

AO couldn't invoke rule 8D without proving that sec. 14A disallowance made by assessee was unsatisfactory

Summary – The High Court of Delhi in a recent case of Vedanta Ltd., (the Assessee) held that Rule 8D cannot be invoked and applied unless Assessing Officer records his dissatisfaction regarding correctness of claim made by assessee in relation to expenditure incurred to earn exempt income

Facts

- During relevant year the assessee earned dividend income which was exempt under section 10(34). The assessee had made self disallowance of certain expenditure in order to earn said income.
- The Assessing Officer, without examining and referring to the disallowance or recording his dissatisfaction on disallowance made, invoked rule 8D of 1962 Rules as if it was mandatory.
- The Commissioner (Appeals) set aside assessment order holding that the Assessing Officer had failed to record his objective satisfaction whether the disallowance made by the assessee was appropriate and in accordance with law.
- The Tribunal upheld order passed by the Commissioner (Appeals).
- On revenue's appeal :

Held

- It is apparent that the Assessing Officer without examining, commenting and rejecting the disallowance made by the assessee had applied rule 8D as compulsory and universally applicable rule where the assessee has earned exempt income. However, Rule 8D cannot be invoked and applied unless Assessing Officer record his dissatisfaction regarding correctness of claim made by assessee in relation to expenditure incurred to earn exempt income. This is the mandate and pre condition imposed by sub-section (2) to section 14A of the Act.
- Rule 8D is in the nature of best judgment determining, *i.e.*, determination in default and on rejection of the explanation of the assessee in relation to expenditure incurred to earn exempt income. Rule 8D is not applicable by default but only if and when the Assessing Officer records his satisfaction and rejects the explanation of the assessee regarding the disallowance of expenditure. In the present case the assessment order proceeds on a wrong assumption that rule 8D would apply to all cases and is mandatory. Finding of the Tribunal affirming the order of the Commissioner (Appeals) is in accordance with the law.
- As the legal issue is settled, no substantial question of law arises for consideration in the instant appeal, which is dismissed