

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND  
SHRI A.D.JAIN, JUDICIAL MEMBER

ITA No.267/Del/2012  
Assessment Year : 2008-09

M/s Gillette Group India  
Pvt.Ltd.,  
(now known as Wella  
Haircosmetics India Pvt.Ltd.),  
C/o JaiKumar Tejwani & Co.,  
Chartered Accountants,  
B-50, East of Kailash,  
Top Floor,  
New Delhi.  
PAN : AAACG2468D.  
(Appellant)

Vs. Assistant Commissioner of  
Income Tax,  
Circle-12(1),  
New Delhi.

(Respondent)

Appellant by : Shri Pradeep Dinodia,  
Shri R.K.Kapoor & Ms.Pallavi  
Dinodia, CAs.  
Respondent by : Shri Alok Singh, Sr.DR.

**ORDER**

**PER G.D.AGRAWAL, VP :**

This appeal by the assessee is filed against the order of learned  
CIT(A)-VIII, New Delhi dated 4<sup>th</sup> November, 2011 for the AY 2008-09.

2. The grounds raised by the assessee read as under:-

*"1. That the learned CIT(A) has erred in law and on facts  
in failing to restrict the disallowance u/s 14A read with rule  
8D to Rs.1,78,83,842/- as against the disallowance of  
Rs.2,37,59,757/- made by the AO on proportionate basis,  
on wholly erroneous, illegal and untenable grounds.*

2. *On the facts and in the circumstances of the case, the learned CIT(A) has failed to appreciate that for A.Y. 2008-09, the disallowance u/s 14A has to be worked out only in accordance with rule 8D of the I.T.Rules."*

3. At the time of hearing before us, it is stated by the learned counsel for the assessee that there are various factual errors in computing the disallowance as per Rule 8D. However, he is not arguing in detail with regard to those errors but, his argument is limited to the fact that the disallowance cannot exceed the expenditure claimed by the assessee. He stated that total expenditure claimed by the assessee in the profit & loss account is only ₹49,04,028/- while the Assessing Officer disallowed ₹2,37,59,757/-. That apart from dividend income, the assessee has other income to the extent of ₹97,04,935/-. Therefore, part of the total expenditure incurred by the assessee is certainly attributable to earning of other income. However, even if it is presumed that the entire expenditure was incurred for earning of dividend income, then also, the disallowance cannot be made more than the expenditure actually claimed by the assessee. He stated that Section 14A provides that no deduction shall be allowed in respect of expenditure incurred by the assessee for earning of exempt income. Rule 8D is only a method for determining such expenditure. Therefore, in any case, what has not been claimed by the assessee cannot be disallowed. He stated that the entire expenditure claimed by the assessee was only ₹49,04,028/- and, therefore, even if it is presumed that the entire expenditure was for earning of dividend income, the disallowance cannot exceed ₹49,04,028/-.

4. The learned DR, on the other hand, relied upon the orders of the authorities below.

5. We have carefully considered the arguments of both the sides and perused the material placed before us. Section 14A reads as under:-

***“Expenditure incurred in relation to income not includible in total income.***

*14A. [(1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.]*

*[(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.*

*(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act :]*

*[Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the*

*assessee under section 154, for any assessment year beginning on or before the 1<sup>st</sup> day of April, 2001.]”*

6. From the above, it is evident that as per sub-section (1) of Section 14A, no deduction is to be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of total income. Sub-section (2) of Section 14A provides the procedure for determination of such expenditure by the Assessing Officer. The Board has also prescribed Rule 8D for determining the expenditure incurred by the assessee for earning of exempt income. Thus, the disallowance can be made under sub-section (1) for the expenditure incurred for earning of exempt income. In the case under appeal before us, from the perusal of the assessee's profit & loss account, it is evident that the total expenditure incurred was ₹49,04,028/- only. Thus, the assessee claimed the deduction for the expenditure of ₹49,04,028/- which is debited to the profit & loss account. The disallowance cannot exceed the expenditure actually claimed by the assessee. We, therefore, accept the assessee's contention that the disallowance made by the Assessing Officer and sustained by the learned CIT(A) in excess of total expenditure debited to profit & loss account was unjustified. Accordingly, we restrict the disallowance to the extent of expenditure actually claimed by the assessee i.e. ₹49,04,028/-.

7. In the result, the appeal of the assessee is partly allowed.  
Decision pronounced in the open Court on 23<sup>rd</sup> March, 2012.

Sd/-  
(A.D.JAIN)  
JUDICIAL MEMBER

Sd/-  
(G.D.AGRAWAL)  
VICE PRESIDENT

Dated : 23.03.2012  
VK.

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH 'E'MUMBAI

**BEFORE SHRIB. RAMAKOTIAH (ACCOUNTANT MEMBER) AND  
SHRI VIVEK VARMA (JUDICIAL MEMBER)**

ITA No.3464/Mum/2011  
Assessment Year-2007-08

M/s. Search Enviro Ltd., 11, G.I.D.C. Estate, Dist. Bulsar, Vapi-396195 Gujarat	Vs.	The ACIT, Circle-9(3), Mumbai
(Appellant)		(Respondent)

Appellant by: Ms.Saisudha Multani  
Respondent by: Shri Sandeep Goel

Date of Hearing :27.02.2012  
Date of pronouncement:02.03.2012

**ORDER**

**PER B. RAMAKOTIAH, AM :**

The issue in assessee's appeal is with reference to disallowance u/s. 14A.

2. The Assessing Officer noticed that assessee had made certain investments and accordingly invoking Rule 8D made disallowance u/s. 14A of the I.T. Act at Rs. 6,36,513/-. The Ld. CIT(A) confirmed the same by stating as under:

*"I have considered the issue. Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. Vs DCIT held that though the provisions of Rule 8D which have been notified w.e.f. 24.3.2008 shall apply w.e.f. assessment year 2008-09, even in respect of earlier years the AO would have to apportion the expenditure and disallow the expenditure incurred by the assessee in relation to income which does not form part of the total income. The relevant assessment year in the case in hand is 2007-08. Rule 8D is, therefore, not applicable here. The AO is, however, competent to determine and disallow such*

*expenditure as may be reasonable having proximate nexus with the exempt income. In the absence of any other parameter or yardstick to arrive at such proximity or reasonableness, the AO rightly used a legally wedded method even though the method per se was not applicable to the current year. I, therefore, confirm the disallowance made of Rs. 6,36,513/-."*

3. It was the submission of the Ld. Counsel that the company did not incur much expenditure while offering the income and filed Profit & Loss account to submit that except donation of Rs. 10,00,000/- and professional fees of Rs. 2,89,575/- the balance of expenditure is very small as under:

Expenditure	Current year Rupees
Bank charges	55,183/-
Filing fees	2,050/-
Audit fees	5,000/-
Tax Audit fees	5,000/-
Amortisation of preliminary expenses	5,900/-
Interest on delayed payment of service tax	2,287/-
Profession tax	500/-
Website charges	3,118/-
Printing & Stationery	780/-

4. The Ld. Counsel relied on the order of Co-ordinate Bench in the case of Nivi Trading Ltd. Vs DCIT in ITA No. 5455/M/2010 dt. 12.10.2011 to submit that assessee does not have any other expenditure except to maintain day today activity and the expenditure has no nexus with the earning of tax free income, therefore, disallowance u/s. 14A is not warranted. The details of professional fees paid were also placed on record to submit that the expenditure was for business and not for earning exempt income.

5. Ld. Departmental Representative relied on the order of AO and Ld. CIT(A).

6. We have considered the issue. As seen from the details of the P&L account filed by assessee receipts were to the tune of Rs. 1.79 crores whereas the expenditure was only Rs. 13.69 lakhs, out of which Rs. 10 lakhs was donation. Out of the balance expenditure, the professional fees were to comply with certification charges and ROC matters and only an amount of Rs. 2.75 lakhs was paid for due diligence which has no relation to earning of exempt income. Only an amount of Rs. 55,183/- was paid as bank charges for clearance of various cheques in business activity. AO simply invoked Rule 8D disallowing the amount u/s. 14A without examining whether there is any nexus with the amount claimed as exempt income. Moreover, the disallowance made is more than the expenditure claimed in the P&L account. Therefore, we are unable to uphold the orders of AO and Ld. CIT(A) on this issue. Considering that an amount of Rs. 77,63,301/- was earned by way of dividend, a token amount of Rs. 5,000/- was only considered as expenditure incurred towards earning exempt income, out of the total claim of expenditure in the P&L account. Accordingly, disallowance is restricted to an amount of Rs. 5,000/-. The AO is directed to allow the balance expenditure as claimed. The grounds raised by the assessee are accordingly, partly allowed.

7. In the result, appeal filed by the assessee is partly allowed.

Order pronounced on this 2<sup>nd</sup> day of March, 2012

**Sd/-**

(VIVEK VARMA)  
Judicial Member

**Sd/-**

(B. RAMAKOTAIAH)  
Accountant Member

Mumbai, Dated 2<sup>nd</sup> March, 2012

Rj