

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 5148/Mum/2019
(A.Y: 2015-16)**

The Dy. Commissioner of Income Tax – 1 (1) (1), 579, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	बनाम/ Vs.	Aegis Logistics Limited, 1202, Tower-B, Peninsula Business Park, Ganpat Roa Kadam Marg, Lower Parel (West), Mumbai - 400013
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACA3302N		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Brajendra Kumar, DR
प्रत्यर्थी की ओर से/ Respondent by :	Shri Ketan Ved, AR

सुनवाई की तारीख / Date of Hearing	11/02/2021
घोषणा की तारीख / Date of Pronouncement	16/02/2021

आदेश / ORDER

PER PAVAN KUMAR GADALE: The revenue has filed the appeal against the order of the Commissioner

of Income Tax (Appeals) - 2, Mumbai, passed u/s.143 (3) and 250 of the Income Tax Act, 1961.

2. The revenue has raised the following ground of appeal:-

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in directing to exclude investment which was not yielded exempt income without appreciating the fact that no such exclusion is provided under Rule 8D(2)(ii) & 8D(2) (iii) of the Act and that the intention of making investment is immaterial to applicability of sec. 14A of the Act."

3. The Brief facts of the case are that, the assessee company is engaged in the business of providing facilities for storage and Terminal ling of bulk liquid chemicals, petrochemicals, and liquefied gas and oil. The assessee has filed the return of income for the AY 2014-15 on 28.11.2015 disclosing the total income of Rs. 1,10,82,03,630/-. Subsequently, the case was selected for scrutiny and notice u/s 143 (2) and 142 (1) of the Act along with questionnaire was issued. In compliance, the Ld.AR of the assessee appeared from time to time and furnished the details. The AO found that the assessee company has not made adequate disallowance u/s 14A of the Act. Therefore

applied the provisions of Section 14A of the Act r.w.r. 8D(2)ii&iii and calculated disallowance of Rs.2,61,73,130/- after granting set off of suo moto disallowance by the assessee of Rs19,32,070/- and passed the order u/s 143 (3) and 250 of the Income Tax Act.

4. Aggrieved by the A.O. order, the assessee has filed an appeal with the CIT (A). The Ld.CIT (A) considered the grounds of appeal, findings of the AO and the submissions of the assessee and dealt on the provisions of law, calculation of average value of investments to be considered for computing disallowance under Rule 8D2(ii)&(iii) and relied on the judicial decisions and further directed the A.O. to recompute the disallowance under rule 8D(2)(ii) and 8D(2) (iii) of the Act and partly allowed the appeal of the assessee.

5. Aggrieved by the CIT(A) order, the revenue has filed the appeal with the Hon'ble Tribunal. At the time of hearing, the Ld. DR of the revenue submitted that the CIT (Appeal) has erred in directing the AO to exclude investments which is not yielding exempted income as there are no excluding provisions, while calculating under rule 8D (2) (ii) and 8D(2)

(iii) and prayed for restoration of computation of the A.O. Contra, the Ld.AR supported the order of the Ld.CIT(A) and the assessee's own case for the earlier assessment year on similar and identical issues and prayed for dismissal of the revenue appeal.

6. We have heard the rival submissions and perused the material on record. The sole matrix of the disputed issue is with respect to disallowance made u/s 14A r.w.r. 8D (2) (ii) and 8D(2) (iii). The Ld.DR submitted that the Ld.CIT (A) has erred in directing the A.O. to exclude the investments which are not yielding any exempt income for calculation of Average Value Of Investments. Whereas the Ld.AR substantiated his arguments on facts and relied on the earlier years assessee's own case. The Ld.AR emphasized that in assessee's own case the Hon'ble Tribunal in ITA No. 1945/Mum/2016 for the AY 2011-12 in revenue's appeal has observed on this particular disputed issue at page 6 para 6, 7 and 8 of the order which is read as under:

“6. Under this issue the revenue has challenged the restriction of disallowance made u/s 14A of the Act r.w. Rule 8D of the Rules to the extent of dividend income from non-trade investment. The Ld. Representative of the revenue has argued that the investment is liable to be considered for the purpose of disallowance u/s 14A of the Act r.w. Rule 8D of the Act. On the other hand, the Ld.

Representative of the assessee has refuted the said contention and argued that the Ld. CIT(A) has rightly restricted the disallowance to the extent of dividend income from non-trade investment. It is also argued that the case of the assessee has duly been covered by the decision of the Special Bench title as ACIT, Circle 17(1) New Delhi Vs. Vireet Investment P. Ltd. (2017) 82 taxmann.com 415 (Delhi Trib.) Before going further we deemed it necessary to advert the finding of the CIT(A) on record:

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“3.5 I have considered the AO’s order as well as appellant submission in aforesaid matter. The AR of the appellant vehemently argues that the appellant company has not received any dividend income from the trade investments and therefore section 14A cannot be applicable in the appellant’s case. I have gone through the other income break-up figure as per Schedule-12 as on 31.03.2011 which is as under:

Schedule 12: Other Income

Dividend on current investments (non-trade)	Rs.118.17
Diminution in value of current investments	-
Profit on sale of long term investments(non-trade)	-
Profit on sale of current investments (non-trade)	Rs. 41.69
Lease Rent	Rs. 81.36
Interest on investments (long term, non-trade)	Rs. 8.09
Miscellaneous receipts	Rs. 85.43

From the above break-up of other income of the appellant it is understood that the appellant company received Rs.118.17 lacs as dividend income from non-trade investments. Accordingly, the AO is directed to re-work section 14A disallowances with regard to administrative expenditure limited to Rs.118.17 lacs. Accordingly, this ground of appeal is partly allowed.”

7. On appraisal of the above mentioned finding, we noticed that the CIT(A) has restricted the AO to re compute the administrative expenses to the extent of Rs.118.17 lacs which was the investment to earn the dividend income. In this regard, the matter of controversy has been adjudicated by the Hon'ble ITAT in the case of ACIT, Circle 17(1) New Delhi Vs. Vireet Investment P. Ltd. (2017) 82 taxmann.com 415 (Delhi Trib.) in which it specifically held that only those investment are liable to be considered for computing average value of investment which yielded exempt income during the year. In view of the said circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and incorrectly which is not liable to be interfere with at this stage. Accordingly, this issue is being decided in favour of the assessee against the revenue.

8. In the result, the appeal filed by the revenue is hereby ordered to be dismissed.”

7. We have considered the facts and circumstances of the present case, where the Ld. CIT (A) has relied on the judicial decisions, the Income Tax rules and the provisions of Act and observed at page 24 para 5.2 and 5.3 of the order read as under:-

“5.2 The second ground is against disallowance of Rs.22,246,935/- under Rule 8D(2)(ii) of the I.T. Rules. The appellant has submitted that it had sufficient own funds and no disallowance could be made under Rule 8(D)(2)(ii). It has been submitted that in AY 2011-12, such disallowance was deleted by the appellate authorities in its own case. In this regard I find that in AY 2011-12, the appellant had suo moto made a disallowance of Rs 172,085/- and had not made any disallowance on its own u/s14A in respect of interest expenditure whereas in AY 2015-16, the appellant has suo moto disallowed Rs.14,32,930/under Rule 8D2(ii) in respect of interest expenditure. Disallowance under Rule

8D2(ii) in AY 2015-16 has been computed with reference to interest expenditure, which was not directly attributable to earning of any particular income or receipt at Rs.858,26,147/-, after excluding the interest expenditure which was directly attributable to earning of any particular income like, interest on ear loan, interest on LC import and interest on Axis Loan used for business projects. Therefore the appellant's submission that disallowance under Rule 8D should not be made since it has substantial interest free funds will not apply to the disallowance made by the appellant suo moto with regard to interest expenditure of Rs.858,26,147/-. In view of above discussion, I am inclined to hold that the disallowance of interest expenditure in AY 2015-16, under Rule 8D2(ii) should be computed with reference to Rs. 858,26,147/- and not with reference to Rs. 11,35,32,000/- as done by the AO. The AO is directed to recompute the disallowance under Rule 8D(2)(ii) with respect to the above said amount of interest expenditure of Rs.858,26, 147/-. However, the average investment to be considered for computing the disallowance under Rule 8D(ii) & (iii) is discussed in para below.

5.3 In Ground No.3, the appellant has contested the computation of average investment to be considered for making disallowance under Rule 8D(ii) & (iii). I am inclined to agree with the appellant that investment in foreign subsidiaries and investment in debentures should be excluded from the computation of average investment since these investment yield income which are taxable under Income tax Act. Further, I am inclined to agree with the appellant that only those investments, which have yielded exempt income during the year should be considered for arriving at the average value of investments to compute the disallowance under section 14A read with Rule 8D, in view of the decision of Hon'ble High Court of Delhi in the case of Cheminvest Ltd. (supra) This amount was shown by the appellant in its computation of income at Rs. 597,92,55,500/- and this does not include the investment in 6% cumulative redeemable preference shares of Sea Lord Containers Ltd. of Rs. 1200 lacs as on 31.03.2014, which has

yielded exempt income of Rs. 166.59 lacs during the year. The appellant's submission that the said investment was disposed off during the income resulting in capital gains is found to be without merit as the said investment has yielded exempt dividend income and should have been considered for computing the average value of investment as on 31.03.2014.

The average investment has been re-computed by the appellant at Rs.15,98,28,000/-, which includes the investment in 6% cumulative redeemable preference shares of Sea Lord Containers Ltd. of Rs. 1200 lacs as on 31.03.2014. Accordingly, the AO is directed to adopt this figure of Rs.15,98,28,000/- and recompute the disallowance under Rule 8D2(ii) and (iii) and allow appropriate relief to the appellant. Ground No.2 and 3 are partly allowed.”

8. The Ld.AR has strengthen the case with the elaborate submissions and duly supported with Hon’ble Tribunal decision in the assessee own case for adopting same methodology for computing the disallowance. The Ld.DR could not controvert the findings of the Ld.CIT(A) with new cogent evidence or information. Accordingly, we find that Ld.CIT (A) has relied on the judicial decisions and took a reasoned view. Accordingly, we do not find any infirmity in the order of the Ld.CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 16.02.2021.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 16.02.2021

AK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई
/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai