

**IN THE INCOME TAX APPELLATE TRIBUNAL "L" BENCH, MUMBAI
BEFORE SHRI G.S.PANNU, AM AND SHRI RAVISH SOOD, JM**

ITA No. 7239/Mum/2016

(निर्धारण वर्ष / Assessment Year:2012-13)

M/s Taurian Engineering Pvt. Ltd., 302A, Poonam Chambers, 3 rd Floor, Dr. Annie Besant Road, Worli, Mumbai-400 018	बनाम/ Vs.	Income-tax Officer 17(1)(1), R. No. 124, 1 st Floor, Piramal Chambers, Lalbaug, Parel, Mumbai 400 012
स्थायी लेखा सं./जीआइआर सं./PAN No.		AABCM8782H
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	S/shri Krish Desai and Bhumila Rathod, A.Rs
प्रत्यर्थी की ओर से / Respondent by	:	Shri M.V. Rajguru, D.R

सुनवाई की तारीख / Date of Hearing	:	01.02.2018
घोषणा की तारीख / Date of Pronouncement	:	25.04.2018

आदेश / O R D E R

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-9, Mumbai, dated 23.08.2016, which in itself arises from the order passed by the A.O under Sec. 143(3) of the Income tax Act, 1961 (for short 'Act'), dated 30.03.2015 for assessment year 2012-13. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:-

"Ground No. 1: Jurisdiction to apply and determine disallowance u/s. 14A:

1. *On the facts and in the circumstances of the case and in law, the CIT(A) erred confirming the action of the Deputy Commissioner of Income Tax- 4(3)(1), Mumbai ("the AO") of assuming jurisdiction to apply section 14A r.w.r. 8D of the Income-tax Rules, 1962 ("the Rules") as also to determine the amount of expenditure incurred by the Appellant in relation to income which does not form part of total income.*
2. *The Appellant prays that it be held that:*
 - i. *the lower authorities failed to establish burden that they are not satisfied with the claim of the Appellant;*
 - ii. *their action to invoke section 14A and to determine the amount of disallowance in relation to exempt income be treated as without jurisdiction, ab intio void and bad-in-law; and*
 - iii. *as such the order of the lower authorities to the extent of addition made under section 14A of the Act be treated as illegal, invalid, ab intio void, bad-in-law and be quashed.*

Ground No. II Disallowance u/s. 14A Rs.15,29,054/-:

1. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in partly confirming the action of disallowing expenditure of Rs.15,29,054/- u/s. 14A r.w.r 8D of the Rules.*
2. *He further erred in disallowing the expenditure of Rs.1,52,905/- which has been already disallowed by the Appellant in its return of income and as such the same resulted into double disallowance of the same amount in the hands of the Appellant.*
3. *The Appellant prays that the action of the lower authorities be deleted.*
4. *Without prejudice to above, if at all the action of the lower authorities be upheld then, in that case, the disallowance be allowed to be treated as cost of investments.*
5. *Without prejudice to above, if at all the action of the lower authorities is upheld then, in that case, the amount of disallowance be allowed to be deducted from the proceeds of consideration of investments in the year in which such investments would be transferred.*

Ground No. III: General

The Appellant craves leave to add to, alter, amend and/or vary all or any of the foregoing grounds of appeal."

2. We find that the appeal filed by the assessee involves a delay of 24 days. The assessee has filed an application explaining the reason leading to delay in filing of the appeal. It is claimed by the assessee that the delay in filing of the appeal had occasioned for the reason that Ms. Bhakti Ajmera, assistant of Sh. Samir R. Sanghvi, Chartered accountant who is a Partner of Manish Modi & Associates, Chartered accountants, out of inadvertence, while going on leave on 17th October, 2016 for her final examination of Chartered accountancy had failed to hand over the appeal papers of the assessee company, viz. Taurian Engineering (P) Ltd, as a result whereof the appeal could not be filed within the limitation period. The affidavits of Sh. Samir R. Sanghvi, C.A and Ms. Bhakti Ajmera, affirming the aforesaid facts had also been enclosed alongwith the application seeking condonation of delay. We have perused the application filed by the assessee seeking condonation of delay and are of the considered view that the delay in filing of the appeal had crept in because of an inadvertent mistake on the part of the office of its chartered accountants. We thus, in all fairness condone the delay of 24 days involved in filing of the appeal.

3. Briefly stated, the facts of the case are that the assessee who is engaged in the business of manufacturing of mobile crusher and screening plants with accessories had filed its return of income for assessment year 2012-13 on 29.09.2012, declaring total income of Rs.34,21,640/-. The case of the assessee was taken up for scrutiny assessment under Sec. 143(2).

4. During the course of the assessment proceedings the A.O observed that the assessee had received dividend income of Rs.15,29,054/-. The A.O called upon the assessee to furnish the details of the dividend income and explain as to why the disallowance of expenditure incurred on earning of the said exempt income may not be made under Sec. 14A r.w. Rule 8D of the Income tax Rules 1962. The assessee in its reply submitted that it had offered 10% of the dividend income of Rs. 1,52,905/- as disallowance under Sec. 14A. The A.O not finding favour with the submissions of the assessee,

proceeded with and worked out the disallowance under Sec. 14A r.w. Rule 8D, as under:-

(i)	The amount of expenditure directly relating to income which does not form part of total income.	(% of Dividend Income/Total Income) x Total expenditure	552
(ii)	Proportionate of interest expenditure computed in accordance with the formula given in Rule 8D (2)(ii)	$(A \times B/C)$ 40,72,065 x 14,07,34,820/33,12,84,758	17,29,875
(iii)	Amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income as appearing in the Balance Sheet of the assessee, on the first day and the last day of the previous year.	0.5% x (14,07,34,820)	7,03,674
Total Expenditure disallowed u/s. 14A			24,34,101

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The main focus of the assessee before the CIT(A) was that the A.O without recording his satisfaction as to why he was not satisfied, having regard to the accounts of the assessee, as regards the correctness of its claim in respect of expenditure incurred for earning of dividend income, had wrongly dislodged the same. However, the submissions of the assessee did not find favour with the CIT(A) who being of the view that as the A.O had rightly worked out the disallowance under Sec. 14A r.w Rule 8D as per the mandate of law, after taking into consideration the objects with which the said statutory provision was made available on the statute, therefore, observed that no infirmity did emerge from his order. It was further observed by the CIT(A) that as the assessee had disallowed the expenditure incurred as certain percentage of the exempt dividend income, thus, the question of reaching of satisfaction as regards the correctness of the claim of the assessee did not arise at all. The CIT(A) further held a conviction that as the A.O had made a further disallowance under Sec.14A, therefore, the same in itself proved that he was not satisfied with the correctness of the claim of the assessee in respect of expenditure which was claimed to have been incurred in relation to the dividend income which did not form part of its

total income. The CIT(A) on the basis of his aforesaid observations upheld the order of the A.O and dismissed the contentions of the assessee assailing the disallowance made under Sec. 14A of the Act.

6. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that as the A.O had failed to record his satisfaction as to why he was not satisfied as regards the correctness of the claim of the assessee, in respect of the amount disallowed under Sec. 14A, had thus wrongly assumed jurisdiction and worked out the disallowance under Sec. 14A r.w Rule 8D at Rs.24,34,101/-. The ld. A.R further tried to impress upon us that as no disallowance under Sec. 14A r.w. Rule 8D(2)(ii) in context of the interest expenditure was made by the A.O while framing the assessment in its case for the immediately preceding year, viz. A.Y. 2011-12, therefore, no such disallowance could have been made in its case for the year under consideration. The ld. A.R further submitted that as the profits of the assessee were sufficient to explain the investments, therefore, no disallowance could have been made in respect of the interest expenditure under Sec. 14A r.w. Rule 8D(2)(ii). It was further averred by the ld. A.R that as the assessee company was only holding shares of one company, therefore, no expense was incurred for earning of the dividend income. Per contra, the ld. Departmental representative (for short 'D.R') relied on the orders of the lower authorities.

7. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that the A.O while dislodging the claim of disallowance made by the assessee under Sec. 14A had mainly deliberated on the scope and gamut of the disallowance contemplated under Sec. 14A r.w Rule 8D by taking support of certain judicial pronouncements. However, a perusal of his order reveals that at no stage he had recorded his satisfaction as to why the claim of disallowance made by the assessee in its return of income was not

to be accepted. We are unable to persuade ourselves to subscribe to the view taken by the CIT(A) that as the assessee had not adopted a mechanism for computing the disallowance or debited the same to the respective expenditure account, therefore, there was no obligation on the part of the A.O to have recorded his dissatisfaction as regards the claim of disallowance made by the assessee in its return of income. We also do not find ourselves to be in agreement with the observation of the CIT(A) that as the A.O had made a further disallowance under Sec.14A, therefore, the same in itself proved that he was not satisfied with the correctness of the claim of the assessee in respect of the expenditure incurred in relation to the dividend income. We find that the view taken by the CIT(A) is not in conformity with the judgment of the **Hon'ble Supreme Court** in the case of **Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT & Anr. (Civil Appeal No.7020 of 2011; dated. 08.05.2017)**, wherein the Hon'ble Apex Court had held that where an A.O makes a disallowance under Section 14A r.w. Rule 8D without arriving at a satisfaction as regards the correctness of the claim of the assessee, on the basis of its accounts as were placed before him, the same would not be sustainable in the eyes of law.

8. We have given a thoughtful consideration to the facts of the case, and are of the considered view that the very process of determination of the amount of expenditure incurred in relation to exempt income would be triggered only if the A.O. returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. We are of the considered view that the A.O before discarding the claim of the assessee as regards the amount of expenditure incurred in relation to the exempt income, as per the mandate of law, remains under a statutory obligation to record cogent reasons as regards his dissatisfaction in respect of such claim of the assessee, before determining the amount of disallowance in accordance with the method prescribed in Section 14A r.w. Rule 8D. We find that our aforesaid view stands fortified by the recent judgment of the **Hon'ble Supreme Court** in the case of

Godrej & Boyce Manufacturing Company Limited (supra), wherein the **Hon'ble Apex Court** had held as under:-

“Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable.

We are of the considered view that in the case before us, the A.O had failed to satisfy the statutory requirement of arriving at a satisfaction, that having regard to the accounts of the assessee, as placed before him, it was not possible for him generate the requisite satisfaction with regard to the correctness of the claim of disallowance made by the assessee under Sec. 14A. We are also not persuaded to subscribe to the observations of the lower authorities that as the disallowance by the assessee under Sec. 14A was on an estimate basis and not by way of a debit to any expenditure account, therefore, there was no obligation on the A.O to have recorded his satisfaction as to why the claim of the assessee was not to be accepted. We are of the considered view that the A.O remained under an obligation to have recorded the reason as to why he was not satisfied with the claim of the assessee, and even under the aforesaid set of circumstances he ought to have made a mention of the reasons leading to his dissatisfaction. We are also not impressed by the claim of the CIT(A) that as the A.O made a further disallowance under Sec. 14A, therefore, the same in itself proved that he was not satisfied with the correctness of the claim of the assessee. We are of a strong conviction that in case the A.O was not satisfied with the claim of disallowance of the assessee under Sec. 14A, then it was obligatory for him as per the mandate of law to have recorded cogent reasons which had led to such dissatisfaction on his part. We are of the view that as the A.O had failed to record the requisite satisfaction, therefore, the very assumption of jurisdiction by him for dislodging the claim of disallowance made by the assessee and substituting the same by the amount worked out as per Sec.

14A r.w Rule 8D cannot be sustained and is liable to be vacated. We thus set aside the disallowance of Rs. 24,34,101/- made under Sec. 14A by the A.O and sustained by the CIT(A).

9. That as we have vacated the disallowance made under Sec. 14A for lack of jurisdiction on the part of the A.O, therefore, we refrain from advertent to the contentions raised by the assessee on merits as regards the validity of the disallowance under Sec. 14A.

10. The appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 25/04/2018

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 25.04.2018
Ps. Rohit

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

