

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

**BEFORE SHRI M. BALAGANESH (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.1054/MUM/2019
(Assessment Year: 2014-15)**

Rosa Power Supply Company
Limited, 3rd Floor, South Wing,
Reliance Centre, Near Prabhat
Colony, Off W.E. Highway,
Santacruz (East),
Mumbai -400 055

Dy. Commissioner
Vs. Income-tax-14(3)(1),
4th Floor, Aayakar Bhavan,
New Marine Lines,
Mumbai – 400 020

PAN No. AABCR8917M

(Assessee)

(Revenue)

**ITA No.1393/MUM/2019
(Assessment Year: 2014-15)**

The Dy. Commissioner
Income-tax-14(3)(1),
Room No.455, 4th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai – 400 020

Rosa Power Supply
Vs. Company Limited,
3rd Floor, South Wing,
Reliance Centre, Near Prabhat
Colony, Off W.E. Highway,
Santacruz (East),
Mumbai -400 055

PAN No. AABCR8917M

(Revenue)

(Assessee)

Assessee by : Shri Amit Khatiwala, A.R
Revenue by : Shri S.C. Tiwari, D.R

Date of Hearing : 24/02/2021
Date of pronouncement : 01/03/2021

ORDER

PER RAVISH SOOD, J.M.:

The captioned cross-appeals are directed against the order passed by the CIT(A)-22, Mumbai, dated 29.11.2018, which in turn arises from the assessment order passed by the A.O under Sec.143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 30.12.2016 for A.Y. 2014-15. We shall first take up the appeal of the assessee. The assessee has assailed the impugned order on the following grounds of appeal before us:

“A. DISALLOWANCE U/S. 14A OF THE ACT R.W. RULE 8D(2)(iii) OF THE INCOME-TAX RULES. 1962 ("the Rules"):

1. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) - 22, Mumbai ("the CIT(A)") erred in confirming the action of the Deputy Commissioner of Income Tax -14(3)(1), Mumbai ("Assessing Officer") in disallowing expenses u/s. 14A of the Act r.w. Rule 8D(2)(iii) of the Rules to the extent of Rs.1,88,58,934/-.

The Appellant submits that the above disallowance is wrongly made under the facts of the Appellant's case and the same ought to be deleted.

2. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the disallowance u/s.14A of the Act r.w. Rule 8D(2)(iii) of the Rules to the extent of exempt income of Rs.1,88,58,934/- while computing the taxable income of the Appellant.

The Appellant submits that the above disallowance is wrongly made and the same ought to be deleted.

3. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the disallowance u/s. 14A of the Act r.w. Rule 8D(2)(iii) of the Rules to the extent of exempt income of Rs.1,88,58,934/- after concluding that investments which have not yielded any exempt income during the year should be excluded while computing disallowance u/s. 14A of the Act r.w. Rule 8D(2)(iii) of the Rules.

The Appellant submits that the disallowance under Rule 8D(2)(iii) of the Act ought to be worked out with reference to investments which have yielded e during the year and only if the disallowance so worked out exceeds income, the same ought to be restricted to the exempt income.

4. Without prejudice to the above, the Appellant submits that the disallowance u/s. 14A of the Act is excessive and the same ought to be reduced substantially.

B. GENERAL:

5. The Appellant craves leave to add to, alter, amend or vary all or any of the aforesaid ground(s) of appeal as they/their representative may deem fit.”

2. Briefly stated, the assessee company which is engaged in the business of generation of electricity had filed its return of income for A.Y. 2014-15 on 28.11.2014, declaring a total income of Rs.nil. The return of income was initially processed as such under Sec. 143(1) 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 it was observed by the A.O that the assessee during the year in question had earned dividend income of Rs.1,88,58,934/- from investments made in exempt income yielding shares. However, it was noticed by the A.O that the disallowance offered by the assessee under Sec. 14A was not commensurate with the proportion of the investments made in the exempt income yielding assets. Backed by the aforesaid fact the A.O worked out the disallowance under Sec.14A r.w Rule 8D at Rs.24,34,11,363/- as under:

(A)	Expenditure directly relating to income which does not form part of total income		Nil
(B)	Interest disallowance as per Rule 8D	433,38,54,281	
	Interest expenditure	Nil	
	Average value of investments	475,00,00,000	
	Average Value of Total Assets	9371, 61,07,052	
	$\frac{\text{Interest X Average Value of Investments}}{\text{Average Value of Total Assets}}$		21,96,61,363
(C)	Disallowance being 0.5% of Avg. Investments		2,37,50,000
	Total Disallowance u/s 14A (A+B+C)		24,34,11,363

After inter alia making the aforesaid disallowance under Sec.14A r.w Rule 8D, the A.O assessed the income of the assessee company at Rs.833,68,09,146/- (before 'set off' of the b/forward business losses and unabsorbed depreciation), which after setting off the aforesaid b/forward losses was reduced to nil.

4. Aggrieved, the assessee assailed the assessment order before the CIT(A). After deliberating on the multiple contentions raised by the assessee insofar the disallowance made by the A.O under Sec. 14A r.w Rule 8D was concerned, the CIT(A) finding favour with the contentions advanced b the

assessee observed, viz. (a) that the disallowance under Sec. 14A r.w Rule 8D was to be made only in respect of the investments which had yielded exempt income during the year in question; and (b) that considering the availability of self owned funds with the assessee no disallowance of any part of the interest expenditure was called for under Sec.14A r.w Rule 8D(2)(ii). However, after observing as hereinabove, the CIT(A) directed the A.O to restrict the disallowance under Sec. 14A to the extent of the exempt income earned by the assessee during the year in question. Accordingly, on the basis of his aforesaid deliberations the CIT(A) partly allowed the assessee's appeal.

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') for the assessee that the CIT(A) had erred in confirming the disallowance under Sec. 14A to the extent of the exempt income that was earned by the assessee during the year in question. It was observed by the Id. A.R that the disallowance under Sec. 14A r.w Rule 8D(2)(iii) ought to have been worked out with reference to the investments that had yielded exempt income during the year in question, and it was only if the disallowance therein so worked out exceeded the exempt income that the disallowance contemplated in the said statutory provision was liable to be restricted to the extent of the exempt income.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the assessment order.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Admittedly, the CIT(A) while finding favour with the multiple contentions raised by the assessee had therein observed, viz. (a) that in the backdrop of availability of sufficient self owned funds with the assessee no disallowance of any part of the interest expenditure was called for under Sec. 14A r.w Rule 8D(2)(ii); and

(b) that for the purpose of quantifying the disallowance under Sec.14A r.w Rule 8D(2)(iii) only the investments which had yielded exempt income during the year in question were to be considered. At the same time, we find that the CIT(A) had also found favour with the claim of the assessee that the disallowance under Sec. 14A was liable to be restricted only to the extent of the exempt income that was received by the assessee during the year in question. Controversy in hand had arisen pursuant to the direction of the first appellate authority that the disallowance under Sec. 14A r.w Rule 8D be restricted to the extent of the exempt dividend income of Rs.1,88,58,934/- that was earned by the assessee during the year in question.

8. We have given a thoughtful consideration to the issue before us and find substantial force in the claim of the Id. A.R that the findings of the CIT(A) are not free from doubts and lack clarity. As is discernible from the order of the CIT(A), we find that he had specifically observed that in the backdrop of availability of sufficient self owned funds with the assessee no disallowance of any part of the interest expenditure was called for under Sec. 14A r.w Rule 8D(2)(ii). Further, finding favour with the claim of the assessee that for the purpose of computing the disallowance under Sec.14A r.w Rule 8D(2)(iii) only the investments which had yielded exempt income during the year in question were to be considered, the CIT(A) had accordingly directed the A.O to do so. As observed by us hereinabove, the CIT(A) had also found favour with the claim of the assessee that the disallowance under Sec.14A was liable to be restricted to the extent of the exempt dividend income of Rs.1,88,58,934/- that was earned by it during the year in question. As is discernible from the records, it was the claim of the assessee before the CIT(A) that as the assessee had not received any exempt income from the investments which were there in its balance sheet on the opening and closing dates thus, no disallowance was called for u/s 14A r.w Rule 8D(2)(iii). Be that as it may, in our considered view, now when the disallowance under Sec. 14A r.w Rule 8D(2)(iii), as claimed by the assessee, is found to be lower than the amount of the exempt income that was received by it during the year in question, the

disallowance under the aforesaid statutory provision was liable to be restricted only to the extent the same was computed under Sec. 14A r.w Rule 8D(2)(iii). In our considered view, the intent of the first appellate authority to restrict the disallowance under Sec.14A to the extent the same is worked out u/rule 8D(2)(iii), subject to an upper limit i.e the amount of the exempt dividend income that was earned by the assessee during the year in question can safely be gathered from a conjoint perusal of his observations recorded in the appellate order. Be that as it may, in order to dispel any doubts, we herein direct the A.O to restrict the disallowance under Sec. 14A r.w Rule 8D to the extent the same is worked out u/rule 8D(2)(iii) i.e after excluding the investments that had not yielded any exempt income during the year in question, as directed by the CIT(A), subject to an upper limit as that of the exempt dividend income that was earned by the assessee during the year in question.

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

**ITA No.1393/MUM/2019
(Assessment Year: 2014-15)**

10. We shall now deal with the appeal of the revenue wherein the impugned order has been assailed on the following grounds of appeal before us:

- “1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in relying upon a presumption of own funds to determine disallowance under section 14A of the Income Tax Act, 1961, when in fact the amended provisions applicable for the year provide a method for its determination.
2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in overlooking the facts that once expenditure relatable to exempt income was not in dispute, it is mandatory to follow Rule 8D for determination of the amount of disallowance.
3. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in not considering the reasons enumerated in Circular No.5 of 2014 issued by CBDT that the expenses which are relatable to earning of exempt income have to be considered for disallowance irrespective of the fact whether such income has been earned during the financial-year or not and ignoring the method of determination as per Rule 8D of the Income Tax Rules, 1962.

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the amount of expenditure relatable to the exempt income and computed under sec. 14A r.w.r 8D is not required to be added to the book profit, which is contrary to the plain and literal meaning of language employed in clause (f) of Explanation 1 to Section 115JB of the IT Act.
5. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.
6. The appellant prays that the order of CIT(A) on the above ground be set-aside and that of the Assessing Officer be restored.”

11. On a perusal of the grounds of appeal, we find that the grievance of the revenue is that the CIT(A) was not justified in taking a departure from the methodology for quantifying the disallowance under Sec.14A as is contemplated in Rule 8D, and therein directing exclusion of such investments which had not yielded any exempt income during the year in question while computing the disallowance within the meaning of Rule 8D(2)(iii) of the Income-tax Rules, 1962. Also, the revenue is aggrieved with the observation of the CIT(A) that the disallowance computed under Sec. 14A r.w Rule 8D was not required to be added to the ‘book profit’ under Sec. 115JB of the Act.

12. We have given a thoughtful consideration to the aforesaid claims of the revenue and are afraid that the same does not find favour with us. As observed by the CIT(A), the ‘Special bench’ of the ITAT Dehli in the case of **ACIT & Anr. Vs. Vireet Investments Pvt. Limited & Anr. (2017) 165 ITD 27 (Delhi) (SB)** had clearly observed that for the purpose of computing the ‘average value of investments’ within the meaning of Rule 8D(2)(iii) the investments which had not yielded any exempt income during the year are liable to be excluded. Also, the ‘Special bench’ of the Tribunal had observed, that computation under clause (f) of ‘Explanation 1’ to Sec.115JB(2) is to be made without resorting to the computation contemplated under Sec. 14A r.w Rule 8D of the Income Tax Rules,1962. Accordingly, finding no infirmity in the view taken by the CIT(A) w.r.t the aforesaid two issues on the basis of which his order has been assailed by the revenue before us, we, thus uphold the same.

13. The appeal of the revenue is dismissed.

14. The appeal filed by the assessee in ITA No. 1054/Mum/2019 is allowed, while for that of the revenue in ITA No. 1393/Mum/2019 is dismissed.

Order pronounced in the open court on 01.03.2021

Sd/-

Sd/-

(M. Balaganesh)
ACCOUNTANT MEMBER

(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 01.03.2021

PS: Rohit

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.

BY ORDER,
//True Copy//
(Sr. Private Secretary)
ITAT, Mumbai