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

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND**
**SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.1832/MUM/2020**
**(Assessment Year: 2016-17)**

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| Care Ratings Limited<br>4th Floor, Godrej<br>Coliseum, Somaiya<br>Hospital Road, Off<br>Eastern Express Highway,<br>Sion (East),<br>Mumbai – 400 022 | Vs. | Asst. Commissioner of<br>Income Tax-6(2)(1),<br>Aayakar Bhavan,<br>Maharishi Karve Road,<br>Mumbai – 400 020 |

**PAN No. AAACC4587F**

**(Assessee)** **(Revenue)**

Assessee by : Shri Tejas Sodha, A.R
Revenue by : Ms. Shreekala Pardeshi, D.R

Date of Hearing : 04/10/2021
Date of pronouncement : 08/10/2021

**ORDER**

**PER RAVISH SOOD, J.M:**

The present appeal filed by the assessee company is directed against the order passed by the CIT(A)-12, Mumbai, dated 27.02.2020, 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 21.12.2018 for A.Y. 2016-17. The assessee has assailed the impugned order on the following grounds before us:

"1. The learned Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in invoking the provisions of section 14A of the Income Tax Act, 1961 ("Act") and thereby making the disallowance of Rs.1,07,16,643/-.

1.1 The Learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the provisions of sec. 14A are not applicable in the case of the appellant as the expenditure incurred by him are wholly and exclusively incurred for the business and are nowhere related to the exempt income earned in any manner.

1.2 The learned Commissioner of Income Tax (Appeals) further erred in law and fact by not considering that the Assessing Officer has neither recorded any dissatisfaction with regard to correctness of appellant's claim of expenditure for earning exempt income nor shown any nexus between the expenditure and the exempt income. On the contrary, by merely observing that some expenditure is attributable to exempt income has straight away proceeded to compute disallowance under Section 14A by applying Rule 8D. We rely upon. M/S Fereshte Sethna V/s CIT (2017) 77 taxmann.com 156(Mumbai ITAT). , Pukhraj Chunilal Bafna VS DCIT (2014) 47 taxmann.com 288(Mumbai ITAT) & ACIT v/s Sachin R Tendulkar (2017) 77 taxmann.com 305 (Mumbai ITAT).

1.3 The learned Commissioner of Income Tax (Appeals) further erred in law and Fact by overlooking the Honorable Income tax Appellate Tribunal decision in respect of the Appellant' case for assessment year 2011-12 vide no. 478/MUM/2015 on 28/07/2017. In identical facts and circumstances the disallowance u/s 14A was deleted.

1.4 The learned Commissioner of Income Tax (Appeals) further overlooked Learned Assessing Officer under Section 14A r/w Rule 8D in appellant's own case for A.Y. 2010-11 was deleted by the learned erstwhile Commissioner of Income Tax (Appeals). Similarly, in assessment year 2012-2013 while completing assessment under section 143(3), The Assessing Officer has not disallowed any expenditure under Section 14A r/w Rule 8D, though the assessee has earned substantial dividend Income.

1.5 The appellant prays it be held that the provisions of section 14A are not applicable in the case of the appellant and consequently the disallowance of Rs. 1,07,16,643/- made by the AO be deleted.

2. The Appellant craves leave to add, amend, alter and / or withdraw the aforesaid ground of appeal."

2. Briefly stated, the assessee company which is engaged in activities auxiliary to financial intermediation except insurance and pension

funding had filed its return of income for A.Y 2016-17 on 30.11.2016, declaring an income of Rs.170,82,95,090/-. Thereafter, the return of income was revised on 30.03.2018 at an income of Rs. 170,31,78,560/-. Subsequently, the case of 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 though the assessee during the year under consideration had made investments in exempt income yielding securities, however, it had not attributed any expenses on a suo motto basis for earning of the exempt income u/s 14A of the Act. On being queried as to why the expenses pertaining to its exempt income may not be disallowed u/s 14A r.w. Rule 8D, it was submitted by the assessee that it was a debt free company and the investments made in the exempt income yielding bonds and debt mutual funds were sourced from the surplus generated from its business. Also, it was stated by the assessee that no part of the expenditure claimed as a deduction was incurred for earning of any exempt income from the aforementioned investments. Backed by its aforesaid claim, it was submitted by the assessee that no part of the expenditure incurred was required to be allocated towards earning of the tax free income. However, the aforesaid claim of the assessee did not find favor with the A.O. Observing, that investments decisions are very complex in nature and require substantial research, day-to-day analysis of market trends and decisions with regard to acquisition, retention and sale of shares at the most appropriate time etc., the A.O was of the view that the claim of the assessee that the dividend income was earned by incurring no or nominal expenditure could not be accepted. The A.O was of the view that as the assessee during the year had earned substantial exempt dividend income of Rs.3,24,96,099/-, therefore, its claim that it

had earned the same without incurring any expenditure, whatsoever, including management or administration expenses was beyond comprehension. Backed by his aforesaid observations, the A.O worked out the disallowance u/s 14A as per the mechanism provided in Rule 8D of the Income Tax Rules, 1963. Accordingly a disallowance u/s 14A r.w Rule 8D(2)(iii) of Rs.1,07,16,643/- was computed by the A.O. After, inter alia, making the aforesaid disallowance the A.O vide his order passed u/s 143(3), dated 21.12.2018 assessed the income of the assessee company at Rs.171,38,95,201/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) not finding favor with the contentions advanced by the assessee upheld the disallowance made by the A.O u/s 14A of the Act and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was submitted by the ld. Authorized Representative (for short 'A.R') for the assessee, that the A.O had without recording his satisfaction as to why the claim of the assessee that no part of the expenses could be attributed to earning of its exempt dividend income was not to be accepted, had however, in a mechanical manner worked out the disallowance u/s 14A r.w. Rule 8D. In order to drive home his aforesaid claim the ld. A.R took us through the observations of the A.O recorded in the assessment order. In sum and substance, it was the claim of the ld. A.R that as the A.O without recording his dissatisfaction as regards the claim of the assessee that no disallowance was called for u/s 14A of the Act, had thus exceeded his jurisdiction and worked out the disallowance by triggering the mechanism provided in Rule 8D of the Income Tax Rules 1962. Backed

by the aforesaid facts, it was submitted by the ld. A.R that as the A.O had wrongly assumed jurisdiction and worked out the disallowance u/s 14A r.w Rule 8D, therefore, the same cannot be sustained and was liable to be struck down on the said count itself. In order to support his aforesaid claim the ld. A.R had relied on a host of judicial pronouncements, as under:

i. Ms Fereshte Sethna V. ACIT [[2017] 162 ITD 412 (Mumbai – Trib.)]

ii. ACIT V. Iqbal M. Chagala [[2014] 52 taxmann.com 94 (Mumbai – Trib.)]

iii. ACIT V. Sachin Tendulkar [[2017] 77 taxmann.com 305 (Mumbai – Trib.)]

iv. Kodak India (P) Ltd. V. ACIT [[2013] 37 taxmann.com 233 (Mumbai – Trib.)]

v. Godrej & Boyce Mfg Co. Ld. Vs. DCIT [CIVIL APL No. 7020 of 2011 (SC)]

vi. REI Agro ltd. Vs. DCIT [IT Appeal Nos. 1331 & 1423 (Kol) Of 2011]

vii. Balarampue Chini Mills Ltd. V. DCIT [ITA No.504/Kol/2011)

viii. South India Bank Ltd. Vs. CIT [CIVIL APPEAL NO. 9606 OF 2011 (SC)]

ix. Pukhraj Chunilal Bafna V. DCIT [[2014] 47 taxmann.com 288 (Mumbai – Trib.)]

6. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the ld. D.R that as the A.O had duly recorded his satisfaction as to why the assessee's claim that no expenditure could be attributed towards earning of the exempt dividend income was not to be accepted, therefore, had validly assumed jurisdiction and worked out the disallowance as per mechanism provided in Rule 8D. The ld. D.R relied on the judgment of the Hon'ble Supreme Court in the case of Maxopp Investments ltd. Vs. CIT (2018) 402 ITR 640 (SC).

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, as well as considered the judicial pronouncements

that have been pressed into service by them to drive home their respective contentions. As observed by us hereinabove, the controversy involved in the present appeal hinges around the solitary issue i.e as to whether or not the A.O had validly assumed jurisdiction and worked out the disallowance u/s 14A r.w Rule 8D. It is the claim of the assessee before us that the A.O without recording his dissatisfaction as regards the claim of the assessee that no expenditure was incurred for earning of the exempt dividend income had in a mechanical manner dislodged the same and worked out the disallowance u/s 14A r.w. Rule 8D of Rs.1,07,16,643/-. As is discernible from the assessment order, the A.O on the basis of his general observations had dislodged the claim of the assessee that no expenditure was incurred for earning of the exempt dividend income and had worked out the disallowance u/s 14A r.w. Rule 8D, observing as under:

> "3.3 The aforesaid submission of the assessee is considered but the same is not found acceptable for the reason that investment decisions are very complex in nature. They require substantial market research, day-to-day analysis of market trends and decisions with regard to acquisition, retention and sale of shares at the most appropriate time. It is, therefore, not correct to say that dividend income can be earned by incurring no or nominal expenditure. The assessee earned amounting to Rs.3,24,96,099/- during the year as Dividend Income. It is difficult to accept that a company can earn dividend income without incurring any expenses whatsoever including management or administrative expenses as investment decisions are generally taken in the meetings of the Board of Directors for which administrative expenses are incurred. The term "expenditure" occurring in section 14A would take in its sweep not only direct expenditure but also all forms of expenditure regardless of whether they are fixed, variable, direct, indirect, administrative, managerial or financial. Sub-section (1) of section 14A provides in unequivocal terms for not allowing deduction in respect of expenditure incurred by the assessee in relation to exempt income and sub-section (2) lays down the mechanism for determining such amount of expenditure incurred in relation to exempt income in accordance with method as prescribed under rule 8D. The disallowance u/s. 14A shall be worked out as per Rule 8D wherein the method of working out the disallowance has been provided. Reliance in this regard is placed on the recent decision of

**Hon'ble Bombay High Court** in the case of **Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT & Anr.** reported in **234 CTR (Bom) 1 (2010).**

3.4 Further, reliance is also placed in the recent judgment of **Hon'ble Special Bench of ITAT, Delhi in the case of Cheminvest Ltd., Vs. ITO [(2009) 121 ITD 318 (Delhi)(SB)],** wherein it has been held that the disallowance u/s. 14A can be made even if no exempt income is actually earned or received during the year, from the investment. Therefore, the disallowance is to be worked out, even if there is no exempt income earned. Prior to Rule 8D, the apportionment of expenditure was at the discretion of Assessing Officer. But, now Rule 8D has prescribed a formula for calculation of disallowance u/s 14A and the same is binding in nature.

3.5 Further, reliance is also placed in the **circular No. 5/2014** where in the Central Board of Direct Taxes clarifies that even if there is no exempt income earned by the assessee in the year under consideration disallowance u/s 14A can be made."

8. Before adverting to the issue in question i.e as to whether or not the A.O had rightly assumed jurisdiction and dislodged the assessee's claim that no expenditure could be attributed for earning of the exempt dividend income, we think it apt to first cull out the position of law as regards the same. The **Hon'ble Supreme Court** in the case of **Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT & Anr. (2017) 394 ITR 449 (SC)** had, inter alia, held, that the A.O is obligated to mention the reasons while concluding that the claim of the assessee that no expenditure was incurred to earn the exempt dividend income was not to be accepted. It was observed by the Hon'ble Apex court that sub-section (2) and (3) of Sec. 14A of the Act r.w Rule 8D 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. It was further observed, that where such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the A.O, what the law postulates is the requirement of a satisfaction in the A.O 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. Backed by its aforesaid observations the Hon'ble Court had concluded that it was only after recording the requisite satisfaction that the provisions of Sec. 14A(2) and (3) r.w Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable. The Hon'ble Apex Court while concluding as hereinabove had held as under:

> "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.
>
> **38. In the present case, we do not find any mention of the reasons which had prevailed upon the Assessing Officer, while dealing with the Assessment Year 2002-2003, to hold that the claims of the Assessee <u>that no expenditure was incurred to earn the dividend income cannot be accepted</u> and why the orders of the Tribunal for the earlier Assessment Years were not acceptable to the Assessing Officer, particularly, in the absence of any new fact or change of circumstances.** Neither any basis has been disclosed establishing a reasonable nexus between the expenditure disallowed and the dividend income received. That any part of the borrowings of the assessee had been diverted to earn tax free income despite the availability of surplus or interest free funds available (Rs. 270.51 crores as on 1.4.2001 and Rs. 280.64 crores as on 31.3.2002) remains unproved by any material whatsoever. While It is true that the principle of *res judicata* would not apply to assessment proceedings under the Act, the need for consistency and certainty and existence of strong and compelling reasons for a departure from a settled position has to be spelt out which conspicuously is absent in the present case."

Also, the aforesaid view was once again reiterated by the Hon'ble Apex Court in the case of **Maxopp Investment Ltd. Vs. CIT (2018) 402 ITR**

**640 (SC)**. In its aforesaid order, it was, inter alia, observed by the Hon'ble Court that before taking recourse to the theory of apportionment and computing the disallowance under Sec. 14A(2) r.w. Rule 8D, the A.O remains under a statutory obligation to record his satisfaction that the suo-motto disallowance offered by the assessee under Sec. 14A was not correct. The Hon'ble Apex Court while concluding as hereinabove had observed as under:

> "41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, *suo moto* disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO."

As regards the nature of satisfaction that is required to be recorded by the A.O before taking recourse to the mechanism provided in Rule 8D of Income Tax Rules, 1962 for computing the disallowance u/s 14A of the Act, we find that the **Hon'ble High Court of Bombay** in its recent order in the case of **CIT Vs. Sociedade De Fomento Industrial Pvt. Ltd. (2020) 429 ITR 358 (Bom)**, had observed, that the A.O must give a clear finding with reference to the assessee's accounts as to how the other expenditure claimed by it in respect of its non-exempt income is related to its exempt income. It was observed by the Hon'ble High Court that the onus was on the revenue to establish that there is a proximate relationship between the expenditure and the exempt income. It was further observed that the application of Sec. 14A and Rule 8D is not automatic in each and every case where there is income not forming part of the assessee's total income. Also, it was categorically observed by the

Hon'ble High Court that the A.O is obligated to give a clear finding as to how the expenditure incurred by the assessee during the relevant year related to the income not forming part of its total income and, the same cannot be justified merely on the basis of surmises or conjectures. The observations of the Hon'ble High Court qua the aforesaid issue for the sake of clarity are being reproduced as under:

> "11. As the record reveals, the Assessee received dividend income of Rs.13,85,03,376/-. It was exempted under the IT Act. The Assessee claimed that he did not incur any expenditure to earn that dividend. It is said to have invested surplus funds through the bankers and other financial institutions. The mutual fund officials used to come to the Assessee's doorstep to fill up the forms and to do all other things necessary in that regard. The Assessee only issued the cheques. The AO disagreed. He reckoned that without devoting time and without analysing the nature of the investment, the Assessee could not have invested in the mutual funds. The AO took the view that section 14A clearly applied to the Assessee's case. The AO accordingly invoked Rule 8D and computed the disallowance at 0.5% of Rs. 381,67,09,7317-, the average investment. Then, he disallowed Rs.1,90,83,548/-. The Assessee appealed to the CIT(A). Indeed, the appellate authority confirmed the AO's disallowance. Of course, the Tribunal reversed it. Let us see whether the Tribunal's view is sustainable.
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> 12. Section 14A, inserted by the Finance Act 2001 with retrospective effect from 1 April 1962, aims to disallow expenditure incurred in relation to income which did not form part of the total income under the IT Act. This section has to be read with Rule 8D, which provides the method of calculation of disallowance. Section 14A statutorily recognises the principle that tax is leviable only on the net income. That is, the profits and gains of business or profession are taxed after deducting expenditure from income In that regard, there is no need for the Assessee to establish a one-to-one correlation between income and expenditure. The provision reads:
>
> Section 14A. Expenditure incurred in relation to income not includible in total income.—
>
> (1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.
>
> (2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act, in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts

of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.

13. Rule 8D of the Income Tax Rules provides the methods for determining the amount of expenditure in relation to income not includible in the total income. But this Rule comes into play once an expenditure falls within the mischief of section 14A of the IT Act. We need not elaborate on that Rule.

14. In Kanga & Palkhiwala: Law & Practice of Income Tax, (Lexis Nexis, New Delhi, 11 ed. Online edition), the learned revising author Arvind P. Datar has an interesting word about this 'inequitable and unfair[1] provision. According to Kanga & Palkhiwala, on a cursory reading, section 14A seeks to prevent a deduction that may result when income does not form part of the taxable income. But the expenditure incurred to earn that income is allowable as a deduction. However, this section and Rule 8D have been amended several times. Those amendments have resulted in highly unfair consequences for Assessees who earn dividend income. The object of exempting dividend income under section 10(34) and income from mutual funds under section 10(33) was to encourage investments in shares and promote savings.

15. Dividends are not taxed in the hands of the shareholder, but it would be incorrect and anomalous, according to the revising author, to state that dividends are a category of income which does not suffer any tax. The object of section 14A is to disallow expenditure on income which has not suffered tax. That said, under section 115-O, the dividend is taxed at the time of distribution at the prescribed rate. That means, tax is paid by the company irrespective of whether an Assessee has income below the taxable limit. Had the dividend been paid directly to him, it would not have suffered tax. There is no provision to file any form seeking an exemption or to claim a refund of the dividend distribution tax for such Assessees. So, to disallow the expenditure in the case of dividend is not correct, Ibid.

16. Section 14A refers to 'income which does not form part of total income under the Act'; it Joes not refer to 'income which does not form part of the total income in the hands of the sssessee[1]. Then, Kanga & Palkhiwala takes note of the latest amendment under the Finance Act, 2020: that

dividend distribution tax has been deleted, As long as the income is taxed, it should not attract section 14A, opines Kanga & Palkhiwala.

17. Recently, this Bench disposed of a batch of Tax Appeals in CIT, Goa v. M/s. Sociedade De Fomento Industrial Pvt. Ltd, (High Court of Bombay, at Goa**,** Judgment, dated 22 Dctober 2020). One of the substantial questions of law there was identical to the one before us. Rejecting the Revenue's contention, this Court has noted that the respondent invested certain funds in exempted categories such as mutual funds; it earned income. During the assessment year, income from such sources stood exempted under section 10(35) of the IT Act. The only issue was whether the respondent incurred any expenditure while earning that exempted income and whether it included that expenditure in the common indirect expenditure of its own. First, the appellant noted, rather guessed, that the respondent borrowed funds to invest and that there ought to be an interest element. But the respondent asserted that it utilised its surplus funds. This Court, then, found that there was no material for the appellant to conclude that the respondent borrowed the funds. Second, given the volume of investment, the respondent is said to have received charge-free services from the managers of the banks and other financial institutions with whom they have invested. So there is said to be no expenditure.

18. This Court rejected the appellant's contentions and affirmed the Tribunal's findings. Here, too, we face an identical problem, similar assertions and counter assertions, and the same result: the Tribunal reversed CIT(A)'s findings. Can our response be different here?

19. Here, on facts, the Tribunal noted that the AO only discussed the provisions of section 14A(I) but has not justified how the expenditure the Assessee incurred during the relevant year related to the income not forming part of its total income. The AO, according to the Tribunal, straightaway applied Rule 8D. Indeed, there must be a proximate relationship between the expenditure and the tax-exempt income. Only then would a disallowance have to be effected. This Court, we may note, on more than one occasion, has held that the onus is on the Revenue to establish that there is a proximate relationship between the expenditure and the exempt income. That is, the application of section I4A and rule 8D is not automatic in each and every case, where there is income not forming part of the total income. No doubt, the expenditure under section 14A includes both direct and indirect expenditure, but that expenditure must have a proximate relationship with the exempted income. Surmise or conjecture is no answer.

20. We may further reiterate that before rejecting the disallowance computed by the Assessee, the Assessing Officer must give a clear finding with reference to the Assessee's accounts as to how the other expenditure claimed by the Assessee out of the non-exempt income is related to the exempt income.

> 21. So, we see no valid reasons to upset the Tribunal's well- reasoned judgment on this substantial question of law."

In the backdrop of our aforesaid observations, we are of the considered view, that the issue that an A.O before taking recourse to the provisions of Sec. 14A(2) and (3) r.w Rule 8D of the Income Tax Rules 1962, is obligated to give a clear finding with reference to the assessee's accounts as to how the expenditure claimed by the assessee in respect of its non-exempt income were related to the exempt income; is no more res-integra pursuant to the aforesaid judgments of the Hon'ble Apex Court.

9. Now, we shall test the validity of the jurisdiction assumed by the A.O as regards the satisfaction recorded by him, if any, while rejecting the assessee's claim that no disallowance was called for u/s 14A of the Act; and substituting the same by a disallowance that was computed by him by triggering the mechanism provided in Rule 8D of the Income Tax Act, 1962. As observed by us hereinabove, it is a matter of fact borne from the record that the A.O had merely on the basis of his general observations, viz. that investment decisions are very complex in nature and require substantial market research, day-to-day analysis of market trends and decisions with regard to acquisition, retention and sale of shares at the most appropriate time etc., had dislodged the claim of the assessee that no part of the expenses claimed by him in respect of his other non-exempt income could be attributed or related to earning of the exempt dividend income. The failure on the part of the A.O to strictly comply with the aforesaid statutory obligation that was cast upon him, can safely be gathered from the fact that there is no clear finding by him with reference to the assessee's accounts as to how the other expenditure claimed by the assessee in respect of its non-exempt income were related to its exempt income. As observed by us hereinabove, a simpliciter

rejection by the A.O of the aforesaid claim of the assessee which is only backed by his general observations, surmises and conjectures can by no means justify the validity of the jurisdiction assumed by him for computing the disallowance u/s 14A r.w. Rule 8D(2)(iii) in the hands of the assessee. We, thus, not finding favor with the view taken by the CIT(A) who had upheld the validity of the jurisdiction assumed by the A.O for computing the disallowance of Rs.1,07,16,645/- u/s 14A r.w Rule 8D(2)(iii) set-aside his order. Accordingly, the disallowance of Rs.1,07,16,645/- made by the A.O u/s 14A r.w Rule 8D is vacated. The **Ground of appeal No. 1** is allowed in terms of our aforesaid observations.

10. The **Ground of appeal No. 2** being general is dismissed as not pressed.

11. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 08.10.2021

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| Sd/- | Sd/- |
| (Pramod Kumar) | (Ravish Sood) |
| VICE PRESIDENT | JUDICIAL MEMBER |

Mumbai;
Dated: 08.10.2021
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**