

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH `F': NEW DELHI**

**BEFORE SHRI G.E. VEERABHADRAPPA, VICE PRESIDENT  
AND SHRI C.L.SETHI, JUDICIAL MEMBER.**

I.T. A. No.4931/Del/2010  
Assessment Year: 2007-08

Quippo Telecom Infrastructure Ltd., Asstt. Commissioner of Income-tax,  
D-2, 5<sup>th</sup> Floor, Southern Park, Vs. Circle 14(1), New Delhi.  
Saket, New Delhi.  
PAN: AAACQ1279N

(Appellant)

(Respondent)

Appellant by: Smt. Alka Arren, CA.  
Respondent by: Shri H.K. Lal, Sr.DR.

**ORDER**

**PER C.L. SETHI, JUDICIAL MEMBER:**

The present appeal has been filed by the assessee, against the order dated 30.08.2010 passed by the Commissioner of Income-tax (Appeals), in the matter of an assessment made under sec. 143(3) of the Income-tax Act, 1961 (the Act), pertaining to the assessment year 2007-08.

2. Ground Nos.1(a) to 1(c) are directed against the CIT(A)'s order in confirming the disallowance u/s 14A of Rs.19,58,253/- on account of expenditure incurred to earn exempt dividend income, by applying the provision of Rule 8D.

3. In this case, the assessee filed its return of income on 31.10.2007 showing total income at `Nil'. The case was selected for scrutiny and notice u/s 143(2) was accordingly issued and served upon the assessee. The assessee appeared, and filed replies and documents before the A.O. The assessee is in the business of providing passive infrastructure to telecom industry. During the assessment proceedings, it was noticed by the AO that the assessee has made investment of Rs.10,00,50,000/- in the shares and mutual funds. The AO then asked the assessee to give detail of expenses which were incurred to earn exempt income from investments made in shares and mutual funds. In reply thereto, the assessee submitted that it had not earned any exempt income during the year, investments in shares and mutual funds were made through the internal funds and no borrowed fund was utilized for this purpose. The assessee's reply in this regard, has been reproduced by the AO in the assessment order. The assessee's reply was considered by the AO. The AO had taken a view that requirement of sec. 14A is only that expenditure should be incurred for the purpose of earning exempt income and it is not necessary that some income is actually earned to disallow any expenditure relating thereto under sec. 14A of the Act. The AO therefore, applied the provisions of Rule 8D and worked out the total amount of expenses disallowable u/s 14A of the Act.

4. Being aggrieved, the assessee preferred an appeal before the learned CIT(A).
5. After considering the AO's order, assessee's submissions and the facts of the case, the CIT(A) decided the issue against the assessee by observing and holding as under:-

*“7. I have carefully considered the fact of the case and the submissions made by the Ld. AR. It is noted that the appellant company was incorporated on 01.07.2005 and it started its operation during the A.Y. 2006-07. This is the second year of business. The appellant has showed long term investment of Rs.10,00,50,439/- in shares and mutual funds. The AO has observed in the assessment order that the appellant has paid an amount of Rs.1,11,24,120/- on account of interest expenses not attributable to any specific income are receipt. Section 14A of the I.T. Act clearly provides the expenditure incurred in relation to income not deductible from total income. Sub-sec. (2) provides the mechanism. Sub-Section (3) provides that the section is applicable in relation to case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of total income under the I.T. Act. It is noted that the special bench of Mumbai ITAT in the case of M/s. Daga Capital Management (P) Ltd. Has clearly settled the controversy regarding the applicability of Rule 8D. Rule 8D provides the procedure by which disallowance U/s 14A is to be computed. The A.O. has computed the disallowance as per the procedure provided in Rule 8D.*

*7.2 It is a fact that the appellant company's managerial and administrative manpower has been utilized in taking the complicated decisions regarding the investments which have yielded exempt income, accordingly disallowance under 14A is necessary in the instant case. I do not agree with the plea of the appellant that provision of sub section (2) of 14A are not applicable in the present case. Rather, tis provision clearly*

*states that the disallowance U/s 14A will be made by prescribed method and the prescribed method is Rule 8D. Therefore, it is crystal clear that the provision of Section 14A(2) are applicable in the instant case because Rule 8D has been brought to statute to avoid the guess work in estimation. The working of disallowance under Rule 8D is very specific, which does not leave any scope for subjectivity. Accordingly, the contention of the appellant can not be accepted. In view of the decision of Special Bench Mumbai ITAT (supra) on this issue, categorically holding that Rule 8D is procedural in nature, I hold that disallowance made by the AO under Rule 8D is correct under the normal provisions of the Act or while computing book profits under MAT and thus, no interference is called for in this regard. Accordingly, these grounds of appeal are rejected.”*

6. Hence, the assessee is in further appeal before us.
7. We have heard both the parties and have carefully perused the material on record.
8. On perusal of learned CIT(A)'s order, we find that the CIT(A) has confirmed the Assessing Officer's action by applying the decision of ITAT, Special Bench Mumbai in the case of Daga Capital Management Pvt. Ltd. (2008) 119 TTJ 289 (Mum.) and, has thus, applied the method provided under Rule 8D of the Income-tax Rules. At this stage, it is pertinent to note that the decision of Special Bench of Tribunal in the case of Daga Capital Management Pvt. Ltd. (supra) holding that Rule 8D is retrospective in nature, has been over-ruled by the Hon'ble Bombay High Court in the case of Godrej Boyce vs. DCIT (2010) 43 DTR 177 (Bom.), where it has been

held that Rule 8D would be applicable only on and from assessment year 2008-09 onwards and not prior to assessment year 2008-09. In the light of the decision of Hon'ble Bombay High Court in the case of Godrej Boyce vs. DCIT (supra), we set aside the orders of the authorities below and hold that no disallowance under sec. 14A shall be made by applying the method provided under Rule 8D of the Income-tax Rules in the present assessment year which is prior to assessment year 2008-09. However, the AO shall be at liberty to identify actual expenditure which had been incurred for the purpose of making and earning dividend income from the investment in shares and mutual funds as so observed by the Hon'ble High Court in the case of Godrej Boyce vs. DCIT (supra). We therefore, restore the matter back to the file of the Assessing Officer for his fresh adjudication in the light of our observations as made above. The assessee shall be at liberty to put forward all such legal contentions and submissions as he may be advised in connection with the quantification of expenses, if any, incurred for the purpose of making and earning dividend income from investment in shares and mutual funds. The AO shall decide the issue in the light of the proposition laid down by the Hon'ble Bombay High Court in the case of Godrej Boyce (supra) and after providing reasonable opportunity of being heard to the assessee.

9. Ground No.2 is directed against the CIT(A)'s order in confirming the AO's action in making addition of Rs.19,58,253/- being expenditure incurred to earn exempt income while computing book profit under sec. 115JB of the Act.

10. We have heard both the parties and have carefully perused the material on record.

11. In the present case, the AO has also made addition of Rs.19,58,253/- on account of alleged expenditure incurred to earn exempt income while computing book profit u/s 115JB of the Act. The AO's action has been confirmed by the CIT(A). Both the authorities have applied Rule 8D of the Income-tax Rules while computing the amount of expenditure disallowable u/s 14A of the Act. As already held above, the provisions of Rule 8D are not applicable to the present assessment year under consideration. Therefore, disallowance of expenditure by applying Rule 8D is not justified. Further, no actual expenditure was debited in the profit & loss account relating to the earning of exempt income. Therefore, the provision of section 14A cannot be imported into while computing the book profit u/s 115JB of the Act inasmuch as clause (f) of Explanation to sec. 115JB refers to the amount debited to the profit & loss account which can be added back to the book profit while computing book profit u/s 115JB of the Act. In this

connection, reliance can be placed upon the decision of ITAT Delhi Bench in the case of Goetze (India) Ltd. Vs. CIT (2009) 32 SOT 101 (Del), wherein it has been held that provisions of sub-sec. (2) & (3) of section 14A cannot be imported into clause (f) of the Explanation to sec. 115JA of the Act. In this view of the matter, we therefore, delete the disallowance of expenses confirmed by the CIT(A) while computing book profit under sec. 115JB of the Act. In other words, no addition to the book profit shall be made on account of alleged expenditure incurred to earn exempt income while computing income u/s 115JB of the Act. Thus, this ground No.2 is decided in favour of the assessee.

12. Ground No.3 is as under:-

*“3.0 That on the facts and in the circumstances of the case, the CIT (Appeals) was not justified and grossly erred in confirming non-quantification of unabsorbed depreciation to be carried forward to subsequent years.”*

13. We have heard both the parties and gone through the orders of the authorities below.

14. The issue raised in this ground is being restored back to the file of the Assessing Officer to quantify the unabsorbed depreciation of the current year to be carry forward to the next assessment year as per provisions of sec. 32(2) of the Act. The AO shall provide reasonable opportunity of being heard to the assessee. The assessee shall produce all the details of

depreciation before the AO so as to enable him to decide the issue in its right and correct perspective and as per the provisions of law. We order accordingly.

15. In the result, the appeal filed by the assessee is partly allowed in the manner as indicated above.

16. This decision is pronounced in the Open Court on 18<sup>th</sup> February, 2011.

Sd/-  
(G.E. VEERABHADRAPPA)  
VICE PRESIDENT

Sd/-  
(C.L. SETHI)  
JUDICIAL MEMBER

Dated: 18<sup>th</sup> February, 2011.

**Copy of the order forwarded to:-**

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

By Order

\*mg

Deputy Registrar, ITAT.



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

**BEFORE SHRI J. SUDHAKAR REDDY (AM)  
AND SMT. ASHA VIJAYARAGHAVAN (JM)**

ITA Nos. 3850 /Mum/2010  
Assessment year- 2005-06

M/s. Essar Teleholdings Ltd., 11, Keshavrao Khadye Marg, Mahalaxmi, Mumbai-400 034  PAN-AAACS 4448K	Vs.	The DCIT, Range 5(1), Aayakar Bhavan, Mumbai-400 020
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Appellant by: Shri Vijay Mehta  
Respondent by: Shri B. Jaya Kumar

**ORDER**

**PER ASHA VIJAYARAGHAVAN (JM)**

This appeal preferred by the assessee are directed against the order dt.29.6.2011 passed by the Id. CIT(A)-9 for the Assessment Year 2005-06.

2. The brief facts of the case are that the appellant company is engaged in the business of investment. Return of income showing total loss of Rs. 87,98,40,509/- was filed on 31.10.2005 alongwith the copies of audited balance sheet and profit and loss account and the Tax Audit Report u/s. 44AB of the I.T. Act. After scrutiny of return, details and information submitted, the Assessing Officer computed total loss of Rs. 65,60,40,509/- u/s. 143(3) of the Act on 27.12.2007. While arriving the aforesaid loss, the AO disallowed finance charges to the tune of Rs. 22.38 crores u/s. 14A of the I.T. Act. During the year, the assessee company has not received any dividend or any income in respect of investment of shares which is exempt or otherwise does not form part of total income. The AO therefore applying provisions of Sec. 14A

and thereby disallowing proportionate interest on loans taken for the purpose of investment.

3. While arriving the Book Profit u/s. 115JB, the AO added proportionate finance charges of Rs. 4.06 crores related to exempt income u/s. 10(34) of the Act. During the year, the assessee company has not received any dividend or any income in respect of investment of shares which is exempt or otherwise does not form part of total income. The AO therefore erred in adding the proportionate finance charges of Rs. 4.06 crores related to exempt income u/s. 10(34) of the Act, while computing the Book Profit u/s. 115JB of the I.T. Act.

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

5. The first ground raised by the assessee reads as follows:

*"1. The CIT(A) erred in directing the AO to disallow the expenditure as per Rule 8D r.w. 14A of the I.T. Act.*

*1.1 The CIT(A) erred in enhancing the amount of disallowance u/s. 14A, by directing to disallow the expenditure as per Rule 8D as against the disallowance made by the AO based on the average cost of funds.*

*1.2 The CIT(A) erred in applying Rule 8D of I.T. Rules to the appellant for the A.Y. under appeal without appreciating the fact that Rule 8D was applicable from A.Y. 2007-08."*

6. On perusal of the Ld. CIT(A)'s order, we find that the CIT(A) has confirmed the AO's action by applying the decision of ITAT, Special Bench Mumbai in the case of Daga Capital Management Pvt. Ltd. (2008) 119 TTJ 289 (Mum) and, has thus, applied the method provided under Rule 8D of the I.T. Rules. At this stage, it is pertinent to note that the decision of Special Bench of Tribunal in the case of Daga Capital Management Pvt. Ltd. (supra) holding that Rule 8D is retrospective in nature, has been over-ruled by

the Hon'ble Bombay High Court in the case of Godrej Boyce Vs DCIT (2010) 43 DTR 177 (Bom.), wherein it has been held that Rule 8D would be applicable only on and from A.Y. 2008-09 onwards and not prior to A.Y. 2008-09. In the light of the decision of Hon'ble Bombay High Court in the case of Godrej Boyce Vs DCIT (supra), we set aside the orders of the authorities below and hold that no disallowance u/s. 14A shall be made by applying the method provided u/R 8D of the I.T Rules, in the present assessment year which is prior to A.Y. 2008-09.

However in circumstances as are prevailing presently and the disallowance has to be worked out by the AO on some 'reasonable basis' and not Rule 8D. Under such circumstances, we set aside the impugned order and restore the matter to the file of the AO for deciding the quantum of disallowance, as per the afore-noted judgment of Godrej & Boyce (supra) after allowing a reasonable opportunity of being heard to the assessee.

7. The second ground raised by the assessee reads as follows:

*"The CIT(A) erred in directing the AO to adjust the book profits computed u/s. 115JB with the expenditure as per Rule 8D r.w.s.14A of the Act."*

8. As already held in ground No. 1 the provisions of Rule 8D are not applicable to the present A.Y. under consideration. Therefore, disallowance of expenditure by applying Rule 8D is not justified. Further, no actual expenditure was debited in the profit & loss account relating to the earning of exempt income. Therefore the provisions of Sec. 14A cannot be imported into while computing the book profit u/s. 115JB of the Act inasmuch as clause (f) of Explanation to Sec. 115JB refers to the amount debited to the profit & loss account which can be added back to the book profit while computing book profit u/s. 115JB of the Act. In this connection, reliance can be placed upon the decision of ITAT Delhi Bench in the case of Goetze (India) Ltd. Vs CIT (2009) 32 SOT 101 (Del), wherein it has been held that provisions of Sub-Sec. (2) & (3)

of Sec. 14A cannot be imported into clause (f) of the Explanation to Sec. 115JA of the Act. In this view of the matter, we therefore, delete the disallowance of expenses confirmed by the CIT(A) while computing book profit u/s. 115JB of the Act. In other words, no addition to the book profit shall be made on account of alleged expenditure incurred to earn exempt income while computing income u/s. 115JB of the Act. Thus ground No. 2 is decided in favour of the assessee.

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

Order pronounced on this 29<sup>th</sup> day of July, 2011

Sd/-  
(J.SUDHAKAR REDDY)  
Accountant Member

Sd/-  
(ASHA VIJAYARAGHAVAN)  
Judicial Member

Mumbai, Dated 29<sup>th</sup> July, 2011  
Rj

*Copy to :*

- 1. The Appellant*
- 2. The Respondent*
- 3. The CIT-concerned*
- 4. The CIT(A)-concerned*
- 5. The DR ' E' Bench*

*True Copy*

*By Order*

*Asstt. Registrar, I.T.A.T, Mumbai*

		Date	Initials	
1.	Draft dictated on:	25.6.2011		Sr. PS/PS
2.	Draft placed before author:	26.07.2011		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	File sent to the Bench Clerk:			
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			
10.	Date of dispatch of Order:			