

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” Bench, Mumbai
Before Shri M. Balaganesh, Accountant Member
and Shri Ravish Sood, Judicial Member
ITA No.2205/Mum/2018
(Assessment Year: 2013-14)

M/s Capricon Realty Ltd.
Vithaldas Chambers, 6th Floor, 16,
Mumbai Samachar Marg, Fort,
Mumbai - 400001

Dy. Commissioner of
Income-tax, Circle 2(1)(1),
5th Floor, Aayakar Bhavan,
M.K. Road,
Mumbai – 400020

Vs.

PAN – AAACC4297J

(Appellant)

(Respondent)

Appellant by: Shri Tanmay Phadke, A.R
Respondent by: Shri Padmapani Bora, D.R
Date of Hearing: 29.01.2020
Date of Pronouncement: 31.01.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-4, Mumbai, dated 22.02.2018, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 05.03.2016 for A.Y. 2013-14. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. The learned Commissioner of Income-tax (Appeals) erred in confirming the additional disallowance of Rs. 5,40,000/- u/s. 14A of the Income-tax Act 1961 r.w.r. 8D as against Rs. 90,000/- disallowed by your appellants in the return of income filed. Your appellants submit that the said additional disallowance of Rs. 5,40,000/- is not at all warranted and the same ought to be deleted.
Without prejudice to the above your appellants submit that the additional disallowance is excessive and ought to be reduced substantially.
2. Your appellants further reserve the rights to add, amend or alter the aforesaid grounds of appeal as they may think fit by themselves or by their representative.”

Apart from that, the assessee has also raised before us the following additional ground of appeal:

- “1. The Ld. A.O. erred in making disallowance of Rs.5,40,000/- under section 14A invoking the provisions of Rule 8D without recording proper satisfaction as to why the suo motto disallowance of Rs.90,000/- made by the Appellant is not correct. Thus, the disallowance made by the Ld. A.O. and confirmed by the Ld. CIT(A) under section 14A r.w.r 8D is unjustified and the same may be deleted.

As the assessee by raising the aforesaid additional ground of appeal has sought adjudication of a legal issue as regards the validity of the disallowance made by the A.O under Sec. 14A of the Act, therefore, the same is admitted by us.

2. Briefly stated, the assessee company which is engaged in the business of real estate had e-filed its return of income for A.Y. 2013-14 on 29.11.2013, declaring its total income at Rs.110,62,08,440/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec.143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had during the year under consideration made investment in exempt income yielding equity shares. On a perusal of the records, it was noticed by the A.O that the assessee had only offered a suo motto disallowance of Rs.2,87,113/- under Sec. 14A r.w. Rule 8D(2)(i). Observing, that that the assessee had not disallowed any part of the administrative expenses as envisaged in Rule 8D(2)(iii), the A.O called upon it to explain as to why disallowance to the said effect may not be carried out in terms of Sec. 14A r.w. Rule 8D(2)(iii). In reply, the assessee furnished a ‘Note’ on the basis of which it tried to justify the disallowance under Sec.14A that was suo motto offered by it in its return of income for the year under consideration. Although, the A.O while framing the assessment took cognizance of the fact that the assessee had furnished an explanation in order to justify the disallowance that was offered by him under Sec. 14A, but he summarily declined to accept the same without giving any cogent reason for so doing. Observing, that the assessee had failed to offer any disallowance under Sec. 14A r.w. Rule 8D(2)(iii), the A.O worked out the same as per the methodology therein prescribed at an amount of Rs.5,40,000/-. Accordingly, on the basis of his aforesaid observations the A.O enhanced the disallowance made by the assessee under Sec. 14A by an amount of Rs.5,40,000/-. Apart from that, the A.O also re-worked out the ‘book profit’ under

Sec.115JB by making an addition of the disallowance that was reworked out by him under Sec. 14A of the Act.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) not being persuaded to subscribe to the contentions advanced by the assessee upheld the disallowance worked out by the A.O under Sec. 14A r.w. Rule 8D(2)(iii).

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that the A.O had disallowed the assessee's claim of disallowance under Sec. 14A without recording his satisfaction as regards the incorrectness of the said claim. On the basis of the aforesaid facts, it was averred by the Id. A.R that de hors recording of satisfaction by the A.O that as to why the claim of disallowance offered by the assessee under Sec. 14A in its return of income was not to be accepted having regard to its accounts, it was impermissible on his part to have dislodged the disallowance so offered by the assessee. In order to impress upon his contention that there was no application of mind by the A.O while substituting the assessee's claim of disallowance under Sec. 14A, the Id. A.R had drawn our attention to the observations recorded by the A.O in the assessment order. It was thus the claim of the Id. A.R that as the A.O had failed to comply with the mandate of law which obligated him to record a satisfaction as to why the claim of disallowance offered by the assessee under Sec. 14A was not to be accepted, the enhancement of the disallowance under Sec. 14A so carried out by him could not be sustained and was liable to be vacated.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was averred by the Id. D.R that although the A.O while framing the assessment had afforded sufficient opportunity to the assessee to explain as to why a disallowance under Sec. 14A r.w. Rule 8D(2)(iii) may not be made in its case, he however had failed to avail the said opportunity and had chosen not to furnish any reply to the same. On the basis of the aforesaid facts, it was submitted by the Id. D.R that the A.O in the totality of the facts of the case had rightly worked out the disallowance under Sec. 14A r.w. Rule 8D(2)(iii).

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. As is discernible from the orders of the lower authorities, the assessee during the year under consideration was in receipt of exempt income. The assessee in its return of income had voluntarily offered a disallowance under Sec. 14A amounting to Rs.2,87,113/-. Observing, that the aforesaid disallowance offered by the assessee was only in context of the interest expenditure envisaged under Sec. 14A r.w. Rule 8D(2)(i), the A.O called upon the assessee to explain as to why the disallowance as regards the administrative expenses attributable to earning of the exempt dividend income may not be worked out as per Rule 8D(2)(iii). As the reply filed by the assessee did not find favour with the A.O, therefore, he worked out the disallowance under Sec. 14A r.w. Rule 8D(2)(iii) at an amount of Rs.5,40,000/-.

8. We have perused the records and find that the assessee on being called upon to explain as to why the disallowance may not be made in its hands under Sec. 14A r.w. Rule 8D(2)(iii), had therein furnished a 'Note', as per which, it was stated by him that the disallowance of Rs.2,87,113/- that was suo motto offered by it under Sec. 14A comprised of two parts, viz. (i) disallowance under Sec. 14A r.w. Rule 8D(2)(i) in respect of direct expenditure attributable for earning of exempt dividend income: Rs.1,97,113/-; and (ii) a further disallowance amounting to Rs.90,000/- that was offered in the return of income out of abundant caution towards earning of the exempt dividend income. However, we find that the A.O while declining to accept the aforesaid claim of disallowance offered by the assessee under Sec. 14A of the Act, had failed to record any satisfaction on his part as regards the incorrectness of the aforesaid claim of the assessee. In fact, we find that though the A.O while framing the assessment had referred about the submissions that were filed by the assessee in order to justify the disallowance that was offered on a suo motto basis in its return of income, but had made no efforts to record his satisfaction having regard to the accounts of the assessee as to why the aforesaid claim was not to be accepted. 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 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. It was observed by the Hon'ble Apex Court 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.”

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)** are of a strong conviction that as the A.O in the case of the present assessee had while dislodging its claim of disallowance under Sec. 14A failed to satisfy the mandate of law by not recording his satisfaction that as to why, having regards to the accounts of the assessee, its claim of disallowance was not to be accepted, therefore, the reworking of the disallowance u/s 14A by him cannot be accepted and has to be vacated. Apart from that, we find that involving identical facts the Tribunal in the assessee's own case for A.Y. 2014-15 in ITA No. 2954/Mum/2018, dated 20.05.2019 had struck down the disallowance that was reworked out by the A.O under Sec.14A de hors recording of the necessary satisfaction as was required per the mandate of law. Accordingly, in the backdrop of our aforesaid observations, we quash the additional disallowance of Rs.5,40,000/- made by the A.O.

9. Resultantly, the appeal of the assessee is allowed.

Order pronounced in the open court on 31.01.2020

Sd/-
(M. Balaganesh)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 31.01.2020

P.S 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**