

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4691/MUM/2019  
Assessment Year: 2014-15**

Associated Container Line Pvt.  
Ltd,  
901, Peninsula Tower,  
Peninsula Corporate Park,  
Ganpatrao Kadam Marg,  
Lower Parel (West),  
Mumbai-400013.

**PAN No. AAACA 9239 L**

**Appellant**

Dy. Commissioner of Income  
Tax-5(1)(1),  
Mumbai.

**Respondent**

Assessee by : Mr. Atul Deshpande, AR  
Revenue by : Mr. Brajendra Kumar, DR

Date of Hearing : 07/01/2021  
Date of pronouncement : 27/01/2021

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the assessee. The relevant assessment year is 2014-15. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-10, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under :

1. "The DCIT 5(1)(1) has erred in making disallowance of Rs.7,58,612/- u/s 14A of Income Tax Act, 1961 read with Rule 8D of Income Tax Rules 1962.

Reasons given by the Assessing Officer while making above addition are insufficient and contrary to the facts and evidence on records.

2. Rule 8D can be applied only in case actual expenses are not available. In present case actual expenses incurred are available, hence the formula given in Rule 8D cannot be applied only because it results in higher amount of disallowance.
3. The DCIT 5(1)(1) has earned in making disallowance of Rs.12,436/- u/s 14A of Income Tax Act 1961, read with Rule 8D(2)(i) though the same has been already disallowed while computing the taxable income.
4. The CIT(A)-10 Mumbai erred in partially upholding the order passed by DCIT 5(1)(1)".

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2014-15 declaring total income of Rs. 3,38,66,890/-. The assessee is a private limited company engaged in the business of international freight forwarding. It earned the following exempt income during the impugned assessment year.

1.	Income from tax free bonds	Rs. 21, 22, 601/-
2.	Dividend from equity shares	Rs. 3,43,607/-
3.	Dividend from mutual funds	Rs. 4,39,913/-
	Total	Rs. 29,06,121/-

During the course of assessment proceedings, the Assessing Officer (AO) observed that the appellant has *suo motu* made a disallowance of Rs. 12,436/- on account of payment of DEMAT charges , which is covered by Rule 8D (2) (i) of the Income Tax Rules, 1962 ('the Rules'). The AO asked the assessee to explain as to why disallowance u/s 14A r.w.r. 8D should not be made. In

response to it, the assessee filed an explanation *vide* letter dated 25.11.2016 stating that all the investments are made on internal accruals and no borrowings were made for making in investments ; further no administrative expenses were incurred for earning the dividend income. However, the AO was not convinced with the above explanation of the appellant and following the decision of the Hon'ble Bombay High Court in *Godrej Boyce & Mfg. Co. Ltd. vs. ACIT* (2010) 328 ITR 81 (Bom), computed the disallowance under Rule 8D (2)(iii) at Rs. 7,58,612/-. Thus, the AO made an addition of Rs. 7,58,612/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT (A). We find that *vide* order dated 02.04.2019, the Ld. CIT (A) partly allowed the appeal filed by the assessee with the following directions:-

“6.3.12 However, I find merit in the claim of the appellant that the investment of Rs. 75,00,000/- made in IDFC Super Saver Income Fund-Growth Plan does not earn tax free income as the proceeds earned on liquidation are subject to tax as long term capital gain, hence, on this investment, the disallowance u/s 14A of the Act read with Rule 8D of the Rules is uncalled for. Under these options no dividend is declared, the income attributable to the units under these options remain invested in funds. The growth funds generate income only in the form of capital gains/losses that accrue on sale/redemption of units of such funds. Therefore, the AO is directed rework the average value of investment for the purpose of computing the disallowances per Rule 8D(2)(iii) after excluding the investment in IDFC Super Saver Income Fund-Growth Plan.”

5. Before us, the Ld. counsel for the assessee refers to the order of the Tribunal in assessee's own case for AY 2005-06 (ITA No. 5079/Mum/2012) and AY 2010-11 (ITA No. 5758/Mum/2015) and AY 2011-12 (ITA No. 5759/Mum/2015).

Explaining that the disallowance of Rs. 7,71,048/- made by the AO u/s 14A r.w.r. 8D is incorrect, the Ld. counsel elaborates that the AO has made the disallowance as mere routine , without going into the merits of the written submission filed by the assessee as to why the disallowance is not applicable ; investments made by the Company are long term in nature; the Company has not borrowed any funds for making such investments; expenses incurred in respect of earning of exempt income have been already disallowed by the Company, while filing its return of income; such disallowance results in denial of genuine expenses incurred in respect of earning taxable income.

6. On the other hand, the Ld. Departmental Representative (DR) submits that the Ld. CIT (A) has rightly followed the decision in *Godrej & Boyce Mfg. Co. Ltd.* (supra) and partly allowed the appeal filed by the assessee by giving direction to the AO to rework the average of investment for the purpose of computing the disallowance as per Rule 8D (2) (iii) after excluding the investment in IDFC Super Saver Income Funds – Growth Plan.

7. We have heard the rival submissions and perused the relevant materials available on record. The reasons for our decision are given below:-

In assessee's own case for AY 2005-06, the Tribunal has held that:

"5. We heard the parties and perused the record. We have also perused the paper book filed by the assessee and we notice that the assessee has incurred aggregate expenses of Rs. 1.17 crores. We further notice that the assessee has made fresh investments in 9 schemes of mutual funds during the year under consideration and it has closed investments made in six schemes, which were standing at the beginning of the year. The assessee has also received dividend

income to the tune of Rs. 15.29 lakhs. Thus we notice that the assessee has indulged in quite number of transactions during the year and hence, we see no merit in the contention of the assessee that it did not incur any expenses for earning the dividend income.

6. Considering the number of transactions, quantum of aggregate expenditure as well as fact that the assessee has received dividend income of Rs. 15.29 lakhs, we are of the view that a reasonable disallowance should be made as required under the provisions of section 14A of the Act. However, we are of the view that the disallowance of Rs. 50,000/- made by the AO is on the higher side. Hence, on conspectus of the matter, we hold that a disallowance of Rs. 25,000/- would be reasonable in the facts and circumstances of the case. Accordingly, we set aside the order of the Id. CIT (A) on this issue and direct the AO to restrict the disallowance to Rs. 25000/-, as referred above.”

#### 7.1 In assessee's own case for AY 2010-11, the Tribunal has held that:

“6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that the assessee had during the year under consideration earned a dividend income of Rs.11,67,933/- on exempt income yielding investments of Rs.7,12,52,078/-. The assessee had not attributed any part of the expenses as having been incurred for earning of the aforesaid exempt income. On a query by the A.O as to why the disallowance under Sec.14A may not be made in respect of the exempt dividend income, it was submitted by the assessee that as it had not incurred any expense other than demat charges, hence no disallowance under Sec.14A was called for in its hands. We find that the A.O had dislodged the claim of the assessee that no expense was attributable to earning of the exempt dividend income, merely on the basis of an observation that it was beyond comprehension that no part of the expenses aggregating to Rs.2,50,32,263/-

debited by the assessee in its profit and loss account could be related to earning of the exempt dividend income by the assessee.

7. We have deliberated at length on the orders of the lower authorities, and are of the considered view that the A.O while dislodging the claim of the assessee that as no part of the expenses debited in the profit and loss account was relatable to earning of the exempt dividend income, thus no disallowance under Sec. 14A was called for in its hands, had failed to record his satisfaction as regards the correctness of such claim, having regard to the accounts of the assessee. Rather, we find that the A.O had dislodged the claim of the assessee that no disallowance under Sec. 14A was liable to be made in its hands by holding a conviction that it was beyond comprehension that no expense incurred by the assessee could be related to earning of exempt dividend income. We are of the considered view that in the backdrop of the judgment of the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT & Anr. (2017) 394 ITR 449 (SC), it was obligatory on the part of the A.O to have recorded his satisfaction, having regard to the accounts of the assessee, as to why the latter claim that no expenditure was attributable to earning of the exempt dividend income was not to be accepted. The Hon'ble Supreme Court while deliberating on the said issue at length had observed 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. Subsections (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 find that in the case before us, the claim of the assessee that no disallowance under Sec.14A was called for in its case had been dislodged by the A.O, not on the ground that having regard to the accounts of the assessee, as placed before him, it was not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee that no expenditure was incurred for earning of the exempt dividend income, but rather the same was not accepted for the reason that as per the A.O it was beyond comprehension that no expense debited by the assessee in the profit & loss account could be related to earning of the exempt dividend income by the assessee. We have deliberated on the aforesaid observations of the A.O and are unable to persuade ourselves to subscribe to the same. We are of the considered view that as the A.O while dislodging the claim of the assessee, that no expense was attributable to earning of the exempt dividend income had failed to comply with the statutory requirement of arriving at a satisfaction having regard to the accounts of the assessee, as placed before him, that it was not possible to generate the requisite satisfaction with regard to the correctness of the said claim of the assessee, therefore, it can safely be concluded that the mandate of the judgment of the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT & Anr. (2017) 394 ITR449 (SC) had not been satisfied by him. We thus, holding a conviction that as the order passed by the A.O in the case before us is not in conformity with the judgment of the Hon'ble Apex Court in the case of Godrej & Boyce Manufacturing Company (supra), hence the disallowance of Rs.2,29,151/- made by the A.O cannot be sustained and is liable to be vacated.

We thus, set aside the order of the CIT(A) and delete the disallowance of Rs.2,29,151/- made by the A.O under Sec.14A r.w. Rule 8D.

7.2 In assessee's own case for AY 2011-12, the Tribunal has held that:-

"13. We shall first advert to the disallowance of Rs.4,06,350/- made by the A.O under Sec. 14A r.w. Rule 8D, which thereafter had been sustained by the CIT(A). We have perused the order of the A.O and find that he while dislodging the claim of the assessee that no expenditure debited in the profit & loss account was attributable to earning of the exempt dividend income of Rs. 18,70,574/-, has however failed to arrive at a satisfaction having regard to the accounts of the assessee, as placed before him, that it was not possible to generate the requisite satisfaction with regard to the correctness of the said claim of the assessee. Rather, we find that the said claim of the assessee that no expense was incurred for earning of the exempt dividend income had been most casually dislodged by the A.O, by observing that the assessee ought to have made disallowance of expenditure in relation to the income which does not or shall not form part of total income as required under Sec. 14A in accordance with the provisions of Rule 8D. We though find that the A.O while making the disallowance had made a mention of having referred to the accounts of the assessee company for the year under consideration and that he was not satisfied with the correctness of the same, but he had not said a word as to why he was unable to generate the requisite satisfaction with regard to the correctness of the claim of the assessee that no expenditure was relatable to earning of the exempt dividend income. We are of the considered view that the A.O while dislodging the claim of the assessee that no expense was relatable to earning of the exempt dividend income ought to have made a mention of the expenses which were booked by the assessee in its books account, and in the backdrop of the same should have pointed out that the incurring of the same had an inextricable nexus with the earning of the exempt dividend income. We thus, are of considered view that as observed by us in the case of the assessee for the immediately preceding year, viz. A.Y 2010-11, in the year under consideration also the A.O while dislodging

the claim of the assessee that no disallowance was called for in its hands under Sec. 14A, had failed to generate the requisite satisfaction with regard to the correctness of the said claim of the assessee. We thus, are of the considered view that as the disallowance made by the A.O Under Sec. 14A r.w Rue 8D is not as per the mandate of the judgment of the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Company Vs. DCIT and Anr. (2017) 394 ITR 449 (SC), hence the same cannot be sustained and is liable to be vacated. The order passed by the CIT(A) in context of the issue under consideration is set aside and the disallowance under Sec. 14A r.w Rule 8D of Rs.4,06,350/- sustained by the CIT(A) is deleted.”

7.3 In para 4.1 of the assessment order dated 13.11.2016, the AO has noted that the assessee ought to have made disallowance of expenditure in relation to the income which does not or shall not form part of the total income as required u/s 14A r.w.r. 8D. Further, the AO has observed that the assessee has *suo motu* disallowed Rs. 12,436/- on account of payment of DEMAT charges, which is covered under Rule 8D (2) (i). Thereafter, as mentioned in para 4.2 of the assessment order, the AO asked the assessee to explain as to why disallowance u/s 14A r.w.r. 8D should not be made in its case. In response to it, the assessee filed an explanation *vide* letter dated 25.11.2016 stating that all the investments are made on internal accruals and no borrowings were made for making any investments; no administrative expenses were incurred for earning of dividend. Thereafter, the AO has made a disallowance of Rs. 7,58,612/- under Rule 8D(2)(iii).

7.4 Facts being identical in respect of the reasons recorded by the AO as mentioned at para 7.3 above with the AYs 2010-11 and 2011-12, we follow the above order of the Coordinate Bench and set aside the order of the Ld. CIT (A).

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

**Order pronounced in the open Court on 27/01/2021.**

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

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 27/01/2021

Alindra, P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)  
**ITAT, Mumbai**