 13th Floor
E-2, Pratyaksha Kar
Bhawan, SPM Civic
Centre
New Delhi - 110002

Vs M/s. Indian Farmers
Fertiliser Cooperative Ltd.,
IFFCO Sadan, C-1, District
Centre, Saket Place,
New Delhi - 110017
PAN AAAAI0050M

(Appellant)

(Respondent)

Appellant by :	Sh. Rakesh Kumar, Sr.D.R.
Respondent by:	Sh. Tarandeep Singh, CA
Date of Hearing	23/05/2018
Date of pronouncement	07/06/2018

ORDER

PER BEENA A. PILLAI, JUDICIAL MEMBER

Present appeal has been filed by Revenue against the order dated 20th May, 2014 passed by Ld. CIT (A) 11, New Delhi for Assessment Year 2006-07 on the following grounds:

"1. Whether the Ld.CIT(A), on the facts and in circumstances of the case, has erred in deleting disallowance of an amount of Rs.140.19 lakhs made by the A.O. u/s 14A, as the assessee has

claimed deduction of expenses in relating to income which is exempt from tax.

2. The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of appellate proceedings before Hon'ble ITAT.”

2. Facts of the case in brief:

Assessee filed its return of income on 31.10.2006 declaring total income of Rs.323,56,23,021/- which was processed u/s 143(1) of the Income Tax Act, 1961 (the Act) at the returned income and subsequently case was selected for scrutiny and notice u/s 143(2) was issued and assessment was completed u/s 143(3) on 30.11.2009 at an income of Rs.355,10,00,239/- comprising disallowance u/s 14A read with Rule 8D(2)(ii) of Rs.11,42,32,000/- and Rs.3,66,72,225/-. Assessee preferred appeal before the Ld. CIT(A) against the above order and vide order in appeal No. 174/2009-10 dated 24.11.2010, Ld. CIT(A) confirmed the disallowance made u/s. 14A/36(1)(iii). Against the order passed by the Ld. CIT(A), assessee moved further appeal before the Hon'ble ITAT impugning the confirmation of disallowance made u/s. 14A read with rule 8D and Hon'ble ITAT vide its order in ITA No. 1087/Del/2011 dated 05.09.2011 restored the matter back to the file of the AO for re-examination of the claim of the assessee in the light of the decision of the Hon'ble Mumbai High Court in the case of Godrej Boyce Manufacturing Company Ltd. vs. DCIT in ITA No. 626 of 2010, 234 CTR). AO considered the submissions of the assessee as referred to above and he observed that the dividend and long

term capital gain which suffers DDT/STT are fully exempt in the hands of the tax payer but dividend income from joint venture with OMIFCO, Oman which may accrue to it, assessee is not effectively paying any tax on this income either in the Source Country or in India.

2.1. A.O. therefore computed the expenses under S.14A r.w. Rule 8D by including investments in OMIFCO, Oman.

2.2. Aggrieved by the order of Ld.AO assessee preferred appeal before Ld.CIT(A).

Ld.CIT(A) by placing reliance on the orders of his predecessor for A.Y. 2008-09 and 2009-10, deleted the investments made by assessee in Oman Company for the purposes of computing disallowance u/s 14A r.w. Rule 8D.

3. Aggrieved by the order of Ld.CIT(A) assessee preferred appeal before this Tribunal.

4. Ld.DR placed reliance upon the order of Ld.AO and submitted that assessee is receiving relief u/s 90 r.w. DTAA with Oman at 30% on the dividend income received by PE from OMIFCO, Oman.

5. On the contrary Ld.AR placed reliance upon the orders of the Coordinate Bench of this Tribunal for A.Y. 2006-07, 2008-09 and 2009-10 wherein direction had been passed to Ld.AO to re-compute the disallowance u/s 14A by excluding the investments made by assessee in OMIFCO, Oman.

5.1. Ld.AR has placed reliance upon a chart wherein the details of dividend received by assessee have been bifurcated which is as under:

Sl. No.	Particulars	Amount – Rs.
A.	<u>Dividend received from Cooperatives:</u>	
1.	Gujarat State Cooperative Bank Ltd.	750
2.	Dividend recd. from T&C - Phulpur	675
3.	Maharashtra State Cooperative	50,050
	Total income received from Cooperatives	51,475
B.	<u>Dividend received from Companies</u>	
1.	Indian Potash Limited	58,32,000
2.	National Commodity & Derivatives Exchange Ltd.	7,20,000
3.	Dividends on investment in Mutual Funds	28,67,049
4.	Godavari Fertilizer & Chemicals Ltd.	80,01,000
	Exempted dividend received from Companies	1,74,20,049
	Income from PE in Oman	197872800
	<u>Total amount:</u>	21,53,44,324/-

5.2. He placed reliance upon the submissions advanced by him for Assessment Year 2008-09 which is as under.

5. On investment made in OMIFCO, Oman, the Ld. AR submitted that the AO had held that the dividend earned on the said investment was effectively exempt in view of deduction/relief claimed by the assessee u/s 90(2) of the Act read with Indo-Oman DTAA but the Ld. CIT(A) reversed the findings of the AO. The Ld. AR submitted that the assessee being a Multi-State Cooperative Society incorporated in India, is resident in India in terms of Section 6 of the Act. In terms of Section

2(45) read with Section 5 of the Act dealing with scope of taxation, a resident is liable to tax in India in respect of global income, viz. income: (i) received or deemed to be received in India, (ii) income received outside India, (iii) income accruing or arising or deemed to accrue or arise in India, and (iv) income accruing or arising outside India. Thus, the Act provides for levying tax on global income of a person resident in India. The provisions of the Act, including Section 5, which provides for taxation of global income of a resident are “*subject to the provisions of this Act*”. It was submitted that the levy of income tax on global income of an Indian resident is thus subject, inter- alia, to provisions of Section 90(2) of the Act, in terms of which provisions of DTAA entered into by India with any other country would apply and prevail over the provisions of the Act, to the extent the provisions of such DTAA are more beneficial to the assessee entitled to benefits of the DTAA. Thus, where the income is taxable under the Act but is exempt under the DTAA, tax under the Act is not leviable thereon. The Ld. AR submitted that in the instant case the dividend received by the assessee from OMIFCO, Oman through its PE is chargeable to tax in India under the head ~~Income~~ income from other sources+ and forms part of the total income and after such inclusion the rebate of taxes has to be allowed from the total taxes in terms of Section 90(2) of the Act read with Article 25 of the Indo-Oman, DTAA which the AO has done. It was submitted that

consequently the provisions of Section 14A are not applicable to dividend received from OMIFCO, Oman in as much as the income is included in the total income of assessee. Reliance was placed on the decision of the Delhi Bench of the ITAT in the case of Krishak Bharti Cooperative Limited vs. ACIT, 158 ITD 77 in support of this contention.+

5.3. Ld.AR thus submitted that investments made in OMIFCO, Oman should be excluded for the purposes of computing the disallowance u/s 14A r.w. Rule 8D.

5.4. He submitted that the dividend received by assessee from OMIFCO, Oman is chargeable to tax in India under the head 'income from other sources' and forms part of total income, and, thereafter, a rebate of tax has been allowed to assessee from the total taxes in terms of S.90(2) of the Act r.w. Article 25 of Indo-Oman DTAA. Ld.AR thus submitted that it is in this manner the provisions of S.14A would not be attracted to the investments made by assessee in OMIFCO, Oman.

6. We have perused the submissions advanced by both the sides in the light of the records placed before us.

6.1. It is observed that it is a recurring issue from the preceding A.Ys and it has been remitted to Ld.AO to examine and verify the average value of investments after excluding the investment in OMIFCO, Oman under Rule 8D(2)(iii). We therefore do not find any infirmity in the observations of Ld.CIT(A) and the same

is upheld. Accordingly the ground raised by Revenue stands dismissed.

7. In the result appeal filed by the Revenue stands dismissed.

Order pronounced in the open court on 07th June, 2018.

Sd/-

Sd/-

(R.K.PANDA)
ACCOUNTANT MEMBER

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 07th June, 2018

- Mv

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR

ITAT Delhi Benches

S.No.	Details	Date	Initials	Designation
1	Draft dictated on Dragon			Sr. PS/PS
2	Draft placed before author			Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement			Sr. PS/PS
7	File sent to Bench Clerk			Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			