

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” Bench, Mumbai**

**Before Shri S. Rifaur Rahman, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 5286/Mum/2018
(Assessment Year: 2015-16)**

M/s Sharekhan Commodities Pvt. Ltd; 10th
Floor, Beta Building, Lodha 1 Thik Techno
Park, Opp. Kanjurg Station,
Mumbai – 400 042.

Deputy Commissioner of Income Tax Central
Circle-3(3),
Vs. Mumbai-400 020

PAN – AAFCS6396F

(Appellant)

(Respondent)

Appellant by: Shri Hiro Rai, Advocate.
Respondent by: Shri V. Vinod Kumar, D.R

Date of Hearing: 27.11.2019
Date of Pronouncement: 10.01.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee company is directed against the order passed by the CIT(A)-51, Mumbai, dated 19.07.2018, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income Tax Act, 1961 (for short 'I.T. Act'), dated 20.09.2017. The assessee has assailed the impugned order on the following grounds of appeal before us :

- “1. Under the facts and in law, the Hon’ble CIT(A) has erred in disallowing Rs. 14,74,750/- under Rule 8D(iii) r.w.s 14A of the Income-tax Act, 1961.
 - 1.1 The Hon’ble CIT(A) failed to appreciate the submission made by the appellant.
 - 1.2 The Hon’ble CIT(A) failed to appreciate the fact that considering its business operations, the appellant suo motto has disallowed Rs. 2,59,674/- as administrative expenses.
2. Under the fact and in law, the appeal order passed by the Hon. CIT(A)-51, is not in accordance with law.
3. Your appellant craves leave to allow amending/altering/adding /withdrawing any of the above grounds of appeal.”

2. Briefly stated, the assessee company which is engaged in the business of commodity trading had e-filed its return of income for A.Y 2015-16 on 24.11.2015, declaring its total income at Rs.13,18,15,800/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the I.T. Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee was in receipt of dividend income which was claimed as exempt. The A.O called upon the assessee to explain as to why the expenses attributable to earning of the exempt dividend income may not be disallowed as per Sec. 14A of the Act. It was observed by the A.O, that the assessee had made investments in shares, mutual funds out of its consolidated funds (including borrowed funds). Also, the A.O was of the view that investments in private limited companies made by the assessee would require day to day monitoring as well as appraisal of various facts including business strategies, day to day operation etc. As the assessee could not provide any justifiable method/basis of the disallowance worked out by it under Sec. 14A, therefore, the A.O computed the disallowance as per Rule 8D, as under :

The amount of expenditure directly relating to income which does not form part of total income			0
Expenditure by way of interest +A x (B/C)		2,556,670	X <u>294,950,000</u> 1,432,267,168
			526,501
A= The amount of expenditure by way of interest other than amount of interest included in clause (i) incurred during the previous year,			
Particulars	Amt.		
Interest	2,556,670		
B= the average of 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.			
Particulars	Invst.		
Opening Balance	439,900,000		
Closing Balance	150,000,000		
Total	589,900,000		
Average	294,950,000		
C= the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.			
Particulars	Total		
Opening Balance	1,305,423,000		
Closing Balance	1,559,111,335		
Total	2,864,534,335		
Average	1,432,267,168		
An amount equal to one-half per cent 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."			1,474,750
Disallowance u/s. 14A read with Rule 8D			2,001,251

On the basis of his aforesaid observations the A.O worked out the disallowance under Sec. 14A r.w Rule 8D at Rs. 20,01,251. As the assessee had voluntarily offered a disallowance of Rs. 2,59,674/-, therefore, the A.O restricted the further disallowance at Rs. 17,41,577/- [Rs. 20,01,251/- (-) Rs.

2,59,764/-]. After inter alia making the aforesaid additional disallowance under Sec. 14A r.w Rule 8D, the income of the assessee was assessed at Rs. 13,45,32,647/-. Also, the 'book profit' under Sec. 115JB after making an adjustment for the disallowance under Sec. 14A r.w Rule 8D was reworked at Rs. 16,06,28,516/-.

4. Aggrieved, the assessee assailed the assessment before the CIT(A). It was observed by the CIT(A) that the disallowance worked out by the A.O under Sec. 14A at Rs. 20,01,251/- comprised of two parts viz. (i). U/rule 8D(2)(ii) : Rs. 5,26,501/-; and (ii). U/rule 8D(2)(iii) : Rs. 14,74,750/-. Observing, that the assessee during the year had sufficient own funds to make investments in the exempt income yielding assets, the CIT(A) deleted the disallowance made by the A.O U/rule 8D(2)(ii). It was also observed by the CIT(A) that involving identical facts in the case of a related concern of the assessee viz. M/s Sharekhan Financial Services Pvt. Ltd., the deletion of the disallowance U/rule 8D(2)(ii) by his predecessor was upheld by the Tribunal. As regards the disallowance that was made by the A.O U/rule 8D(2)(iii) in the case of the related party, it was observed by the CIT(A) that the same was upheld by the CIT(A). Also, it was observed by him that as the upholding of the disallowance U/rule 8D(2)(iii) by the CIT(A) was not assailed any further in the case of the related party before the Tribunal, therefore, the same had attained finality. On the basis of his aforesaid observations the CIT(A) sustained the disallowance U/rule 8D(2)(iii) of Rs. 14,74,750/- that was made by the A.O in the case of the present assessee .

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was submitted by the Id. A.R that the A.O while dislodging the claim of the assessee as regards the expenditure that was stated to have been incurred for earning of the exempt dividend income, had failed to record his satisfaction as regards the incorrectness of the same. It was averred by the Id. A.R that the A.O had dislodged the claim of the assessee that only an amount of Rs. 2,59,674/- was attributable towards earning of the exempt dividend income without recording his satisfaction as to why the same was not to be accepted. In support of his contention that the A.O having regard to the accounts of the assessee, as placed before him, before resorting to and carrying out a disallowance under Sec. 14A(2) and (3) r.w Rule 8D, remained under a bounden duty to observe that as to why it was not possible for him to generate the requisite satisfaction with regard to the correctness of the claim of the assessee, the Id. A.R had relied on a host of judicial pronouncements viz. (i). Godrej & Boyce Manufacturing Co. Ltd. Vs. Dy. CIT (2017) 394 ITR 449 (SC); (ii). Maxoppp Investment Ltd. Vs. CIT (2018) 402 ITR 640 (Sc); (iii). Pr. CIT Vs. Bajaj Finance Ltd. (2019) 309 CTR (Bom) 28; (iv). Pr. CIT Vs. Reliance Capital Asset Management Ltd. (2017) 251 Taxman 68

(Bom); (v). H.T Media Ltd. Vs. Pr. CIT (2017) 399 ITR 576 (Del); (vi). M/s Taurian Engineering Pvt. Ltd. Vs. ITO, 17(1), Mumbai [ITA No. 7239/Mum/2016; dated 25.04.2018]; and (vii). Anshul Speciality Molecules limited Vs. The Dy. CIT, Central Circle-6(3), Mumbai [ITA No. 4436/Mum/2016; dated 13.06.2018]. It was submitted by the Id. A.R that as the A.O had failed to record any satisfaction as regards the incorrectness of the claim of the assessee that only an amount of Rs.2,59,624/- was incurred/borne for earning of the exempt dividend income, therefore, the very assumption of jurisdiction by him for working out the disallowance under Sec. 14A was devoid and bereft of any legal sanctity. Alternatively, it was submitted by the Id. A.R, that even otherwise the A.O while working out the 'average investments' for the purpose of computing the disallowance U/rule 8D(2)(iii) had wrongly included such investments which had not yielded any exempt income during the year under consideration. It was averred by the Id. A.R that a direction be issued to the A.O for excluding the value of the investments which had not yielded any exempt income during the year while computing the 'average value' of the investments for working out the disallowance U/rule 8D(2)(iii).

6. Per contra, the Id. Departmental Representative (for short ' D.R') relied on the orders of the lower authorities. It was the contention of the Id. D.R that the A.O had rightly made the disallowance of Rs. 20,01,251/- under Sec.14A r.w. Rule 8D of the expenses that were incurred by the assessee for earning of the exempt dividend income during the year under consideration.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. We find that the claim of the assessee that only an amount of Rs. 2,59,674/- was attributable towards earning of the exempt dividend income was rejected by the A.O. As is discernible from the assessment order, we find, that though the assessee had suo motto offered a disallowance under Sec. 14A of Rs. 2,59,674/- in its return of income, however, the A.O had observed that the assessee had wrongly contested that no expenditure had been incurred for earning the dividend income or making of investments. Be that as it may, the A.O instead of recording his satisfaction that having regard to the accounts of the assessee as placed before him, it was not possible to generate the reasonable satisfaction with regard to the correctness of the claim of the assessee, had however, summarily rejected the same, for the reason, that the assessee could not provide any method/basis which would be acceptable to the department. In our considered view, the A.O had rejected the aforesaid claim of the assessee without recording his satisfaction as to why the same was not to be accepted having regard to the accounts of the assessee. On appeal, the CIT(A) had upheld the

disallowance u/s 14A r.w Rule 8D(2)(iii) by merely referring to the view taken by his predecessor in the case of a related party of the assessee.

8. We have given a thoughtful consideration to the issue before us and are unable to persuade ourselves to subscribe to the view taken by the lower authorities. Admittedly, the A.O having regard to the accounts of the assessee had failed to record his dissatisfaction as regards the correctness of the claim of the assessee in respect of the expenses which were stated to have been incurred for earning of the exempt dividend income. In our considered view, the issue as to whether it is obligatory on the part of the A.O to record his satisfaction as to why the claim of the assessee in respect of the expenses incurred for earning of the exempt dividend income was not to be accepted, having regard to the accounts of the assessee, is no more *res integra* and has been settled by the **Hon'ble Supreme Court** in the case of **Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT & Anr. (2017) 394 ITR 449 (SC)**. The Hon'ble Apex Court in its aforesaid order had observed that it is obligatory on the part of the A.O to record his satisfaction that having regard to the accounts of the assessee as placed before him, it was not possible to generate the reasonable satisfaction with regard to the correctness of the claim of the assessee. We are of strong conviction that the observation of the A.O in the present case that the assessee could not provide any method/basis which would be acceptable to the department for working out the disallowance u/s 14A, would not justify the dispensing of the statutory obligation that was cast upon him for recording his satisfaction as regards the correctness of the claim of the assessee, having regard to its accounts placed before him. It was observed by the Hon'ble Apex Court in the case of **Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT & Anr. (2017) 394 ITR 449 (SC)** that it was only after the A.O had recorded his dissatisfaction as regards the correctness of the claim of the assessee that the provisions of Sec.14A(2) and (3) r.w. Rule 8D could be invoked. It was observed by the Hon'ble Apex Court, as under:

"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. 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."

9. As observed by us hereinabove, the A.O had dislodged the aforesaid claim of disallowance u/s 14A of the assessee, without recording his satisfaction as to why the same was not to be accepted having regard to the accounts of the assessee which were placed before him. We thus in terms of our aforesaid observations respectfully following the judgment of the **Hon'ble Supreme Court** in the case

of **Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT & Anr. (2017) 394 ITR 449 (SC)**, therein vacate the further disallowance of Rs. 17,41,577/- [Rs. 20,01,251/- (-) Rs. 2,59,674/-] made by the A.O under Sec.14A r.w. Rule 8D.

10. As we have vacated the disallowance made by the A.O under Sec. 14A r.w Rule 8D on the ground of invalid assumption of jurisdiction by the A.O, therefore, the other grounds which had been raised by the assessee before us for assailing the aforesaid disallowance, having been rendered as academic in nature are therefore not being adverted to and adjudicated upon by us.

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

Order pronounced in the open court on 10.01.2020

Sd/-
(S. Rifaur Rahman)
Accountant Member

Sd/-
(Ravish Sood)
Judicial Member

मुंबई Mumbai; दिनांक 10.01.2020

Ps. Rohit

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