

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" C " BENCH, AHMEDABAD**  
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT**  
**And**  
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 1863/AHD/2018  
निर्धारण वर्ष/Asstt. Year: 2015-16

Mid Valley Health Care Services Pvt. Ltd., Corporate House No.21, Magnet Corporate Park, 100Ft. Hebatpur Thaltej Road, S.G.Highway, Ahmedabad.  <b>PAN: AAECM7777K</b>	Vs.	A.C.I.T., Circle 2(1)(2), Ahmedabad.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri Parimalsinh B. Parmar, A.R
Revenue by :	Shri S.S. Shukla, Sr.D.R

सुनवाई की तारीख / **Date of Hearing** : **15/06/2021**  
घोषणा की तारीख / **Date of Pronouncement**: **28/06/2021**

**आदेश / O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-2, Ahmedabad, dated 26/06/2018 (in short "Ld. CIT(A)") arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal:

1. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of invoking the provisions of Rule 8D without recording any dissatisfaction to the claim of appellant.*
2. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of making a disallowance u/s.14A of the Act r.w.r.8D of the Income-tax Rules, 1962.*
3. *The learned CIT(A) has erred both in law and on the facts of the case in partly confirming disallowance made by the AO u/s. 14A of the Act r.w.r.8D of the Income-tax Rules, 1962.*
4. *The learned CIT(A) has erred both in law and on the facts of the case in not following the binding decisions of Hon'ble Gujarat High Court allowing credit of owned funds while computing the disallowance u/s 14A of the Act r.w. Rule 8D of the Income-tax Rules, 1962.*
5. *The learned CIT(A) has erred both in law and on the facts of the case in confirming that disallowance u/s.14A is to be made while calculating book profit u/s. 115JB.*
6. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
7. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the ld.AO in levying interest u/s.234A/B/C of the Act.*

*The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

3. The first interconnected issue raised by the assessee in ground nos. 1 to 4 is that the Ld. CIT(A) erred in confirming the order of the AO by sustaining the disallowance of Rs. 10,25,016/- only under the provision of section 14A r.w. Rule 8D(2)(iii) of Income Tax Rules.

4. The facts in brief are that the assessee in the present case is a Private Limited Company and engaged in the activity of business process outsourcing. The assessee in the year under consideration has earned exempt income of Rs. 35,35,409/- which was claimed as exempted u/s 10(34)/(35) of the Act. The assessee against such

income has made disallowance of Rs. 67,416/- under the provision of section 14A of the Act.

4.1 However, the AO being dissatisfied with the disallowance made by the assessee under the provision of section 14A of the Act invoked the provision of Rule 8D of Income Tax Rules and made the disallowance of Rs. 20,96,334/- on account of administrative expenses.

4.2 On appeal the Ld.CIT(A) partly allowed the appeal of the assessee subject to the verification by observing as under:

*I have carefully considered the facts of the case, assessment order and submission of the appellant. The AO has made disallowance of Rs.20,96,334/- u/s.14A of the I.T. Act, 1961 invoking the provision of Rule 8D. The AO has stated that appellant has received dividend income of Rs.35,35,409/- which has been claimed exempt, but allocated only Rs.67,416/- as expenditure for the purpose of 14A. The AO accordingly computed the disallowance of Rs.20,96,334/- as per Rule 8D(2)(iii). The appellant has contended that it has allocated expenditure of Rs.42,89,298/- relating to shares and mutual fund and further allocation of Rs.67,416/- being a salary of one person who is engaged in the share trading activity. Therefore, no further disallowance is required to be made. The appellant has allocated only direct expenses relating to exempt income which has not been considered by AO in computation as per Rule 8D(2)(i). I do not agree with the appellant's submission that only direct expenditure are to be disallowed u/s.14A of the Act. Therefore, AO was justified to invoke Rule 8D for making the disallowances. However, the appellant without prejudice has submitted that AO has no computed the disallowance under Rule 8D (2)(iii) properly as the average investment is Rs.11,35,49,611/- as against Rs.41,92,66,874/-. As per appellant the disallowance under Rule 8D(2)(iii) would be Rs.10,25,016/- The AO is directed to verify the table submitted by the appellant and allow the claim as per Rule 8D(2)(iii). The ground of appeal is accordingly partly allowed.*

5. Being aggrieved by the order of the Ld. CIT(A) the assessee is in appeal before us.

6. The Ld. A.R before us filed a paper book running from pages 1 to 76 and contented that the assessee has already made *suo moto* disallowance of Rs.42,89,298/- against such exempted income besides the disallowance made u/s 14A of the Act for Rs.67,416/-

7. For this purpose Ld. AR drew our attention on page 72 of the paper book. Accordingly the Ld. AR submitted that further disallowance under the provision of section 14A r.w Rule 8D will be gross injustice to the assessee.

7.1 On the contrary the Ld. DR before us submitted that the assessee has not made the disallowance in pursuance to the provision of section 14A r.w Rule 8D against exempted income. As such the assessee failed to furnish the details of the expenses qua the exempted income. Furthermore, the assessee has not challenge the applicability of the provision of section 14A r.w. Rule 8D of Income Tax Rules. The Ld. DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. The assessee in the case on hand has made the disallowance of Rs. 67,416/- against the exempted under the provisions of section 14A of the Act. However, the AO found that the disallowance made by the assessee was not in pursuance to the provisions of section 14A read with rule 8D of Income Tax Rule. Accordingly, the AO worked out the disallowance under the provisions of section 14A read with rule 8D of income tax rule amounting to Rs.20,96,334/- on account of administrative expenses. However, on appeal the learned CIT-A has reduced such disallowances to Rs. 10,25,016/- subject to verification.

8.1 It was contended by the learned AR at the time of hearing that the assessee has already made the disallowances against such exempted income amounting to Rs. 42,89,298/- besides the disallowance made under section 14A of the Act for Rs.67,416/- only. Thus as per the learned AR the aggregate disallowance made by the assessee against such exempted income stands at Rs.43,56,714/- and therefore the learned AR contended that there cannot be any further disallowance against such exempted income. However, we are not in agreement with the contention of the learned AR for the assessee. It is because the assessee has admittedly made the disallowance of Rs. 42,89,298/- in the computation of income placed on page

72 of the paper book but the same has been claimed as deduction against the income of the capital gain. This fact can be verified from the submission of the assessee vide letter dated 7 September 2017 placed on pages 7 to 15 of the paper book. The relevant submission of the assessee reads as under:

*All the expenses of Rs.42,89,298/- relating to exempt and taxable income from investment have been deducted from CG income and have not been claimed against business income.*

8.2 From the above submission of the assessee it is revealed that the above expenses of Rs. 42,89,298/- were incurred by the assessee against the capital gain and these expenses had no connection with the income under the head business and profession. In other words, such expenses cannot be said to have been incurred for the purpose of the business. Furthermore, the revenue has also accepted that the above expenditure of Rs.42,89,298/- were incurred in connection with the capital gain income. Thus the contention of the learned AR that the assessee has made the disallowance of the aforesaid expenses under the provisions of section 14 A of the Act does not appear to be true.

8.3 Now the 2<sup>nd</sup> question arises for our adjudication so as to whether the disallowance in the given facts and circumstances is required to be made under the provisions of section 14-A read with rule 8D of Income Tax Rules. The provisions of section 14A of the Act mandates to make the disallowance of the expenditure incurred in connection with the exempted income. The next step is to determine such expenditure i.e. incurred in connection with such exempted income. The onus lies upon the assessee to determine such expenditure. Admittedly, the assessee has made the disallowance under the provisions of section 14A for Rs. 67,416/- only. The sum of Rs. 67,416/- represents the payment made to the consultant who was looking after the investments. As such the contention of the assessee as recorded in the submission of the assessee dated 7 September 2017, with respect to such expenditure stands as under:

*Secondly, apart from above the Assessee has disallowed an amount of Rs.67,416/- relating to payment made to consultant who is looking after these investments.*

8.4 From the above, it is revealed that only the expenses paid to the consultant was disallowed by the assessee against the exempted income. In our considered view such disallowance reveals the expenses which have been directly incurred by the assessee against the exempted income. The aforesaid sum represents the payment made to the consultant who was exclusively looking for the investments.

8.5 The act of making the investment in the securities is not one-time decision rather it is ongoing process for making purchase and sale of securities. In this process, the time of top management is consumed with the support of lot of administrative staff and facilities. The services of the accountant, record keeper and other staff are utilized. Likewise, the administrative facilities such as printing and stationary, computers, telephones, electricity etc. are required for such investment activity. However, we note that the assessee has not made any disallowance qua such expenses in the return of income. On perusal of the financial statements placed on pages 68 and 69 of the paper book, we note that the assessee has claimed employee benefit expenses and other expenses amounting to ₹1,09,75,504.00 and 95,01,422.00 respectively. These are the expenses providing the support of administrative staff and administrative facilities which was also required, may be a bit, for the investment activities. Therefore, the disallowance of such expenses qua the exempted income was required to be made. But we find that the assessee has not done so. Therefore, the AO had no option except to resort to the provisions of section 14-A read with rule 8D for the purpose of making such disallowance. In other words, the AO has clearly recorded his satisfaction for making the disallowance under the provisions of section 14-A read with rule 8D of income tax rule by rejecting the submission of the assessee. The relevant finding of the AO reads as under:

*The reply of the assessee has been duly considered by the same is not found acceptable.*

8.6 In view of the above we hold that the AO has made the disallowance after recording the satisfaction as mandated under the provisions of section 14A read with rule 8D of Income Tax Rule.

8.7 Before parting we also find that the tribunal in the own case of the assessee for the assessment year 2013-14 and 2014-15 in ITA No. 2524 and 2525/AHD/2017 involving identical facts and circumstances has restricted the disallowance to the tune of Rs.3 Lacs only vide order dated 31/07/2019. The relevant finding of the order of the ITAT bearing ITA No. 2524/AHD/2017 for the assessment year 2013-14 reads as under:

*We have heard the rival contention and perused the material on record. The AO has computed the disallowance under Sec. 14A to the amount of Rs. 12,62,7707-. However, the Ld. CIT(A) has confirmed the disallowance to the extent of Rs. 10,28,1417- after excluding investment in the nature of mutual fund etc.*

*With regard to the issue in appeal that AO has not recorded any satisfaction for making disallowance under Sec. 14A of the Act, we noticed that AO at Page 5 of the assessment order has clearly stated that assessee has not maintained any record to demonstrate that no administrative expenditure has been incurred for the purpose of earning exempt income. The AO has also cited instances of administrative expenditure such as the review of investment, monitoring of the activities of the company in which the assessee company has made substantial investment by the director of the assessee company and the employees of the assessee company etc. There fore, the salary paid by the assessee company to those employee and the director who have devoted their time towards investment activities have not been utilised exclusively for the purpose of the business of the company.*

*In the light of the above facts and circumstances we do not find any merit in the ground of appeal of the assessee that no satisfaction has been recorded by the AO before making disallowance under Sec. 14A of the Act. However, after perusal of the information on record filed by the assessee we observe that assessee has made investment in equity share of listed company's debentures, bond units of mutual fund etc. and all these have been made through portfolio management consultant who has provided full fledge services in that respect. The assessee had suo-motu disallowed an amount of Rs.73,034/- under Sec. 14A of the Act. However, looking to the quantum of exempt income and investment made by the assessee it will be appropriate to restrict the disallowance out of administrative expenditure to the amount of Rs.3,00,000/- Therefore, appeal of the assessee is partly allowed.*

8.8 The facts of the case on hand are identical to the facts of the case as discussed above, therefore respectfully following the same, we restrict the disallowance under section 14-A read with rule 8D to the tune of Rs.3 Lacs only.

8.9 Hence the ground of appeal of the assessee is **partly allowed**.

9. The next issue raised by the assessee in the ground no.5 is that the Ld.CIT(A) erred in confirming the order of the AO by sustaining the disallowance made u/s.14A r.w. Rule 8D for Rs.10,25,016/- while computing book profit under the provision of section 115JB of the Act.

10.1 The AO in the year under consideration has made the disallowance under the provision of section 14A r.w.Rule 8D for an amount of Rs. 20,96,334/- while computing income under normal provision of the Act. However, the AO also added the same disallowance while working out the book profit under the MAT provision.

10.2 On appeal the Ld. CIT(A) partly confirmed the order of the AO.

11. Being aggrieved by the order of the Ld. CIT(A) the assessee is in appeal before us.

12. The Ld. AR before us submitted that there cannot be disallowance on the amount made under the provision of section 14A r.w. Rule 8D while computing book profit under the provision of section 115JB of the Act.

13. On the other hand Ld. DR vehemently supported the order of the Ld.CIT(A)

14. We have heard the rival contentions of both the parties and perused the materials available on record. The AO in the instant case has made the disallowance u/s 14A r.w.r. 8D of the Income Tax Rules for Rs.20,96,334/- while determining the income under normal computation of income. Further, the AO while determining the income under Minimum Alternate Tax (MAT) as per the provisions of section 115JB

of the Act, has added the disallowance made under the normal computation of Income under section 14A r.w.r. 8D of Income Tax Rule for Rs. 20,96,334/- in pursuance to the clause (f) of explanation 1 to section 115JB of the Act.

14.1 However, we note that in the recent judgment of Special Bench of Hon'ble Delhi Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd. reported in 82 Taxmann.com 415 has held that the disallowances made u/s 14A r.w.r. 8D cannot be the subject matter of disallowances while determining the net profit u/s 115JB of the Act. The relevant portion of the said order is reproduced below:

*"In view of above discussion, the computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to the computation as contemplated under section 14A, read with rule 8D of the Income-tax Rules, 1962."*

14.2 The ratio laid down by the Hon'ble Tribunal is squarely applicable to the facts of the case on hand. Thus it can be concluded that the disallowance made under section 14A r.w.r. 8D cannot be resorted while determining the expenses as mentioned under clause (f) to explanation 1 to section 115JB of the Act.

14.3 However, it is also clear that the disallowance needs to be made with respect to the exempted income in terms of the provisions of clause (f) to section 115JB of the Act while determining the book profit. In holding so, we draw support from the judgment of Hon'ble Calcutta High Court in the case of *CIT Vs. Jayshree Tea Industries Ltd.* in GO No.1501 of 2014 (ITAT No.47 of 2014) dated 19.11.14 wherein it was held that the disallowance regarding the exempted income needs to be made as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. The relevant extract of the judgment is reproduced below:-

*"We find computation of the amount of expenditure relatable to exempted income of the assessee must be made since the assessee has not claimed such expenditure to be Nil. Such computation must be made by applying clause (f) of Explanation 1 under section 115JB of the Act. We remand the matter for such computation to be made by the learned Tribunal."*

*We accept the submission of Mr. Khaitan, learned Senior Advocate that the provision of section 115JB in the matter of computation is a complete code in itself and resort need not and cannot be made to section 14A of the Act.”*

14.4 Given above, we hold that the disallowances made under the provisions of Sec. 14A r.w.r. 8D of the IT Rules, cannot be applied to the provision of Sec. 115JB of the Act as per the direction of the Hon'ble Calcutta High Court in the case of *CIT Vs. Jayshree Tea Industries Ltd.* (Supra).

14.5 Now the question arises to determine the disallowance as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. In this regard, we note that there is no mechanism/ manner given under the clause (f) to Explanation-1 of Sec. 115JB of the Act to workout/ determine the expenses with respect to the exempted income. Therefore in the given facts & circumstances, we feel that ad-hoc disallowance will serve the justice to the Revenue and assessee to avoid the multiplicity of the proceedings and unnecessary litigation. Thus we direct the AO to make the disallowance of 1% of the exempted income as discussed above under clause (f) to Explanation-1 of Sec. 115JB of the Act. We also feel to bring this fact on record that we have restored other cases involving identical issues to the file of AO for making the disallowance as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. But now we note that there is no mechanism provided under the clause (f) to Explanation-1 of Sec. 115JB of the Act to make the disallowance independently. Therefore our action for restoring back the issue to the file of AO would unnecessarily cause further litigation. Thus we limit the disallowance on an ad-hoc basis @ 1 % of the exempted income as per the

clause (f) to Explanation-1 of Sec. 115JB of the Act. Thus the ground of appeal of the assessee is partly allowed.

15. In the result, the appeal of the assessee is **partly allowed**.

**Order pronounced in the Court on 28/06/2021 at Ahmedabad.**

**Sd/-  
(RAJPAL YADAV)  
VICE PRESIDENT**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 28/06/2021  
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