

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No. 4948/MUM/2015
Assessment Year: 2011-12**

Royal Twinkle Star Club Pvt. Ltd., 317/318, Parvati Industrial Estate, Sun Mill Compound, Lower Parel (W), Mumbai - 400013 PAN: AAECR0618L	Vs.	The ACIT, Central Circle-2(4), (Erstwhile Central Circle – 14), Pratishtha Bhavan, 8 th Floor, Mumbai
(Appellant)		(Respondent)

Assessee by : Shri Hiro Rai (AR)

Revenue by : Shri Bharat Andhle (DR)

Date of Hearing : 15/09/2021
Date of Pronouncement: 29/09/2021

ORDER

PER SAKTIJIT DEY, JM

This is an appeal by the assessee against order dated 06.08.2015 of learned Commissioner of Income Tax (Appeals)-48, Mumbai for the assessment year 2011-12.

2. The dispute in the present appeal is confined to disallowance made Under section 14A of the Income Tax Act, 1961, r.w.r. 8D.

3. Briefly the facts are, in course of assessment proceedings, the assessing officer (AO) noticed that during the year the assessee had earned exempt income by way of dividend amounting to Rs. 26,10,738/-. Whereas, the assessee has not disallowed any expenditure attributable to such income.

Accordingly, the AO issued a show cause notice to the assessee requiring to explain why disallowance should not be computed in terms of rule 8D. Though, the assessee objected to the proposed disallowance, however, the AO proceeded to compute disallowance under rule 8D. In the process, he disallowed an amount of Rs. 3,58,421/- towards interest expenditure under rule 8D(2)(ii) and Rs. 2,77,421/- under rule 8D(2)(iii) towards administrative expenditure. Thus, the total disallowance worked out to Rs. 30,66,342/-. Though, the assessee contested the disallowance before learned Commissioner (Appeals), however, it was unsuccessful.

4. Before us, the submission of Shri Hiro Rai, learned counsel appearing for the assessee are two-fold. Firstly, the disallowance under section 14A r.w.r. 8D should be computed by considering only those investments which have yielded exempt income during the year and secondly, under no circumstances the disallowance can exceed the exempt income earned during the year. In support of such contention, learned counsel relied upon the following decisions:

1. *ACIT vs. Vireet Investment (P) Ltd. (2017) 165 ITD 27 ITAT (Delhi Tribunal Special Bench)*
2. *ACB India Ltd. vs. CIT (2015) 374 ITR 108 (Delhi)*
3. *PCIT VS. Ajit Ramakant Phatarpekar [2021 429 ITR 319 (Bombay)]*

5. Learned Departmental Representative strongly relied upon the observations of the AO and learned Commissioner (Appeals).

6. We have considered rival submissions in the light of decision relied upon and perused the materials on record. Undisputedly, in the year under

consideration the assessee had earned exempt income of Rs. 26,10,738/-. It is also a fact that the AO has disallowed an amount of Rs. 30,66,342/- under rule 8D. The dispute between the parties basically is with regard to the quantum of disallowance to be made. Having analyzed the ratio laid down in the decisions cited before us, we find substantial merit in the submissions of learned counsel for the assessee. Now, it is fairly well settled that while computing disallowance under rule 8D only those investments, which have yielded exempt income during the year can be considered. Therefore, we direct the AO to compute the disallowance under rule 8D by considering only those investments, which have yielded exempt income during the year. If upon such computation, the disallowance is found to be more than the exempt income earned during the year, then, such disallowance has to be restricted to the extent of the exempt income earned during the year. We further direct the AO to provide reasonable opportunity to the assessee to furnish the relevant details relating to the investment made and exempt income earned on them. The AO is directed to verify the details and thereafter compute the disallowance as directed. Grounds are partly allowed.

6. In the result, appeal is partly allowed as indicated above.

Order pronounced in the open court on 29th September, 2021.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 29/09/2021

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**