

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

**BEFORE SHRI S.RIFAUZ RAHMAN (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.5376 /MUM/2018  
(Assessment Year: 2013-14)**

Indian Express Newspapers  
(Mumbai) Pvt. Ltd.,  
Express Towers, Nariman Point,  
Mumbai – 400021

Dy. CIT-3(2)(1)  
Vs. 6<sup>th</sup> Floor, Aayakar Bhavan,  
Mumbai – 400020

**PAN No. AAACI2555F**

**(Assessee)**

**(Revenue)**

Assessee by : Shri V. Mohan, A.R  
Revenue by : Ms.Shreekala Pardeshi, D.R

Date of Hearing : 21/01/2021  
Date of pronouncement : 28/01/2021

**ORDER**

**PER RAVISH SOOD, J.M:**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-8, Mumbai, dated 18.06.2018, 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 28.03.2016 for A.Y. 2013-14. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. On the facts and in the circumstances of the case, Ld. CIT (Appeals) erred in not appreciating the fact that although in the return of income disallowance under Sec.14A r.w. Rule 8D was made as per the Department's stand, in the assessment proceedings the computation of disallowance as per Assessee was submitted and this was not taken into account by the A.O.
2. On the facts and in the circumstances of the case, Ld. CIT (Appeals) erred in confirming the disallowance of Rs.41,51,435/- under Sec.14A r.w Rule 8D.
3. Appellant craves leave to amend or alter the existing grounds or add further grounds at the time of hearing.”

2. Briefly stated, the assessee company which is engaged in the business of renting and leasing of immovable properties had filed its return of income

for A.Y. 2013-14 on 29.11.2013, declaring a total income of Rs.47,39,51,430/- as per the normal provisions of the Act and a 'book profit' of Rs.55,34,05,644/- under Sec. 115JB of the Act. 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 the assessee company that had in its return of income offered a suo motto disallowance under Sec. 14A r.w Rule 8D of Rs.41,51,435/- w.r.t the exempt dividend income of Rs.1,24,32,404/-, filed a revised computation seeking restriction of the disallowance to an amount of Rs.5,92,125/-. Before the A.O, it was claimed by the assessee that as the investments in the exempt income yielding assets were made out of its own funds and no part of the interest bearing borrowed funds were used for the said purpose, thus, no disallowance of any interest expenditure under Sec. 14A r.w. Rule 8D(2)(ii), though wrongly offered in the return of income, was called for in its hands. In sum and substance, the assessee sought to withdraw the disallowance of the interest expenditure that was suo motto offered under Sec. 14A r.w. Rule 8D(2)(ii) in its return of income for the year under consideration. However, the A.O did not take into consideration the aforesaid submission of the assessee and vide his order passed under Sec.143(3), dated 28.03.2016 assessed its income at Rs.47,41,76,680/-

4. Aggrieved, the assessee assailed the assessment order before the CIT(A). It was inter alia submitted by the assessee before the CIT(A) that the A.O had erred in making a disallowance of Rs.41,51,435/- under Sec.14A r.w. Rule 8D. Observing, that the aforesaid issue did not emerge from the impugned order, the CIT(A) did not find favour with the aforesaid claim of the assessee and dismissed the same by treating it as infructuous.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was submitted by the Id. Authorized Representative (for short 'A.R') that as the assessee had substantial self owned funds to justify the source of the investments made in the exempt

income yielding assets, therefore, no disallowance of any part of the interest expenditure was called for under Sec. 14A r.w Rule 8D(2)(ii). It was averred by the Id. A.R that involving identical facts the Tribunal in the assessee's own case for the preceding years ie. A.Y. 2010-11, A.Y. 2011-12 and A.Y. 2012-13 had vacated the disallowance of the interest expenditure made in the said respective years. In order to fortify his aforesaid claim the Id. A.R took us through the aforesaid orders of the Tribunal. It was submitted by the Id. A.R, that as in the preceding years, the assessee in the year in question too had substantial own funds to justify the investments made in the exempt income yielding assets. In order to buttress his aforesaid claim the Id. A.R took us through the 'balance sheet' of the assessee company for the year under consideration, Page 31 of the assessee's paper book (for short 'APB'). Admitting that though the assessee had suo moto offered the disallowance under Sec. 14A r.w. Rule 8D(2)(ii) in its return of income, it was submitted by the Id. A.R that the lower authorities ought to have considered its revised claim of disallowance that was raised in the course of the proceedings before them.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was, however, submitted by the Id. D.R that in case the claim of the assessee did find favour with the Tribunal, then, in all fairness the matter may be restored to the file of either the A.O or the CIT(A) for verification of the veracity of the same. In order to buttress her aforesaid claim, it was submitted by the Id. A.R that as on no occasion either of the lower authorities had verified the facts on the basis of which the assessee had claimed that no disallowance of interest expenditure was called for in its case, thus, the same could not be accepted on the very face of it and was required to be revisited for necessary verification by the lower authorities.

7. We have heard the Id. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been

pressed into service by them to drive home their respective contentions. As is discernible from the records, the assessee company had in its return of income offered a disallowance under Sec. 14A of Rs.41,51,435/- w.r.t its exempt dividend income of Rs.1,24,32,404/-. Admittedly, the assessee on the basis of a 'Note' that was submitted with the A.O in the course of the assessment proceedings had sought the scaling down of the disallowance under Sec. 14A to an amount of Rs.5,92,125/-, as under:

**"Indian Express Newspapers (Mumbai) Private Limited**

SECTION 14(A) - INADMISSIBLE EXPENSES

Expenditure in relation to tax free income of Rs.1,24,32,404/- under Rule 8D is as under:-

(i)	Amount of expenditure that is directly relating to such income	NIL
(ii)	Interest Computed	
	<u>Interest X Avg. Value of Investments</u> Average Value of Total Assets	NIL
(iii)	0.50 % of Avg. Value of Investments 0.50% of 11,84,25,026/-	<u>5,92,125</u>
	Amount of Total Disallowance under Rule 8D	<u>Rs. 5,92,125</u>

Disallowance under sec: 14 A of the Act r.w Rule 8D  
 During the previous year, dividend received on investment (mutual funds)  
 Rs. 1,24,32,404/-

Balance in Investment Accounts (Mutual Fund)

As at 01-04-2012	Rs.17,47,09,860/-
As at 31-03-2013	Rs.6,21,40,191/-

The Closing balance comprised of following investments (Mutual Fund)

HDFC	Rs.4,18,63,310/-
ICICI	<u>Rs.2,02,76,881/-</u>
	<u>Rs.6,21,40,191/-</u>

We confirm that the investments in mutual funds were made only out of own funds and not out of borrowed funds. This can be evidenced from the Bank statements wherefrom the payments for making the aforesaid investments were made. Therefore, there cannot be allocation of interest in the computation of disallowance, interest cost under Section 14A r.w Rule 8D.

As can be seen from the details furnished above, the investments comprised of mutual funds in HDFC and ICICI only. This did not require any elaborate workforce and deployment of staff.

Therefore, 0.5% on the average if investments is all that can be considered for disallowance under Sec.14 r.w Rule 8D. The working is attached."

It was, thus, the claim of the assessee for the very first time, that as its investment in the exempt income yielding mutual funds was made out of its own funds and no part of the interest bearing borrowed funds were utilised, thus, no disallowance of any part of the interest expenditure, though suo motto offered in the return of income, was called for under Sec. 14A r.w Rule

8D(2)(ii) in its hands. As can be deciphered from the assessment order, the A.O did not take cognizance of the aforesaid claim of the assessee and retained the disallowance under Sec. 14A r.w. Rule 8D of Rs.41,51,435/- as was suo motto offered by the assessee in its return of income. On appeal, the CIT(A) while considering the claim of the assessee that the A.O had erred in making a disallowance under Sec.14A r.w. Rule 8D at Rs.41,51,435/-, declined to deal with the same on the ground that that no such disallowance was made by the A.O.

8. We have deliberated at length on the issue under consideration and are unable to persuade ourselves to subscribe to the manner in which the CIT(A) had disposed off the aforesaid grievance of the assessee. Admittedly, in light of the judgment of the **Hon'ble Supreme Court** in the case of **Goetze (India) Ltd. Vs. CIT (2006) 284 ITR 323 (SC)** an A.O is not permitted to allow any claim raised by the assessee in the course of the assessment proceedings, except for where the same had been raised by filing of a revised return of income. However, the position does not remain the same insofar the appellate authorities are concerned. As observed by the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Pruthvi Brokers & Shareholders (P) Ltd. (2012) 349 ITR 336 (Bom)**, even if the assessing officer is not entitled to grant a deduction on the basis of a letter requesting an amendment to the return filed, the appellate authorities are entitled to consider the claim and to adjudicate the same. In fact, we find that the Id. A.R of the assessee had also relied on the said judgment of the Hon'ble jurisdictional High Court in order to support his claim that the CIT(A) ought to have admitted the assessee's claim and therein adjudicated the same on merits. On a perusal of the orders of the tribunal in the assessee's own case for the aforementioned preceding years i.e A.Y. 2010-11, A.Y. 2011-12 and A.Y. 2012-13, we find that after considering the fact that the assessee in the said respective years had substantial interest free funds, it was 'therein' concluded that in light of the judgments of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. HDFC Ltd. (2014) 366 ITR 503 (Bom)** no disallowance of any part of the

interest expenditure under Sec. 14A r.w. Rule 8D(2)(ii) was called for in the hands of the assessee. In the backdrop of the aforesaid facts, we find no reason to take a different view, and thus, respectfully follow the view taken by the Tribunal in the assessee's own case for the aforementioned preceding years. At the same time, we find substantial force in the claim of the Id. D.R that as neither of the lower authorities had verified the aforesaid factual position as had been projected by the assessee to support its claim that no disallowance of any part of the interest expenditure was called for as it had sufficient interest free funds to source the investment in the exempt income yielding assets, the matter, thus, would require to be restored to the file of either of the lower authorities for the limited purpose of verifying the veracity of the said claim so canvassed by the assessee. In the backdrop of the aforesaid facts, we are of the considered view that in all fairness the matter requires to be revisited by the A.O for the limited purpose of verifying the assessee's claim that it had sufficient interest free funds to justify the investments made in the exempt income yielding assets. In case, the claim of the assessee is found to be in order, then, the disallowance made under Sec. 14A r.w. Rule 8D(2)(ii) shall stand vacated. Accordingly, for the aforesaid limited purpose the matter is restored to the file of the A.O for carrying out necessary verifications in terms of our aforesaid observations. Needless to say, the A.O shall in the course of the 'set aside' proceedings afford a reasonable opportunity of being heard to the assessee.

9. The appeal of the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 28.01.2021

Sd/-  
S. Rifaur Rahman  
(ACCOUNTANT MEMBER)

Sd/-  
Ravish Sood  
(JUDICIAL MEMBER)

Mumbai, Date: 28.01.2021  
PS: Rohit

**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar  
ITAT, Mumbai