

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नबीन कुमार प्रधान, लेखा सदस्य के समक्ष
BEFORE VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI N.K.PRADHAN, ACCOUNTANT MEMBER

आअसं. 4568/मुं/2019 (नि.व. 2012-13)
ITA NO.4568/MUM/2019(A.Y.2012-13)

Manu Enterprises Limited,
1st Floor, Sidhwas House,
N.A.Sawant Marg, Colaba,
Mumbai 400 005

PAN: AAACM4979M

..... अपीलार्थी /Appellant

बनाम Vs.

The Income Tax Officer-3(2)(2),
Room No.673/664, 6th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... प्रतिवादी/Respondent

Assessee by : Ms. Kanjal Bhuta

Revenue by : Shri Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 03/03/2021

घोषणा की तिथि/ Date of pronouncement : 08/03/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-9, Mumbai (in short 'the CIT(A)') dated 17/05/2019 for the assessment year 2012-13.

2. In appeal the assessee has assailed the disallowance made by the Assessing Officer under section 14A of the Income Tax Act, 1961 (in short 'the Act'), r.w.r. 8D of the Income Tax Rules, 1962.

3. Ms. Kanjal Bhuta, appearing on behalf of the assessee submitted at the outset that the Assessing Officer has not recorded his dis-satisfaction with regard to assessee's claim that no expenditure was incurred in earning of exempt income. The Id. Authorized Representative for the assessee contended that during the period relevant to the assessment year under appeal, the assessee has earned exempt income of Rs.30,66,562/- on account of dividend received on the investments. Since, no investments were made during the financial year 2011-12, no suo-motu disallowance was made under section 14A of the Act .

The Id.Authorized Representative of the assessee submitted that substantial investments were made by the assessee in the shares of Manugraph India Ltd., a subsidiary of the assessee in the earlier assessment years.. The investment in the said company was made from own funds and borrowed funds were not used by the assessee. The Id.Authorized Representative of the assessee submitted that own funds of the assessee are sufficient to cover the investments that have yielded tax free income, hence, no disallowance was warranted on such investments. The Id.Authorized Representative of the assessee made an alternate contention that if at all disallowance u/r.8D is to be made, the interest expenditure should be reduced while computing such disallowance.

4. On the contrary, Shri Sanjay J. Seth, representing the Department vehemently defended the impugned order.The Id.Departmental Representative submitted that the disallowance has been made u/r 8D(2)(iii) that is half percent of average investment. The Assessing Officer has duly recorded satisfaction

before making disallowance under section 14A r.w.r. 8D. The Id. Departmental Representative prayed for dismissing the appeal of the assessee.

5. Both sides heard, orders of authorities below examined. The solitary issue raised in the present appeal by the assessee is against disallowance of Rs.14,10,393/- made under section 14A r.w.r. 8D.

6. The first contention of the assessee is that before invoking the provisions of Rule 8D, the Assessing Officer has not recorded satisfaction as provided in section 14A(2) of the Act. Sub-section(2) of section 14A mandates that the Assessing Officer shall determine the expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with Rule 8D, if the Assessing Officer is not satisfied with the correctness of the claim of assessee. Sub-section (3) of section 14A of the Act states that provisions of sub-section (2) shall also apply where the assessee claims that no expenditure has been incurred in earning of exempt income.

7 In the present case, the claim of assessee is that since no new investments were made during the period relevant to the assessment year under appeal, no expenditure has been incurred by the assessee in relation to earning of dividend income, exempt from tax. The provisions of sub-section (2) and (3) require the Assessing Officer to record satisfaction before invoking the provisions of Rule 8D with respect to assessee's computation of suo-motu disallowance or assessee's claim that no expenditure has been incurred.

8. A perusal of the assessment order dated 29/11/2014 reveals that Assessing Officer has not recorded satisfaction at all before invoking the provisions of section 14A of the Act as mandated under the Act. The Assessing Officer rejected the submissions of the assessee by observing as under:-

“The detailed note of the assessee on disallowance is considered but not accepted. Even though the assessee has made an effort to explain that no part of interest/expenditure have been incurred in relation to earning of the exempt income (dividend income), the fact remains undisputed that the disallowance is to be worked out mandatorily as per the norms prescribed under Rule 8D of the I.T.Act.”

Thereafter, the Assessing Officer computed the disallowance u/r 8D Recording of dissatisfaction by the Assessing Officer in relation to assessee’s claim of suo-motu disallowance or no disallowance is sine-qua-non to invoking of Rule 8D. Any disallowance made u/r.8D without recording satisfaction as envisaged under section 14(2) of the Act is unsustainable in law.

9. The Hon'ble Bombay High Court in the case of Godrej and Boyce Mfg Co. Ltd. vs. DCIT reported as 328 ITR 81, in an unambiguous manner held that satisfaction under section 14A(2) of the Act by the Assessing Officer has to be arrived in an objective manner having regard to the accounts of the assessee. The relevant extract of the judgment reads as under:-

“(viii) Sub-section (2) of section 14A does not enable the Assessing Officer to apply the method prescribed by rule 8D without determining in the first instance the correctness of the claim of the assessee, having regard to the accounts of the assessee. Sub-section (2) of section 14A mandates that it is only when having regard to the accounts of the assessee, the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to income which does not form part of the total income under the Act, that he can proceed to make a determination under the Rules;

(ix) The satisfaction envisaged by sub-section (2) of section 14A is an objective satisfaction that has to be arrived at by the Assessing Officer having regard to the accounts of the assessee. The safeguard introduced by sub-section (2) of section 14A for a fair and reasonable exercise of power by the Assessing Officer, conditioned as it is by the requirement of an objective satisfaction, must, therefore, be scrupulously observed. An objective satisfaction contemplates a notice to the assessee, an opportunity to the assessee to place on record all the relevant facts including his accounts and recording of reasons by the Assessing Officer in the event that he comes to the conclusion that he is not satisfied with the claim of the assessee;”

The Hon'ble Supreme Court of India in the case of Godrej and Boyce Mfg Co. Ltd., 394 ITR 449 affirming the view of Hon'ble Bombay High Court held:

“ 37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (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.”

10. In the instant case as pointed earlier, the Assessing Officer has not recorded his dis-satisfaction with regard to assessee's claim as postulated by the provisions of section 14A of the Act and elucidated by the Hon'ble Courts. Thus, we find merit in the contentions of the assessee. The disallowance made under section 14A r.w.r. 8D is directed to be deleted. The impugned order is set-aside and the appeal of the assessee is allowed.

11. In the result, appeal by assessee is allowed.

Order pronounced in the open court on Monday the 8th day of March, 2021.

Sd/-

(N.K.PRADHAN)

लेखा सदस्य /ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 08/03/2021

Vm, Sr. PS (O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai