



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

ITA no.2449/Mum./2019  
(Assessment Year : 2014-15)

HDFC Asset Management Co. Ltd.  
2<sup>nd</sup> Floor, HDFC House, Backbay  
Reclamation, H.T. Parekh Marg  
Churchgate, Mumbai 400 020  
PAN – AAACH7614L

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-1(1)(2), Mumbai

..... Respondent

Assessee by : Shri Niraj Sheth  
Revenue by : Shri Sunil Deshpande

Date of Hearing – 05.11.2020

Date of Order – 25.11.2020

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The aforesaid appeal has been filed by the assessee challenging the order dated 18<sup>th</sup> March, 2019, passed by the learned Commissioner of Income Tax (Appeals)-2, Mumbai, pertaining to the assessment year 2014-15.

2. The dispute in the present appeal is confined to the disallowance of expenditure under section 14A of the Income Tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee, a resident company, filed its return of income on 25<sup>th</sup> November 2014, declaring total income of ₹ 484,24,27,520, under the normal provisions of the Act and book profit of ₹ 513,57,61,685, under section 115JB of the Act. During the assessment proceedings, the Assessing Officer noticed that in the year under consideration, the assessee received exempt income by way of dividend amounting to ₹ 8,55,01,594, and tax free income on investments amounting to ₹ 278,64,723. Since, the assessee had not disallowed any expenditure attributable to earning of exempt income in terms of section 14A of the Act, the Assessing Officer issued a show cause notice to the assessee to explain as to why disallowance under section 14A of the Act should not be made by applying provisions of rule 8D. In response to the show cause notice, the assessee furnished a detailed submission explaining why no disallowance under section 14A of the Act is to be made. Without prejudice, the assessee furnished a computation disallowing an amount of ₹ 6,13,500, under section 14A of the Act. The Assessing Officer after considering the submissions of the assessee found them unacceptable. He observed, the assessee in its submission has accepted that decision making with

regard to investment in various exempt income yielding asset was taken by an investment committee consisting of the members of the board of the company. Thus, he observed, the time devoted by the investment committee and other employees and the other overheads do involve a cost which is attributable to earning exempt income. Further, he observed, the very fact that the assessee itself in the submissions made has voluntarily offered disallowance of ₹ 6,13,500, goes to contradict assessee's initial claim that no expenditure is incurred for earning exempt income. Further, he observed, the expenditure attributable to earning exempt income can be easily identified. Thus, on the aforesaid reasoning, the Assessing Officer rejected assessee's claim of having incurred expenditure of ₹ 6,13,500, only. Having done so, the Assessing Officer proceeded to compute disallowance under section 14A by applying the provisions of rule 8D(2). While doing so, he treated the suo-motu disallowance of ₹ 6,13,500, made by the assessee as a direct expenditure under rule 8D(2)(i). Additionally, the Assessing Officer disallowed an amount of ₹ 79,06,890, being 0.5% of the average value of investment by applying rule 8D(2)(iii). Being aggrieved with such disallowance, the assessee preferred appeal before the first appellate authority.

4. After considering the submissions of the assessee, learned Commissioner (Appeals) granted partial relief to the assessee and

further directed the Assessing Officer to grant benefit of suo-motu disallowance made by the assessee.

5. The learned Authorised Representative submitted, the assessee is an asset management company and has made the investment in its own mutual funds. Therefore, as such, the assessee does not have to incur any expenditure for earning the exempt income. He submitted, despite the fact that no expenditure has been incurred by the assessee, still the assessee on without prejudice basis had furnished a statement before the Assessing Officer computing the disallowance under section 14A of the Act at ₹ 6,13,500. Drawing our attention to the submissions and computation of suo-motu disallowance, learned Authorised Representative submitted, the suo-motu computation is on a reasonable and scientific basis, hence, should not be rejected. He submitted, the disallowance made by the Assessing Officer is unsustainable as the Assessing Officer has failed to record satisfaction as mandated under section 14A(2) of the Act. Drawing our attention to the reasoning of the Assessing Officer, learned Authorised Representative submitted, the Assessing Officer has rejected the suo-motu disallowance only on the reasoning that the assessee does not maintain its account in a manner from which the expenditure attributable to earning of exempt income can be easily identified. He submitted, the aforesaid reasoning of the Assessing Officer cannot be

construed as a proper satisfaction as held by the Tribunal, Kolkata Bench, in DCIT v/s M. Junction Services Ltd., ITA no.1960/Kol./2016, dated 1<sup>st</sup> June 2018, and another decision in M. Junction Services Ltd., vide ITA no.171/Kol./2018, dated 26<sup>th</sup> April 2019. Besides the above, the assessee relied upon a number of judicial precedents as submitted in the legal paper book. Thus, he submitted, the disallowance made by the Assessing Officer should be deleted.

6. The learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

7. We have carefully considered the rival submissions in the light of the decisions relied upon and perused the material placed on record. As could be seen from the facts on record, in the year under consideration, the assessee had earned substantial amount of exempt income exceeding more than ₹ 11 crore. Whereas, in the return of income filed for the impugned assessment year, the assessee had not disallowed any expenditure attributable to earning of exempt income as per section 14A of the Act. Only in course of assessment proceedings, in response to a show cause notice issued by the Assessing Officer, the assessee along with its submissions has furnished a computation disallowing an amount of ₹ 6,13,500, on a without prejudice basis. The primary contention of the assessee while

challenging the disallowance made by the Assessing Officer under section 14A r/w rule 8D is, the Assessing Officer has not recorded satisfaction as per section 14A(2) while disallowing expenditure attributable to exempt income. As against the aforesaid submissions of the learned Counsel for the assessee, on a perusal of the impugned order, we find that in Para-7 and 8 of the assessment order, the Assessing Officer, in fact, has recorded his satisfaction why assessee's claim that no exempt income can be attributed to earning exempt income as well as the suo-motu disallowance is not acceptable. On a perusal of the said reasoning, it is noticed that the Assessing Officer has not rejected the claim of the assessee merely on the reasoning that the assessee does not maintain its account in a manner from which expenditure attributable to earning exempt income can be easily identified. Rather, the Assessing Officer has clearly stated that the time devoted by the investment committee and the employees as well as other overheads certainly involve a cost which is attributable to earning of exempt income. Therefore, it is not a case where the Assessing Officer has failed to record any satisfaction and mechanically proceeded to compute the disallowance under section 14A r/w rule 8D. Therefore, in our view, the condition of section 14A(2) stands satisfied in the present case.

8. Having held so, it is now necessary to deal with the reasonableness of disallowance computed under rule 8D(2) by the

Assessing Officer. As could be seen, the Assessing Officer has treated the suo-motu disallowance of ₹ 6,13,500, as direct expenditure under rule 8D(2)(i). However, learned Commissioner (Appeals) has disapproved the aforesaid decision of the Assessing Officer and we entirely agree with the reasoning of the first appellate authority. As regards the disallowance made under rule 8D(2)(iii) is concerned, it is noticed that the assessee had furnished a computation of such disallowance by applying certain basis. Whereas, the Assessing Officer without properly examining assessee's computation has straight away applied the formula prescribed in rule 8D(2)(iii). Of-course, the first appellate authority while deciding the issue has granted partial relief to the assessee by directing the Assessing Officer to exclude the investments which have not yielded exempt income during the year and which in our opinion is correct. However, as far as the remaining disallowance is concerned, in our view, before applying rule 8D(2)(iii), the Assessing Officer should properly examine assessee's computation. It is observed, while deciding similar issue relating to disallowance under section 14A r/w rule 8D(2)(iii) in the assessment year 2009-10, the Tribunal in ITA no.754/Mum./2013, dated 20<sup>th</sup> February 2015, has restored the issue to the Assessing Officer for fresh adjudication. Following the aforesaid decision, the Tribunal has restored identical issue to the Assessing Officer in assessment years 2011-12 and 2010-11 in ITA no. 3057/Mum./2015 & Ors. dated 29<sup>th</sup> March 2017, and for

the assessment years 2012-13 and 2013-14 in ITA no.5519/Mum./2017 & Anr., dated 29<sup>th</sup> March 2019. Since, in the preceding assessment years the issue has been restored back to the Assessing Officer, for the sake of consistency and uniformity in the decision on the issue, we restore the issue to the Assessing Officer for fresh adjudication. Needless to mention, the assessee must be provided reasonable opportunity of being heard before deciding the issue. Grounds raised by the assessee are allowed for statistical purposes.

9. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open court on 25.11.2020

**Sd/-**  
**N.K. PRADHAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 25.11.2020**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai