

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

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

**ITA No. 1764/MUM/2020  
Assessment Year: 2016-17**

Dy. Commissioner of Income Tax, Circle-2(1)(1), Room No. 561, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	<b>Vs.</b>	Centrum Capital Limited, 2 <sup>nd</sup> Floor, Bombay Mutual Building, Dr. D N Road, Fort, Mumbai - 400001 PAN: AAACC5099G
<b>(Appellant)</b>		<b>(Respondent)</b>

**CO No. 115/MUM/2020  
(Arising out of ITA No. 1764/MUM/2020)  
Assessment Year: 2016-17**

Centrum Capital Limited, 2 <sup>nd</sup> Floor, Bombay Mutual Building, Dr. D N Road, Fort, Mumbai - 400001 PAN: AAACC5099G	<b>Vs.</b>	Dy. Commissioner of Income Tax, Circle-2(1)(1), Room No. 561, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri R.K. Sahu (CIT DR)

Assessee by : Shri Ravikiran Pathak (AR)

Date of Hearing : 14/09/2021

Date of Pronouncement: 29/09/2021

**ORDER**

**PER SAKTIJIT DEY, JM**

Captioned appeal by the revenue and cross objection by the assessee arise out of order dated 07.02.2020 of learned Commissioner of Income Tax (Appeals)-4, Mumbai for the assessment year 2016-17.

2. Grounds raised by the revenue are set out as under:-

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the disallowance u/s 14A r.w.r. 8D should not exceed the exempt income without appreciating the Board’s Circular No. 5 of 2014 dated 11.02.2014, wherein it was clarified that disallowance u/s 14A is applicable even if there is no exempt income.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in relying on the decision of Hon’ble ITAT in the case of Future Corporate Resources Ltd. (in ITA No. 4658(Mum) 2015 dated 26.12.2017 without appreciating the fact that investments held in stock-in-trade and the income earned by way of dividend, which is exempt from tax u/s 10(34) of the Act and the applicability of section 14A for appropriation of expenses between taxable and non-taxable incomes and thereby restricting the disallowance to dividend income.”*
3. Whereas, cross objection of the assessee reads as under:-
  1. *Hon’ble Commissioner of Income Tax (Appeal)-4, Mumbai [hereinafter referred as CIT(A) ought to have restricted the disallowance u/s 14A of the Act at Rs. 44,250/- being exempt income earned by the assessee as against 22,82,187/-.*
4. As could be seen from the grounds raised both by the revenue as well as assessee, the issue is common and relates to disallowance made under section 14A of the Income Tax Act, 1961 r.w.r. 8D. Of course, vide letter dated 13.09.2021, the assessee has raised the following additional grounds to the cross objection:

*“1. The Commissioner of Income Tax (Appeal)-4, Mumbai [hereinafter referred as CIT(A)] ought to have restricted the disallowance u/s 14A of the Act at Rs. 54,625/- considering only those investments on which assessee has actually earned the exempt income as against disallowance of Rs. 5,04,585/- confirmed by the CIT(A).*

*2. In the alternative and without prejudice to the above, the CIT(A) ought to have restricted the disallowance u/s 14A of the Act at Rs.*

*1,74,750/- being exempt income earned by the assessee as against disallowance of Rs. 5,04,585/- confirmed by the CIT(A).*

*3. The CIT(A) ought to have allowed the deduction of education cess from business income of the assessee.”*

Since, the additional grounds can be decided without investigating into fresh facts, we admit them for adjudication.

5. Material facts relevant for dealing with issue relating to disallowance under section 14A of the Act r.w.r. 8D are, the assessee is a resident company and is engaged in the business of merchant banking, financial advisory services, syndication of finance, arranging credit facilities from banks and financial institutions and trading in PSU/SLU Bonds. In the year under consideration, the assessee had earned exempt income by way of dividend amounting to Rs.1,74,715/-. Suo motu, the assessee disallowed an amount of Rs. 5,04,585/- under section 14A r.w.r. 8D, being expenditure attributable to the exempt income. The assessing officer (AO) on verifying assessee's computation, however, was of the view that the disallowance made is not in accordance with rule 8D. Accordingly, he proceeded to compute disallowance under rule 8D at Rs. 10,23,42,493/-. The assessee having already disallowed an amount of Rs. 5,04,585/-, he made net disallowance of Rs. 10,18,37,908/-. Assessee contested the aforesaid disallowance before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and material on record and in the light of the decision cited before him, learned Commissioner (Appeals) granted substantial relief to the assessee by restricting the disallowance to the extent of suo motu disallowance made by the assessee.

6. The learned Counsel for the assessee submitted, learned Commissioner (Appeals) is unjustified in restricting the disallowance to Rs. 5,04,585/-, being the suo motu disallowance made by the assessee. instead of restricting it to the exempt income actually earned by the assessee. Further, he submitted, while deciding identical issue in assessee's own case in assessment year 2013-14 the Tribunal has restricted the disallowance to the exempt income earned during the year.

7. The learned Departmental Representative relied upon the observations of the AO.

8. We have considered rival submissions in the light of the decisions relied upon and perused the material on record. Short issue arising for consideration is, whether disallowance under section 14A r.w.r. 8D can exceed the exempt income during the year. Applying the legal principle set out in the decisions cited before us, it has to be held that disallowance under section 14A r.w.r. 8D cannot exceed the quantum of exempt income earned in a particular assessment year. In fact, in assessee's own case in assessment year 2013-14, the Tribunal in ITA No.497/Mum/2019 and CO No.12/Mum/2020 dated 05.10.2020 has also expressed identical view. Therefore, we direct the AO to restrict the disallowance under section 14A r.w.r. 8D to the amount of exempt income earned during the year under consideration.

9. There is one more surviving issue in assessee's cross objection relating to claim of deduction of education cess from the business income.

10. Having considered rival submissions, we find that the Hon'ble jurisdictional High Court in case of Sesa Goa Limited vs. DCIT (423 ITR 426

Bom) has held that education cess is an allowable deduction while computing profit and gains of business and profession. In view of the aforesaid decision of the Hon'ble jurisdictional High Court, we direct the AO to allow deduction of education cess while computing the business income of the assessee.

11. Resultantly, revenue's appeal is dismissed and assessee's cross objection is allowed as indicated above.

Order pronounced in the open court on 29<sup>th</sup> 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