

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 483/MUM/2019 (A.Y: 2014-15)**

ACIT – CIR -2(1)(1) Room No. 561, 5 <sup>th</sup> Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020	v.	M/s. DSP Adiko Holdings Pvt. Ltd., 11 <sup>th</sup> Floor, Mafatlal Centre Nariman Point, Fort Mumbai - 400021  <b>PAN: AAACA3438M</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by** : **Shri Fevil Bhatt**  
**Department by** : **Shri R. Bhoopathi**  
  
**Date of Hearing** : **31.01.2020**  
**Date of Pronouncement** : **23.10.2020**

**ORDER**

**PER C.N. PRASAD (JM)**

**1.** This appeal is filed by the revenue against the order of the Learned Commissioner of Income Tax (Appeals)– 4, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 28.11.2018 for the Assessment Year 2014-15.

**2.** Revenue has raised following grounds in its appeal: -

"1. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in restricting the disallowance u/s.14A made by

*the AO thereby overlooking the fact that it was correctly worked out as per the method of calculation prescribed in Rule 8D of Income Tax Rules, 1962".*

2. *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in restricting the disallowance u/s.14A with Rule 8D when this method of working of disallowance is held as reasonable method by the jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd Vs. CIT 328 ITR 81 (Bom.)"*

3. *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing relief to the assessee relying on the decision of Hon'ble Special Bench of ITAT Delhi in the case of Vireet Investment (P) Ltd., without appreciating the facts that the issue has not reached to its finality as the Hon'ble Delhi High Court in its decision in the case of Goetz India Ltd., reported in 361 ITR 505 held that while computing Book Profit disallowance u/s 14A is required to be made."*

**3.** Briefly stated the facts are that, Assessing Officer while completing the assessment invoking provisions of Rule 8D computed the disallowance u/s. 14A of the Act at ₹.3,45,82,540/-. However, since assessee had suomoto disallowed an amount of ₹.5,79,943/- he restricted the disallowance to ₹.3,40,02,597/-. On appeal Ld.CIT(A) following the order of the Tribunal in assessee's own case for the assessment years A.Y.2008-09 to A.Y. 2012-13 directed the Assessing Officer to work out the disallowance as per the criteria decided by the Tribunal in assessee's own case in earlier years.

**4.** The counsel for the revenue strongly supported the order of the Assessing Officer and the Ld. Counsel for the assessee submitted that the issue has been decided in assessee's own case by the Tribunal for several Assessment Years right from the A.Y. 2008-09 to A.Y. 2012-13 and this decision was also upheld by the Hon'ble Bombay High Court by order dated 03.06.2019. Copy of the order is placed on record.

**5.** We have heard the rival submissions, perused the orders of the authorities below. Assessee during the assessment year under consideration received exempt income of ₹.4,12,30,900/- and made suomoto disallowance of ₹.5,79,943/- while computing the disallowance u/s. 14A of the Act. In the course of the assessment proceedings assessee vide letter dated 30.11.2016 submitted that it had already disallowed direct expenditure related to exempt income as well as proportionate disallowance of expenditure taking exempt income to total income as proportion. It was also submitted by the assessee that the Tribunal in its own case for earlier assessment years restricted the disallowance to the suomoto disallowance made by the assessee.

**6.** Not convinced with the submissions of the assessee the Assessing Officer computed the disallowance at ₹.3,45,82,540/- u/s. 14A of the Act

r.w. Rule 8D, comprising of direct expenditure of ₹.41,143/- and administrative expenses being 0.5% of average value of investments under Rule 8D(2)(iii) at ₹. 3,45,41,397/-. However, since the assessee made suomoto disallowance of ₹.5,79,943/- the Assessing Officer restricted the disallowance to ₹.3,40,02,597/-. Ld.CIT(A) restricted the disallowance to the suomoto disallowance made by the assessee following the decision of the Tribunal in assessee's own case for the earlier assessment years i.e. A.Y. 2008-09 to A.Y. 2012-13 observing as under: -

*"During the course of appellate proceedings, a written submission was filed which find place in para 5 of this order. The appellant submitted that similar type of disallowances were made in appellant's own case for assessment years 2008-09,2009-10, 2010-11, 2011-12 and 2012-13. According to the appellant, the appeal of the assessee on these grounds has been decided by Hon'ble Tribunal. I have considered the submission of the appellant, the Hon'ble Tribunal in appellant's own case has held as under:*

*The Hon'ble ITAT during A.Y. 2008-09, in ITA No. 7598/Mum/2011 dated 22.01.2014 has held as under:*

*We are of the considered view that a reasonable allocation of expenditure has to be made which can be attributed to the income which is chargeable to tax. Considering the facts and circumstances of the case, we are of the considered view that expenditure of Rs.7,21,927/- as worked out by the assessee, the details of which are mentioned by AO at pg. 2 of the order, is reasonable to make disallowance u/s 14A with Rule 3D. Accordingly, we restrict the disallowance of Rs.7,21,927/- by reversing the orders of the lower authorities below and thus allow the grounds of appeal taken by assessee.*

*In A.Y. 2009-10, in ITA No. 6780/Mum/2012 dated 31.03.2016*

*On perusal of the above decision of the Tribunal, we agree with the Id. Counsel's argument and remand the matter to the file of the AO. We direct the AO to apply the said ratio to the facts of the present case and other decisions, if any, in*

*force and decide the issue in accordance with law. (Appeal effect given by AO accepting assessee's disallowance vide order dt 30/06/2017)*

*In A.Y. 2010-11, in ITA No. 7135/MUM/2013 dated 22.04.2016*

*5 - Therefore, considering the quantum of taxable income & exempt income earned by the assessee during the relevant previous year, in our view, the expenditure apportioned/attributed by the assessee to exempt income at Rs.22,69,274/- is more than reasonable.*

*6 - Facts in the impugned AY being materially same, respectfully following the order of the co-ordinate bench of the Tribunal, we modify the order of the Id. CIT(A) by restricting the disallowance u/s 14A r/w Rule 8D to Rs.22,69,274/-, as voluntarily offered by the assessee in the course of assessment proceedings.*

*In A.Y. 2011-12, in ITA No. 5484/M/2014 dated 17.03.2016*

*On perusal of the above decision of the Tribunal, we agree with the Id. Counsel's argument and remand the matter to the file of the AO. We direct the AO to apply the said ratio to the facts of the present case and other decisions, if any, in force and decide the issue in accordance with law. (Appeal effect given by AO accepting assessee's disallowance vide order dt 30/06/2017)*

*In A.Y. 2012-13, in ITA No. 1159/MUM/2017 dated 25.07.2018*

*5 - Upon further appeal, the Id. CIT(A) has restricted the same to Rs.12.16 lacs which is fair & logical. Upon perusal of the Tribunal's order for AY 2008 -09, we find that sou-moto disallowance as made by the assessee has been accepted by the Tribunal.*

*6-hence, upon due consideration of factual matrix, we see no reason to interfere with the order of Ld. First appellate authority.*

*Since there is neither any legal change nor any factual change therefore, respectfully following judgement of Hon'ble ITAT in appellant's own case for assessment year 2008- 09, 2009-10, 2010-11, 2011-12, 2012-13, AO is directed to work out the disallowance as per the criteria decided by Hon'ble ITAT in appellant's own case in earlier years. Hence, appeal is partly allowed."*

7. We also find that for the A.Y. 2013-14 the Tribunal in ITA.No. 3512/Mum/2018 dated 19.07.2019 accepted the claim of the assessee observing as under: -

"8. We have considered rival submissions and perused the material on record. Though there is no dispute that during the year under consideration, the assessee had earned both taxable as well as exempt income, however, fact remains, the total expenditure claimed by the assessee in respect of all sources income earned during the year is ` 6.71 lakh. Even out of the said amount, the assessee has further disallowed ` 2,02,688, under section 14A, towards earning of exempt income. The aforesaid disallowance was made by the assessee on proportionate basis keeping in view the quantum of taxable income and exempt income earned during the year. It is also evident, assessee had been following the aforesaid methodology of apportioning expenditure between the taxable and exempt income from the past several years and accepting the methodology adopted by the assessee, the Tribunal while deciding the issue in assessment year 2008-09 in ITA no.7598/Mum./2011, dated 22nd January 2014, has directed the Assessing Officer to restrict the disallowance to the amount already disallowed by the assessee voluntarily. The same view was expressed by the Tribunal while deciding assessee's appeals in assessment years 2010-11, vide ITA no. 7135/Mum./2013 &Ors., dated 22nd April 2016 and in the assessment year 2011-12, vide ITA no.5467/Mum./2014 & Anr., dated 17th March 2016. Pertinently, the aforesaid decisions of the Tribunal have been upheld by the Hon'ble Jurisdictional High Court vide order dated 3rd June 2019 while dismissing the appeals filed by the Revenue. In any case of the matter, the disallowance made by the Assessing Officer is far in excess of the total expenditure claimed by the assessee. Therefore, under no circumstances, the disallowance made by the Assessing Officer could have been sustained. Therefore, following the decisions of the Tribunal and the Hon'ble Jurisdictional High Court in the preceding assessment years, as referred to above, we hold that the disallowance under section 14A r/w rule 8D, should be restricted to the amount already disallowed by the assessee under section 14A of the Act. The grounds raised by the assessee are allowed and those of the Revenue are dismissed.

9. *Facts being identical, our aforesaid decision would apply mutatis mutandis to the appeals relating to the other two assessee's which are under consideration in the present order."*

**8.** Further, Hon'ble High Court in Income Tax Appeal No. 459 of 2017 with Income Tax Appeal No. 466 & 519 of 2017 and Income Tax Appeal No. 490 of 2017 with Income Tax Appeal No. 492 & 514 of 2017 by order dated 03.06.2019 rejected the appeals filed by the Revenue observing as under: -

"4. *Mr. Suresh Kumar, the learned counsel for the Revenue submitted that once Rule 8D of the Income Tax Rules was held applicable, the formula contained in sub-rule (2) thereof had to be applied. The Tribunal erroneously restricted the disallowance to the one offered by the assessee. On the other hand, learned counsel for the assessee pointed out that the assessee had no interest expenditure, disallowance in terms of Rule 8D(2)(ii) therefore would not apply. The assessee's total expenditure claim in relation to of its business activity came to Rs. 24.19 Lakhs of which the assessee had voluntarily reduced Rs. 7.79 Lakhs. The Tribunal accepted such working out.*

5. *Sub-section (2) of Section 14 of the Act provides that the Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Sub-rule (1) of Rule 8D also makes similar provision provides that where the Assessing Officer having regard to the accounts of the assessee is not satisfied with the correctness of the claim of expenditure made by the assessee or that the assessee claims that no expenditure has been incurred in relation to income which does not form part of the total income, the Assessing Officer would determine the amount of expenditure in terms of sub-rule (2). For applicability of subrule (2) of Rule 8D, the*

*requirements of sub-rule (1) would have to be satisfied. Only then, the formula provided in the unamended clause would apply.*

*6. In the present case, as noted, the assessee's entire claim of expenditure in relation to its business activities was Rs. 24.19 Lakhs out of which, the assessee had voluntarily reduced sum of Rs. 7.79 Lakhs in relation to income not forming part of the total income. The Tribunal accepted such working out. Quite apart the correctness of the approach of the Tribunal, accepting stand of the Assessing Officer would lead to disallowance of expenditure far in excess of what is claimed by the assessee itself."*

**9.** Thus, respectfully following the orders of the Tribunal for the earlier assessment years as well as the order of the Hon'ble High Court in assessee's own case we hold that the computation as adopted by the assessee for disallowing expenditure attributable for earning exempt income u/s. 14A of the Act should be accepted. Thus, we see no infirmity in the order passed by the Ld.CIT(A).

**10.** In the result, appeal of the Revenue is dismissed.

**11.** Before parting, we noticed that this appeal was heard on 31.01.2020 and the pronouncement is delayed due to lockdown in view of COVID-19 pandemic. The pronouncement is as per Rule 34(5) of Income Tax Appellate Tribunal Rules, 1963 and Hon'ble Bombay High Court decision vide orders dated 15.04.2020 and 15.06.2020 extending the time bound periods specified by Hon'ble High Court by removing the period under

lockdown. This aspect was also dealt with in detail by the Mumbai Bench of the Tribunal in case of DCIT v. JSW Steel Vide order dated 14.05.2020 in ITA.No. 6264/Mum/2018.

Order pronounced on 23.10.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-  
**(N.K. PRADHAN)**  
**ACCOUNTANT MEMBER**  
Mumbai / Dated 23/10/2020  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**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.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**