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

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

ITA No.6892MUM/2019
(Assessment Year: 2016-17)

The DCIT, Central Circle-6(4), Room No. 1925, 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021	Vs.	M/s International Cargo Terminals & Infrastructure Private Limited, Unit No.801, Godrej Coliseum, C-Wing, Off Somaiya Hospital Road, Sion (East), Mumbai 400 022

PAN No. AAACU5182C

(Revenue)	**(Assessee)**

ITA No.6974MUM/2019
(Assessment Year: 2016-17)

M/s International Cargo Terminals & Infrastructure Private Limited, Unit No.801, Godrej Coliseum, C-Wing, Off Somaiya Hospital Road, Sion (East),Mumbai 400 022	Vs.	The DCIT, Central Circle-6(4), Room No. 1925, 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021

PAN No. AAACU5182C

(Assessee)	**(Revenue)**

Assessee by : Shri Y.P. Trivedi, A.R
Revenue by : Ms. Shreekala Pardeshi, D.R

Date of Hearing : 25/08/2021
Date of pronouncement : 07/09/2021

ORDER

PER RAVISH SOOD, J.M:

The present cross-appeals are directed against the order passed by the CIT(A)-54, Mumbai, dated 23.08.2019, which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 30.12.2018 for A.Y. 2016-17. The assessee has assailed the impugned order on the following grounds before us:

"1.(a) The learned Commissioner of Income-tax (Appeals) erred in law in upholding the action of the Assessing Officer in disallowing a sum to the extent of Rs.45,80,000/- under section 14A of the Income-tax Act, 1961 ("the Act") read with Rule 8D of the Income-tax Rules, 1962 ("the Rules").

(b) The learned Commissioner of Income-tax (Appeals) erred in holding that the share of profit received from a partnership concern is income exempt from tax for the purposes of computing the disallowance under section 14A of the Act read with Rule 8D(ii) of the Rules.

(c) The appellant submits that it has received a sum of Rs,45,8Q,GQO/- as share of profit from partnership concerns which retains the same character of income of the firm which is already subjected to tax and hence share of profit as such is not exempt from tax. Hence, the provisions of section I4A of the Act ought not to apply and no disallowance is called for.

2. The learned Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in disallowing a sum of Rs.1,00,000/- out of Rs.2,50,000/- disallowed by Assessing Officer under the head Staff Welfare expenses on the ground that they were not incurred wholly and exclusively for the business.

3. The learned Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in disallowing a sum of Rs. 25,000/- out of Rs. 50,000/- disallowed by Assessing Officer under the head Entertainment Expenses on the ground that they were not incurred wholly and exclusively for the business.

4. The learned Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in disallowing a sum of Rs. 50,000/- out of Rs.1,00,000/- disallowed by Assessing Officer tinder the head Miscellaneous Expenditure on the ground that they were not incurred wholly and exclusively for the business.

5. The appellant submits that the learned Assessing Officer be directed:

(i) to delete the disallowance under section 14A of the Act of a sum of Rs.45,80,000/-.

(ii) to delete the disallowance of staff welfare expenses of a sum of Rs1,00,000/-.

(iii) to delete the disallowance of entertainment expenses of a sum of Rs.25,000/-.

(iv) to delete the disallowance of miscellaneous expenses of a sum of Rs.50,000/-

and to modify the assessment in accordance with the provisions of the Act.

6. Each of the above grounds of appeal are independent and without prejudice to each other.

7. The Appellant craves leave to add to alter or modify any of the above grounds of Appeal."

On the other hand, the department has challenged the order passed by the CIT(A) on the following grounds before us:

"1. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was right in holding that the provisions of section 14A is not applicable where the assessee has not exempt income during the year and failing to appreciate that the provisions of section 14A clearly stipulates that expenditure incurred in relation to income "not includible in total income" has to be considered for computing the disallowance u/s. 14A?

2. Whether on the facts and in the circumstances of the case and in law. the Hon'ble ITAT was right in holding mat the provisions of section 14A will not be applicable when there is no exempt income earned by the assessee during the year failing to appreciate the clarification in Board's Circular No.5/2014 dated 11.02.2014 wherein it is clearly laid down that the expenses which arc relatable to earning of exempt income have to be considered for disallowance irrespective of the fact whether any such income has been earned during the Financial Year or not?

3. Whether on the facts and circumstances of the case and in law, the Hon'ble Tribunal was correct in not noticing CBDT Circular No.5/2014 when it is judicially acknowledged that CBDT Circulars constitute important clarifications of legislative intent?

4. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in giving a finding that disallowance u/s14A read with Rule 8D is not applicable to the instant case as there is no exempt income earned during the year which is contrary to the fact that during the year the assessee had earned share of profit of Rs.45,80,000/- from partnership firm which is claimed exempt u/s 10(2A) of the Income Tax Act, 1961.

5. On the facts and in the circumstances of the case and in law, the Id. CTT(A) has erred in restricting the disallowance u/s. 14A to the extent of exempt income of Rs.45,80,000/- as against the disallowance made by the Assessing Officer at Rs.2,42,74,978/- in accordance with the provisions of Rule 8D(2) of the Income-tax Rules, 1962,

6. On The facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in misplacing reliance upon the judgement of the Hon'ble Special Bench. ITAT, Mumbai in the case of ITO vs. Daga Global Chemical Private Limited - ITA

No.5592/Mum/2012 and Shri Sandeep Bharat Singh Kothari vs. ACIT - ITA No.8706/Mum/2011 as the facts and circumstances of that case are totally distinct from those of the instant case.

7. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating the fact that the A.O. in the case of State Bank of Patiala had himself restricted the disallowance to the extent of exempt income considering the facts and circumstances of that particular case.

The appellant prays that the order of Commissioner of Income Tax (Appeal) on the above ground be set aside and the order of the Deputy Commissioner of Income-tax, Central Circle 6(4), Mumbai, be restored. The appellant craves, leave to amend or alter any grounds or add a new ground, which may be necessary. Last date for filing second appeal is 12.11.2019."

2. Briefly stated, the assessee company had e-filed its return of income for A.Y. 2016-17 on 07.10.2016, declaring a total income of Rs.39,96,61,530/-. The return of income filed by the assessee company was initially processed as such u/s 143(1) of the Act. Subsequently, the case the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee despite having made substantial investments in exempt income yielding assets, had however disallowed only an amount of Rs. 4.6 lac under Sec. 14A of the Act. It was further noticed by the A.|O that the disallowance u/s 14A was not worked out as per the mechanism provided in Rule 8D. Accordingly, the A.O computed the disallowance u/s 14A r.w Rule 8D at an amount of Rs.2,42,74,948/-. Assessment was thereafter framed by the A.O vide his order passed u/s 143(3), dated 30.12.2018 and the income of the assessee company was assessed under the normal provisions at Rs.42,40,95,120/-, while for the 'book profit' u/s 115JB was determined at Rs.55,90,24,978/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Insofar the contentions of the assessee that no disallowance u/s 14A was called for in its hands, the same did not find favour with the CIT(A). At the same time, observing, that the assessee during the year under consideration had received an exempt income of Rs.45.80 lacs only, the CIT(A) directed the A.O to restrict

the disallowance to the extent of the aforesaid amount of exempt income. Accordingly, the CIT(A) partly allowed the appeal of the assessee company.

5. Both the assessee and the revenue being aggrieved with the order of the CIT(A) have carried the matter in appeal before us. At the very outset of the hearing of the appeal, it was submitted by the ld. Authorized Representative (for short 'A.R') for the assessee that as per instructions the grounds of appeal nos. 2 to 4 are not being pressed. In the backdrop of the aforesaid concession of the ld. A.R the **Grounds of appeal No. 2 to 4** are dismissed as not pressed.

6. Our indulgence in the present appeal has been sought by both the parties for adjudicating the sustainability of the view taken by the CIT(A) qua the disallowance worked out by the A.O u/s 14A r.w Rule 8D. On the one hand, it was, inter alia, the claim of the assessee that the CIT(A) has lost sight of the fact that as the share of profit of Rs.45.80 lacs received by the assessee from the partnership firm retained the character of the income of the firm that had already suffered taxes, therefore, the same could not have been held as income which was exempt from tax within the meaning of Sec.14A of the Act, while for on the other hand the revenue is aggrieved with the scaling down of the disallowance worked out by the A.O u/s 14A r.w rule 8D up to the amount of the exempt income that was received by the assessee during the year under consideration.

7. We have heard the ld. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, and also considered the judicial pronouncements relied upon by them in support of their respective contentions. As regards the claim of the ld. A.R that as the share of profit received by the assessee company from the partnership firm had already suffered taxes in the hands of the firm, therefore, the same could not be treated as an income which was exempt from tax within the meaning of Sec.14A of the Act, we are afraid that the same does not find favour with us. In this

regard, it would be relevant to point out that a principally similar contention was raised by the assessee before the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Company Ltd. Vs. Dy. CIT (2017) 394 ITR 449 (SC), which however was turned down by the Hon'ble Apex Court. In the said case, it was the claim of the assessee that as tax was already paid on the 'dividend', though by the payee company, therefore, Sec. 14A could not be triggered for disallowing the expenditure incurred to earn such dividend income, as such dividend income was really not tax free. Rejecting the aforesaid claim of the assessee, it was observed by the Hon'ble Apex Court that as a plain reading of Sec. 14A revealed beyond doubt that the expenditure incurred in earning the exempt income cannot be allowed as a deduction, therefore, now when under Sec.10(33) of the Act the dividend income was not to form part of the total income of the assessee, the expenditure incurred to earn such exempt income would be liable to be disallowed under Sec. 14A of the Act. For the sake of clarity, the observations of the Hon'ble Apex Court in its aforesaid order passed in the case of Godrej & Boyce Manufacturing Company Ltd. (supra) are reproduced as under:

> "24. The object behind the introduction of section 14A of the Act Finance Act of 2001 is clear and unambiguous. The Legislature inter check, the claim of allowance of expenditure incurred towards earning exempted income in a situation where an assessee has both exempted and non-exempted income or includible or non-includible income. While there can be no scintilla of doubt that if the income in question is taxable and, therefore, includible in the total income, the deduction of incurred in relation to such an income must be allowed, such deduction would not be permissible merely on the ground that the tax on the dividend received by the assessee has been paid by the dividend paying company and not by the recipient assessee, when under section 10(33) of the Act such income by way of dividend is not a part of the total income recipient assessee. A plain reading of section 14A would go to show that the income must not be includible in the total income of the assessee. Once the said condition is satisfied, the expenditure incurred in earning the said income cannot be allowed to be deducted. The section does not template a situation where even though the income is taxable in the hands of the dividend paying company the same to be treated as not includible in earn that income must be allowed on the basis that no tax on such income has been paid by the assessee. Such a meaning, if ascribed to section 14A, would be plainly beyond what the language of section 14A can be understood to reasonably convey."

Accordingly, on the basis of an analogy that can be drawn from the aforesaid judicial pronouncement, it can safely be concluded that on the same reasoning the expenditure incurred for earning of share of profit in a partnership firm, being exempt u/s 10(2A) of the Act, would be liable for disallowance u/s 14A of the Act. In fact, we find that a similar view had been taken by the 'Special bench' of the ITAT, Ahmedabad in the case of Shri Vishnu Anant Mahajan Vs. ACIT, ITA No. 3002/Ahd/2009, dated 25.05.2012. In its aforesaid order, it was observed by the Tribunal that the provisions of Sec. 14A applies to the share of profit earned by an assessee from the partnership firm. Also, the ITAT, Mumbai in the case of Minal Industries Ltd. Vs. DCIT, Mumbai, ITA No. 7419/Mum/2019, dated 31.07.2019 following the view taken by the 'Special bench' of the ITAT, Ahmedabad in the case of Shri. Vishnu Anant Mahajan (supra), had concluded, that the claim of the assessee that the provisions of Sec. 14A would not be applicable to the share of profit earned by the assessee from a partnership firm does not merit acceptance. Accordingly, in the backdrop of our aforesaid observations, we herein conclude that the claim of the ld. A.R that no disallowance u/s 14A could be made qua the profit earned by an assessee from a partnership concern cannot be accepted and is accordingly rejected. The **Ground of appeal No. 1(c)** is dismissed.

8. We shall now advert to the claim of the ld. A.R that the A.O without recoding his objective satisfaction had wrongly assumed jurisdiction and dislodged the disallowance of Rs.4,62,000/- that was on a suo motto basis offered by the assessee u/s 14A of the Act, and substituted the same by an amount of Rs.2,47,36,978/- that was mechanically worked out by him as per the procedure contemplated in Rule 8D of the Income-tax Rules, 1962. Rebutting the aforesaid claim, it was submitted by the ld. D.R that the A.O had categorically observed that as the assessee had not given details of the expenditure that were incurred for earning the exempt income, therefore, it was incorrect on the part of

the assessee's counsel to claim that no satisfaction was recorded by the A.O prior to dislodging the aforesaid claim of the assessee.

9. We have given a thoughtful consideration to the aforesaid issue and find substantial force in the claim of the ld. D.R. In our considered view, as the A.O had given cogent reason as to why the disallowance offered by the assessee u/s 14A was not to be accepted, therefore, we do not find any merit in the claim of the ld. A.R that there was a failure on the part of the A.O to record an objective satisfaction that as to why the disallowance offered by the assessee was not to be accepted. Accordingly, not finding favour with the aforesaid contention of the assessee, we reject the same.

10. We shall now take up the claim of the ld. A.R that the disallowance u/s 14A r.w.Rule 8D(2)(iii) was liable to be restricted only qua the investments that had yielded exempt income to the assessee during the year under consideration.

11. We have heard the rival contentions. After giving a thoughtful consideration to the aforesaid issue in hand, we concur with the contention advanced by the ld. A.R that the disallowance u/s 14A r.w Rule 8D(2)(iii) could only be made qua the investments which had yielded exempt income to the assessee during the year under consideration. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Madras in the case of CIT Vs. Shriram Ownership Trust [TCA 242 of 2018; dated 08.12.2020]; and the order of the 'Special bench' of the ITAT, Delhi in the case of ACIT Vs. Vireet Investments (2017) 82 taxman.com 415 (Del) (SB). It is the claim of the ld. A.R that in case if the disallowance u/s 14A r.w Rule 8D(2)(iii) is restricted qua the investments which had yielded exempt income to the assessee during the year under consideration, then, the same would be confined to an amount of Rs.1,89,250/- i.e after considering the 'average value' of the investments made by the assessee in the partnership firm, as under:

"0.5% of [Rs.7.56 crore (+) 0.01 crore]/ 2 = 0.5% of Rs.3.785 crores = Rs.1,89,250/-."

Although, we are principally in agreement with the aforesaid claim of the ld. A.R, however, the same cannot be accepted on the very face of it and would require to be factually verified by the A.O. Accordingly, we herein restore the matter to the file of the A.O for the purpose of verifying the veracity of the aforesaid quantification of the disallowance worked out by the assessee u/s 14A r.w Rule 8D i.e after considering the 'average value' of only those investments which had yielded exempt income to the assessee during the year under consideration. Accordingly, the aforesaid claim of the assessee is accepted in terms of our observations recorded hereinabove.

12. Although, we had accepted the claim of the ld. A.R that the disallowance u/s 14A r.w Rule 8D(2)(iii) is to be worked out after considering the 'average value' of the investments that had yielded exempt income during the year under consideration, however, for the sake of completeness we shall herein deal with the alternative contention of the assessee that the disallowance u/s 14A cannot exceed the amount of the exempt income that was received by the assessee during the year under consideration. As observed by us hereinabove, the CIT(A) being of the view that the disallowance u/s 14A cannot exceed the amount of the exempt income that was received by the assessee during the year under consideration, had thus, backed by his aforesaid conviction restricted the said disallowance to the extent of the exempt share of profit of Rs.45.80 lac that was received by the assessee from the partnership firm during the year in question. Insofar the aforesaid view taken by the CIT(A) is concerned, we are principally in agreement with the same. Our aforesaid view that the disallowance u/s 14A cannot exceed the amount of the exempt income received by the assessee during the year is fortified by the following judicial pronouncements:

(i) Joint Investments Vs. ACIT (2015) 372 ITR 694 (Del)

(ii) DCIT Vs. Craft Builders and Constructions (2019) 414 ITR 122 (Del) [SLP filed by the revenue was thereafter dismissed by the Hon'ble Supreme Court in 112 taxman.com 322 (SC)]

(iii) Nirved Traders Pvt. Ltd. Vs. DCIT [ITA 149 of 2017, dated 23.04.2019 (Bom)

(iv) M/s Holcim India Pvt. Ltd. Vs. CIT-IV (2015) 57 taxmann.com 28 (Delhi)

(v) CIT Vs. M/s Lakhani Marketing Inc.(2014) 226 Taxman 45 (P&H)

(vi) CIT Vs.Hero Cycle Ltd. (2010) 323 ITR 518 (P&H)

(vii) CIT Vs. Winsome Textiles Industries Ltd. (2009) 319 ITR 204 (P & H)

(viii) CIT Vs. Corrtech Energy (P) Ltd. (2014) 223 taxman.com 130 (Guj)

(ix) CIT Vs. Shivam Motors (P) Ltd. (2015) 230 Taxman 63 (All)

(x). Pr. Commissioner of Income-tax-10 Vs. HSBC Invest Direct (India) Ltd., ITA No. 1672 of 2016; dated 04.02.2019 (Bom)

Accordingly, in the backdrop of the aforesaid settled position of law, we find no infirmity in the view taken by the CIT(A) that the disallowance u/s 14A cannot exceed the amount of the exempt income received by the assessee during the year under consideration. The **Ground of appeal No. 1(a)** & **Ground of appeal No. 5(i)** are allowed in terms of our aforesaid observations.

13. The **Grounds of appeal No. 6 & 7** being general are dismissed as not pressed.

14. As the issue raised by the revenue in its appeal is confined to the dislodging of the disallowance worked out by the A.O as per the mechanism provided in Sec. 14A r.w Rule 8D, and scaling down of the same to the extent of the exempt income that was received by the assessee company during the year under consideration, we are of the considered view, that as we have deliberated at length qua the maintainability of the disallowance in the hands of the assessee and also the quantification of the aforesaid disallowance u/s 14A r.w Rule 8D, therefore, our view therein taken would deal with the aforesaid grievance of the

revenue. Accordingly, in terms of our aforesaid observations, the appeal filed by the revenue is dismissed.

15. Resultantly, the appeal filed by the assessee in ITA No. 6974/Mum/2019 is partly allowed while for that filed by the revenue in ITA No. 6892/Mum/2019 is dismissed.

Order pronounced in the open court on 07.09.2021

Sd/-	Sd/-
(S. Rifaur Rahman)	(Ravish Sood)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai;
Dated: 07.09.2021
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