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

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

ITA No.2001/MUM/2020
(Assessment Year: 2016-17)

Nilkamal Limited 77/78, Nilkamal House, Road No. 13, MIDC, Andheri (East), Mumbai – 400 093	Vs.	ACIT, CC-1(2) Pratishtha Bhavan, Old CGO, Annexe, M.K. Marg, Mumbai – 400 020

PAN No. AAACN2329N

(Assessee) **(Revenue)**

Assessee by : Shri Vipul Joshi, A.R
Revenue by : Shri KPRR Murty, D.R

Date of Hearing : 06/10/2021
Date of pronouncement : 08/10/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-47, Mumbai, dated 08.10.2020, 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 25.12.2018. The assessee has assailed the impugned order on the following grounds before us:

"1(a) The learned Commissioner of Income Tax (Appeals) erred in confirming a disallowance of Rs. 12,79,310/- made by the Assessing Officer u/s 14A of the Income Tax Act, 1961 in the order framed u/s 143(3).

(b) The Appellant submits that on the facts and circumstances of the case, as well as in the law the said disallowance is illegal and unwarranted and therefore, ought to have been deleted by the learned Commissioner of Income Tax (Appeals).

2. The Appellant craves leave to add, alter, delete or modify all or any the above grounds at the time of hearing.

2. Briefly stated, the assessee company which is engaged in the business of manufacturing of plastic molded articles and related activities had e-filed its return of income for A.Y 2016-17 on 30.11.2016, declaring a total income of Rs.165,97,42,800/-. The return of income filed by the assessee company was processed as such u/s 143(1) of the Act. 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 company during the year under consideration had received exempt dividend income of Rs.98,10,000/-, however, it had not offered any suo motto disallowance u/s 14A of the Act. On being queried as to why the interest expenditure incurred by it may not be disallowed u/s 14A of the Act, it was submitted by the assessee that as it had sufficient non-interest bearing funds available with it throughout the year which were far much higher than the investments made in the exempt income yielding securities, therefore, no part of the interest expenditure claimed as deduction was liable to be disallowed. Also, it was submitted by the assessee that as it had not incurred any expenditure for earning exempt income, therefore, no disallowance u/s 14A was called for in its case. In order to buttress its aforesaid claim the assessee had drawn support from the assessment framed in its case for the last five years wherein no disallowance was made under Sec. 14A of the Act. However, the A.O not finding favor with the contentions advanced by the assessee rejected the same. Observing, that it would not be possible to earn dividend income or to make investments without incurring any expenditure, the A.O was of the view that the claim of the assessee that no indirect expenditure was incurred for earning of the exempt income did not merit acceptance. It was observed by the A.O that an assessee could not earn substantial dividend income without incurring any expenditure, whatsoever, including management or administrative expenses. In

order to drive home his aforesaid claim the A.O observed that as substantial market research, day to day analysis of market trends and decisions with regard to acquisition, sale of shares at the most appropriate time etc. were required to be carried out, therefore, deployment of substantial part of capital towards investment in shares and incurring of consequential interest expenditure as well as administrative expenses could not be ruled out. Backed by his aforesaid conviction, the A.O was of the view that the claim of the assessee that dividend income could be earned by incurring no or nominal expenditure did not merit acceptance. Observing, that the legislature had in its serious attempt to check any claim of deduction by an assessee of any expenditure incurred in relation to income which does not form part of his total income had inserted Sec. 14A with retrospective effect. It was observed by the A.O that the basic object of introduction of Sec. 14A was to disallow direct and indirect expenditure incurred by an assessee in relation to income which does not form part of its total income, irrespective of the fact that its business was composite or not. Adverting to the facts involved in the case of the assessee before him, it was observed by the A.O that the assessee had during the year under consideration invested in equity shares which had yielded exempt dividend income of Rs.98,10,000/-. Rejecting the assessee's claim that no expenditure could be attributed to earning of the aforesaid exempt dividend income, the A.O after referring to certain judicial pronouncements worked out the disallowance u/s 14A as per the mechanism provided in Rule 8D at an amount of Rs.12,79,310/-. After, inter alia, making the disallowance u/s 14A r.w Rule 8D the A.O vide his order passed u/s 143(3), dated 25.12.2018 assessed the income of the assessee company at Rs.167,03,54,630/- under the normal provisions while for its 'book profit' u/s 115JB was determined at Rs.156,29,08,721/-.

4. Aggrieved, the assessee assailed the order passed by the A.O u/s 143(3), dated 25.12.2018 before the CIT(A). Observing, that the A.O while completing

the assessment had worked out the disallowance in accordance with sub-clause (iii) of Rule 8D, the CIT(A) finding the same to be fair and reasonable upheld the disallowance made by the A.O.

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') that the assessee during the year under consideration was only in receipt of dividend income in respect of its shares which were purchased in the preceding years. Backed by the aforesaid fact, it was submitted by the ld. A.R that as no new investment was made during the year, therefore, no expenditure could be attributed for earning of the exempt dividend income. It was submitted by the ld. A.R that the dividend income was directly received in the assessee's bank account through electronic mode. It was submitted by the ld. A.R that though the assessee had categorically stated before the lower authorities that no disallowance u/s 14A was called for in its case, however, the latter without recording any satisfaction as to why the aforesaid claim of the assessee was not to be accepted, had summarily taken recourse to the mechanism provided in Rule 8D of the Income Tax Rule 1963 and worked out the disallowance u/s14A of the Act. In the backdrop of the aforesaid facts, it was submitted by the ld. A.R that the A.O without recording any dissatisfaction as regards the claim of the assessee that no part of the expenditure was liable to be disallowed in respect of its exempt dividend income, had thus, most wrongly assumed jurisdiction and worked out the disallowance u/s 14A of the Act.

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.

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 at Rs.12,79,310/-. On a careful perusal of the assessment order, we find, that 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:

> "4.2 The submission of the assessee has been considered but found not to be acceptable. As regards the component of direct cost attributable to the earning of dividend income, it is prudent fact that I would not be possible to earn such dividend income or to make investment without incurring some indirect expenditure. Though there is no specific employee or department carrying on the activity of earning dividend income, some expenditure would certainly have been incurred for earning such exempt income.
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> 4.3 It is difficult to accept the hypothesis that one can earn substantial dividend income without incurring any expenses, whatsoever, including management or administrative expenses. By the same logic, it is equally difficult to accept that the only expenses involved in earning the dividend income are of investment only. A company cannot earn dividend without its existence and management. 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. They require huge investment in shares and consequential blocking of funds. It is well known that capital has cost and that element of cost is represented by interest. Besides investment decisions are generally taken in the meetings of Board of Directors for which administrative expenses arc incurred. It is therefore, not correct to say that the dividend income can be earned by incurring no or nominal expenditure.

4.4 The insertion of section 14A with retrospective effect is the serious attempt on the par! of the parliament not to allow deduction in respect of any expenditure incurred by the assessee in relation to income which does not form part of the total income against the taxable income. In other words, section 14A clarifies that expenses incurred can be allowed only to the extent they are re la table to earning of taxable income, Therefore, the basic object of introduction of section 14A into the Act is to disallow the direct and indirect expenditure incurred in relation to income which does not form part of total income irrespective of the fact that business is composite or not.

4.5 Now coming to the facts of the instant case, the assessee has invested in equity shares whose income would be exempt. During the previous year relating lo (he assessment year, assessee has received dividend income of Rs.98,10,000/- which is claimed as exempt, however, as discussed in earlier paras of this order, since investment decisions are complex in nature and require incurring of direct and indirect expenditure, section 14A is applicable to the assessee. Therefore, assessee's plea that no disallowance needs to be made as to earn said income assessee had not incurred any direct or indirect expenses cannot be accepted.

4.6 The provision is very clear on this issue and does not require any interpretation. As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent is impermissible. This was held by Hon'ble Supreme Court in the case of **CIT vs Keshavji Ravji 183 ITR** 1(SC). Further reliance is placed on the decision of Apex Court in the cases **CIT** Vs **Sun Engg. Works 198 ITR** 297(SC) **and Distributors (Baroda) Pvt. Ltd Vs. CIT reported in** S3 **ITR** 377(SC). When the meaning of words in the provision is clear and unambiguous, the Court has to give effect to it whatever be the consequences, as the Court has not jurisdiction of mitigate harsh consequences, if any. This was held by Hon'ble Karnataka High Court **in** the case of **Patil Vijay Kumar vs Union of India & Anr 151 ITR 48(Kar). The** Hon'ble Supreme Court in the case **of IPCA Laboratories vs DCIT 266 ITR** 521 (SC) held that when no ambiguity is present in the provisions of the statute, the provisions cannot be interpreted to confer benefit on the assessee. Moreover, the decision of jurisdictional High Court in the case of **Godrej *&* Boyce** Mfg **Co Ltd vs DCIT** (234 **CTR 1),** is clearly applicable to the case of the assessee. Further reliance is placed on the decision in the case of **Daga Capital Mgmt Pvt. Ltd. vs DCIT** (2009) **312** ITR I (Spl. **Bench)** wherein the constitutional validity of subsection (2) and (3) of section 14A has been upheld.

4.7. In view of the above, the submission of the assessee that no expenditure has been incurred in relation to earning exempt income and the question of any disallowance does not arise cannot be accepted. Therefore, the disallowance u/s 14A r.w.r 8D is worked out as under:

"1. The amount of expenditure directly related to the tax free income = Nil

2. Interest which is not directly related to the exempt income = Nil

3. 0.5% of the average of the opening and closing balances of the investments on which dividend has been earned =

(2555.97 (lakh) + 2561.27 (lakh)] /[2] * 0.5% = Rs.12,79,310/-."

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 to earning of the exempt dividend income, we think it apt to first cull out the position of law pertaining to the said issue. 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 the 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 of 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.
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> **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, 1963 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 therein 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 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 1963, is statutorily 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 computed by him by triggering the mechanism provided in Rule 8D of the Income Tax Act, 1963. 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 it in respect of its other non-exempt income could be attributed 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 to the other expenditure claimed by the assessee in respect of its non-exempt income were related to the 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.12,79,310/- u/s 14A r.w Rule 8D(2)(iii) set-aside the same. Accordingly, the disallowance of Rs.12,79,310/- 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 of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 08.10.2021

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