

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

**BEFORE SHRI RAMIT KOCHAR, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.1677/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2007-08)

DCIT Cent. Cir- 8(3) (Erstwhile DCIT, CC-46, Mumbai) 6 <sup>th</sup> Floor, Room No.659, Aayakar Bhavan, M.K. Road, Mumbai-400020.	<b>बनाम/</b> Vs.	M/s. Sun Investment Pvt. Ltd. Jindal mansion, 5A Dr. G. Deshmukh Marg, Mumbai- 400026.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACS0389M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Chaudhary Arun Kumar Singh (Sr. AR)	
Assessee by:	Shri Rishabh Shah	

सुनवाई की तारीख / Date of Hearing: 24/07/2019  
घोषणा की तारीख /Date of Pronouncement: 26/08/2019

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 04.12.2017 passed by the Commissioner of Income Tax (Appeals) -47, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2007-08.

2. The revenue has raised the following grounds: -

- “(i) Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in restricting the disallowance to Rs.1,04,34,232/- under the provision of section 14A of the Act read with Rule SD of the Income Tax Rules, 1962.”



- (ii) "Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in restricting the disallowance to Rs.1,04,34,232/- under the provision of section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 without appreciating the fact that SLP has been filed in the Hon'ble Supreme Court in the assessee's group case i.e. JSW Energy Limited for A. Y.2006-07 wherein similar addition was made by AO and the Id. CIT(A) has deleted the said addition following the decision of the Hon'ble High Court in the case of Godrej and Boyce Mfg. Co. Ltd."

The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the AO be restored.

The appellant craves leave to amend or alter any ground and/or add new grounds which may be necessary".

**3.** The brief facts of the case are that the assessee filed its return of income on 10.10.2007 declaring total income to the tune of Rs.3,52,40,576/- for the A.Y. 2007-08. The return was processed u/s 143(1) of the I.T. Act, 1961 on 19.03.2009. Thereafter, the case was selected for scrutiny under CASS. Notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. The assessee company was engaged in the business of Investment in securities, lending & providing consultancy services. On verification, it was found that the assessee had shown the exempt income of Rs.69,74,09,441/- which was claimed as exempt u/s 10(34) of the Act. No expenses in respect of this exempt income were disallowed by the assessee in view of the provisions of Section 14A of the Act r.w. Rule 8D of the Rules and assessed the expenditure to earn the exempt income in sum of Rs.3,46,60,480/-. After some more scrutiny, the total income of the assessee was assessed in sum of Rs.14,91,54,590/- and book profit u/s 115JB of the Act in sum of Rs.1,49,94,582/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted the claim of the assessee to the extent of Rs.1,40,34,232/-. Feeling aggrieved, the revenue has filed the present appeal before us.



**ISSUE NOS. 1 & 2:-**

4. Both the issues are in connection with the restriction of the addition to the extent of 1,40,34,232/- u/s 14A of the Act r.w. Rule 8D of the Income Tax Rules 1962. The Ld. Representative of the revenue has argued that the AO has rightly applied the provisions u/s 14A r.w. Rule 8D of the I.T. Rules, 1962 and assessed the expenditure to earn the exempt income in sum of Rs. 3,46,60,480/- in accordance with law but the CIT(A) has wrongly restricted the same to the extent of 1,40,34,232/-, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside in the interest of justice. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record: -

*“5.0 I have considered the submissions of the appellant and perused the materials available on record. It is seen that the appellant has earned exempt income amounting to Rs.69,74,09,441/- during the year. The appellant in its original return didn't make any disallowance of expense in relation to such exempt income earned. In view of this the AO has made a disallowance amounting to Rs.3,46,60,480/- by invoking provision of Rule 8D. The AO has placed reliance on the judgment of Hon'ble ITAT Special Bench, Mumbai decision in the case of Daga Capital 117 ITD 169 (Mum).*

*15.1 The matter was then taken to First Appellate Authority (FAA), wherein the CIT(A) dismissed the appeal of the appellant. Thereafter, the matter was taken to Hon'ble ITAT, wherein the ITAT restored the matter back to the file of CIT(A) holding that the provisions of Rule 8D are not applicable to the case of the appellant, as the same pertains to AY 07-08. The Hon'ble Bombay High Court in the case Godrej Boyce Mfg. Co. Pvt. Ltd. has held that the provisions of rule 8D is prospective and is applicable from AY 08-09 onwards.*

*15.2 Thus, in view of the above admitted position, I am of the opinion that the action of the AO invoking the provision of Rule 8D in order to make disallowance u/s 14A is erroneous and not as per law. However, it is noted that the appellant has subsequently in its return filed u/s 153C disallowed an amount of Rs. 86,043/- towards demat charges and*



*Rs.1,39,48,189/- being 2% of the amount of dividend income earned u/s 14A of the Act, on the basis of the outcome for the AY 05-06. In view of these facts and circumstances, I hereby direct the AO to restrict the disallowance u/s 14A to Rs.1,40,34,232/- (Rs.86,043+1,39,48,189). Hence, the Ground of Appeal No. 1 is partly allowed."*

5. On appraisal of the above mentioned order, we noticed that the CIT(A) in view of the decision of the jurisdictional High Court in case of Godrej Boyce Mfg. Co. Pvt. Ltd. has held that the provisions of u/s 14A r.w. Rule 8D of the I.T. Rules, 1962 was applicable w.e.f. A.Y. 2008-09 onwards. The case of the assessee is in connection with the A.Y. 2007-08. Undoubtedly, the provisions u/s 14A r.w. Rule 8D of the I.T. Rules, 1962 is not applicable to the facts of the present case. The provisions of Section 14A of the Act r.w. Rule 8D of the Rules are applicable w.e.f. A.Y. 2008-09 onwards. The assessee failed to revised return of income u/s 153 of the Act and assessed the demat charges in sum of Rs.86,043/- and Rs.1,39,48,189/- being 2% of the dividend income u/s 14A of the Act. The CIT(A) has found the said expenditure to earn the exempt income justifiable. The facts are not distinguishable at this stage also. The demat charges along with 2% of the expenses of dividend income seems quite justifiable. The CIT(A) has passed the order judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, both the issues are decided in favour of the assessee against the revenue.

6. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 26/08/2019

Sd/-

(RAMIT KOCHAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 26/08/2019

Vijay/Sr.PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 1677/M/2018  
A.Y.2007-08

**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.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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