

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI
BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER

&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.5170 & 5171/Mum/2018
(Assessment Years: 2011-12 & 2012-13)

Shri. Neel Bhupendra Dalal 39, Ali Chambers, Tamarind Lane Fort, Mumbai-400 001	Vs.	ITO-4(2)(3) Mumbai
PAN/GIR No.AACPD1862F		
Appellant)	..	Respondent)

Assessee by	Shri. S.E.Dastur, Sr.Advocate
Revenue by	Shri. Kailash Mangal, DR
Date of Hearing	17/12/2019
Date of Pronouncement	15/01/2020

आदेश / O R D E R

PER G.MANJUNATHA, Accountant Member:

These two appeals filed by the assessee are directed against separate, but identical orders of the Ld. Commissioner of Income Tax (Appeals)-09, Mumbai, both dated 07/06/2018 for the Asst. Years 2011-12 and 2012-13. Since, the facts are identical issues are common, for the sake of convenience, these appeals were heard together and are disposed- off, by this consolidated order.

ITA.NO.5170/Mum/2018 for AY 2011-12:-

2. The assessee has, more or less raised common grounds of appeal for both assessment years. Therefore, for the sake of

brevity, the grounds of appeal filed for the AY 2011-12 are reproduced as under:-

1. *The Learned Commissioner of Income-tax (Appeals) ("CIT(A)") erred in upholding the disallowance under Section 14A of the Income-tax Act, 1961 (the Act') of expenditure of Rs. 19,31,359/-.*
2. *The Learned CIT(A) ought to have held that the Assessing Officer erred in making an addition under Section 14A in the absence of his being satisfied as required by law.*
3. *The Learned CIT(A) ought to have held that the margin facility availed by the assessee from Religare Finvest was utilized solely for the purpose of trading in shares and not towards personal investments and hence Section 14A was not applicable to such expenditure,*
4. *The appellant craves leave to add, amend, alter or delete and/or modify the above grounds of appeal before or during the course of hearing.*

3. The brief facts of the case are that the assessee is an individual engaged in the business of share and stock broking, filed his return of income for AY 2011-12 on 28/03/2013, declaring total income at Rs.'Nil'. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO noticed that the assessee has earned dividend income from shares, however did not made suo-moto disallowances of expenditure incurred in relation to exempt income as required u/s 14A of the Act. Therefore, called upon the assessee to explain as to why disallowances contemplated u/s 14A shall not be determined in accordance with Rule 8D of I.T.Rules 1962. In response, the assessee, vide letter dated 11/11/2013 submitted that he had not incurred any specific expenditure, including interest for earning exempt income. Therefore, the question of disallowances of expenditure u/s 14A does not arise. The assessee vide his letter dated 27/11/2013 has made an alternative plea without prejudice to his earlier submissions, dated 11/11/2013 and worked out adhoc disallowances of expenditure incurred in relation to exempt income u/s 14A at Rs. 1,08,239/- and also, a further sum of Rs. 55,152/-. The Ld. AO did

not convinced with explanations furnished by the assessee and accordingly, by relied upon by the decision of Hon'ble Bombay High Court in the case of Godrej and Boyce Manufacturing Company Limited vs DCIT 328 ITR 81 observed that whether or not any exempt income is earned for the year and any expenditure is incurred in relation to said income, but disallowances contemplated u/s 14A shall be determined in accordance with Rule 8D of I.T.Rules, 1962 and accordingly, determined total disallowances of Rs.27,66,659/- towards expenditure incurred in relation to exempt income u/s 14A of the I.T.Act, 1961.

4. The assessee carried the matter in appeal before the first appellate authority. Before the Ld.CIT(A), the assessee has reiterated his submissions made before the Ld. AO to argue that the Ld. AO has applied Rule 8D without appreciating the facts and supporting case laws cited by the assessee. The Ld.CIT(A) after considering relevant submissions of the assessee and also by relied upon the decision of Hon'ble Bombay High Court in the case of Godrej and Boyce Manufacturing Company Limited.(supra) held that in view of amended provisions of section 14A from Asst. Year 2008-09 onwards, the disallowances contemplated therein shall be determined in accordance with Rule 8D. Therefore, he opined that there is no error in the findings recorded by the Ld. AO, while determining the disallowances of Rs.27,66,659/-. However, by considering the amount of exempt income earned for the year, he has restricted disallowances u/s 14A to the extent of exempt income earned for the year amounting to Rs. 19,31,359/-. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

5. The Ld. AR for the assessee submitted that the Ld.CIT(A) was erred in upholding the disallowances u/s 14A of the I.T.Act, 1961 without appreciating the fact that the Ld. AO has not recorded satisfaction as required u/s 14A(2) having regard to the books of accounts of the assessee and that the claim of the assessee that no expenditure has been incurred to earn exempt income or any suo-moto disallowances made by the assessee is incorrect, he cannot proceed to apply Rule 8D to determine disallowances of expenditure incurred in relation to exempt income. The Ld. AR for the assessee referring to the decision of Hon'ble Supreme Court, in the case of Godrej and Boyce Manufacturing Company Limited vs DCIT (2017) 394 ITR 449 (SC) submitted that the Hon'ble Suprem Court has reiterated the position of law as held by the Hon'ble Bombay High Court, in the case in paragraph 37, where it was categorically held that whether, application of formula prescribed under Rule 8D are in the best judgment of the Ld. AO, in determination of disallowances, what the law postulates is requirement of a satisfaction by the Ld. AO 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 provision of section 14A (2) &(3) r.w.Rule 8D of the I.T.Rules, 1962, or best judgment determination as earlier prevailing would become applicable. The Ld. AR for the assessee further referring to the decision of ITAT in assessee's own case for earlier year submitted that the Tribunal has held that unless, the Ld. AO has recorded proper satisfaction as required u/s 14A(2) having regard to the books of accounts of the assessee, no disallowances could be made by invoking the formula prescribed under Rule 8D (2) of The Income Tax Rules 1962.

6. The Ld. DR, on the other hand, strongly supporting order of the Ld.CIT(A) submitted that from the AY 2008-09 onwards disallowances contemplated u/s 14A shall be determined in accordance with the prescribed formula provided under Rule 8D of I.T.Rules, 1962 whether or not any exempt income is earned for the year and also, whether any disallowances is made by the assessee on its own. The Ld. DR, further submitted that in this case, the Ld. AO has recorded satisfaction having regard to the books of accounts of the assessee and also, the claim that no expenditure has been incurred in relation to exempt income after considering the nature and extent of exempt income earned by the assessee. Therefore, there is no merit in the arguments of the Ld. AR for the assessee that no satisfaction was recorded by the Ld. AO.

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below along with case laws cited by the Ld. AR for the assessee. It is a settled position of law that before invoking Rule 8D of I.T.Rules, 1962 for determination disallowances of expenditure incurred in relation to exempt income u/s 14A of the Act, 1961, the Ld. AO shall required to record satisfaction having regard to the books of accounts of the assessee as required u/s 14A(2) of the I.T.Act, 1961 that the claim of the assessee that no expenditure has been incurred to earn exempt income or any suo-moto disallowances made by the assessee in its computation of total income is not correct. Unless, the Ld. AO records satisfaction as required u/s 14A(2), he shall not proceed to determine disallowances by invoking Rule 8D of I.T.Rules, 1962. The Hon'ble Supreme Court in the case of Godrej and Boyce Manufacturing Company Limited vs DCIT(supra) had considered an identical issue and in paragraph 37 of the judgment has clearly held

that 14A(2) &(3) of the Act r.w.Rule 8D of the I.T.Rules, 1962 merely prescribed 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 Ld. AO 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 AO, what the law postulates is the requirement of the satisfaction by the Ld. AO 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 provision of section 14A(2) &(3) r.w.Rule 8D of I.T.Rules, 1962 or a best judgment determination as earlier prevailing, would become applicable. This legal principle has been further supported by the findings of the Hon'ble Bombay High Court, in the case of PCIT vs. Bajaj Finance Ltd. (2019) 110 taxmann.com 303, where it was held that in terms of section 14A, satisfaction of Ld. AO about correctness of expenditure offered for disallowances by assessee therefore, is a free condition and, thus where the Ld. AO did not in any manner reject explanation of the assessee, but merely proceeded to make disallowances by invoking section 14A r.w.Rule 8D of I.T.Rules, 1962, the Tribunal was justified in deleting the same. The coordinate bench of ITAT in assessee own case for AY 2010-11 in ITA No. 451/Mum/2015 held that unless, the Ld. AO records satisfaction as required u/s 14A(2), he cannot proceed to determine disallowances by invoking Rule 8D of I.T.Rules, 1962. The sum and substance of the ratio laid down by the Hon'ble Supreme Court and High Court including the coordinate bench is that unless, the Ld. AO records satisfaction as required u/s.14A(2), having regard to the books of accounts of the assessee that the claim of the assessee is

incorrect, he cannot proceed to compute disallowances by invoking Rule 8D(2) of I.T.Rules, 1962. In this case, on perusal of assessment order passed by the Ld. AO, we find that nowhere, the Ld. AO has recorded objective satisfaction having regard to the books of accounts of the assessee or the claim of the assessee that no expenditure has been incurred in relation to exempt income. In absence of any satisfaction as required u/s 14A(2), the Ld. AO cannot proceed to determine disallowances by invoking prescribed formula provided under Rule 8D of I.T.Rules, 1962. Therefore, we are of the considered view that the Ld. AO, as well as the Ld.CIT(A) were erred in making additions towards disallowances of expenditure u/s 14A r.w.r. 8D of the Income Tax Rules, 1962. Hence, we direct the AO to delete additions made towards disallowances of expenditure u/s 14A of the I.T.Act 1961.

8. In the result, appeal filed by the assessee is allowed.

ITA No.5171/Mum/2018:-

9. The facts and issues involved in the present appeal are identical to the facts and issues, which we had considered in ITA No.5170/Mum/2018 for AY 2011-12. The reasons given by us in preceding paragraph shall *mutatis mutandis* apply to this appeal as well. Therefore, for similar reasons, we direct the Ld. AO to delete additions made towards disallowances of expenditure u/s 14A of the I.T.Act, 1961.

10. In the result, appeal filed by the assessee is allowed.

11. As a result, both appeals filed by the assessee are allowed.

Order pronounced in the open court on this 15 /01/2020

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated: 15/01/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai