

IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA No.4277/Mum/2019

(A.Y: 2013-14)

JM Financial And Investment Consultancy Services Pvt Ltd., 141, Maker Chambers III, Nariman Point, Mumbai – 400021.	Vs.	DCIT, Circle – 3(2)(1) Room No. 608, Aayakar Bhavan, MK Road, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACJ1237H		
Appellant	..	Respondent

Appellant by :	Dr. K Shivaram. AR
Respondent by :	Ms. Usha Gaikwad. DR

Date of Hearing	08.09.2021
Date of Pronouncement	16.09.2021

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)- 8, Mumbai passed u/s 143(3) and 250 of the Income Tax Act, 1961.

The assessee has raised the following grounds of appeal:

- 1) *The learned Commissioner of Income Tax (Appeals) - 8, Mumbai ICJT(A) erred on facts and in law in upholding the additional disallowance made by the AO u/s. 14A of Rs. 50,45,253/- without dealing with the contention of the appellant • that the Deputy Commissioner of Income Tax, Circle*

*3(2)(1), Mumbai (AO) had made the additional disallowance u/s. 141\ read with Rule 8) without recording a satisfaction as to why the disallowance made by the appellant u/s. 14A of Rs. 14,98,978/- could not be accepted.*

*2) The appellant prays that the additional disallowance u/s. 14A read with Rule 81) may be held to be without recording a proper satisfaction and accordingly the additional disallowance made by the AO of Rs. 50,45,253/- and confirmed by the CIT(A), may be deleted.*

*Disallowance made by the appellant should not be considered as direct expenses for earning exempt income - Rs. 12,69,629/-*

*3) Without prejudice to the above, the learned CIT (A) erred on facts and in law in not adjudicating or considering the alternative contention of the appellant that the disallowance u/s. 14A made by the appellant of Rs.12,69,629/- should not be considered to be the direct expenses incurred for earning the exempt income under Rule 81)(2)(i).*

*4) The appellant prays that as the appellant has considered both direct and indirect expenses u/s. 14A, the total disallowance of Rs. 12,69.629/- could not be considered as the direct expenses incurred for earning the exempt income.*

*Including value of investments which have not yielded any exempt income*

*5) Without prejudice to the above, the learned CIF(A) erred in holding that for the purpose of calculating the disallowance u/s. 14A read with Rule 81). even the investments which did not yield any exempt income had to be considered.*

*6) The appellant prays that the investments which did not yield any exempt income may be excluded while calculating the disallowance u/s. 14A read with Rule 8D.*

*Includin<sup>g</sup> strategic investments and investments in group concerns*

*7) Without prejudice, the learned CIT(A) erred in holding*

that strategic investments and investment in group concerns had to be included while computing the disallowance u/s. 14A read with Rule 81) without appreciating that hardly any time, effort or expenses are required for maintaining the said investments.

8) The appellant prays that strategic investments and investments in group concerns should be excluded while computing the average value of investments.

Without prejudice, not dealing with Ground F i.e. considering the value of investment at gross value without reducing the diminution in value of investments

9) Without prejudice to the above, the learned CIT(A) erred on facts and in law in not dealing with Ground F (i.e. 13 and 14) to the effect that the learned AO erred in computing the average value of investments by taking the gross value of investments as against the net value as appearing in the Balance Sheet of the appellant.

10) The appellant prays that the learned CIT(A) may be directed to deal with this ground i.e. whether while computing average value of investments, gross investments or net investments, should be taken.

B) General

11) The above Grounds of Appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above Grounds of Appeal.

2. The brief facts of the case are that assessee company is a non banking financial company (NBFC) and engaged in the business of investing and financing. The assessee has filed the return of income for the A.Y 2013-14 declaring a total income of Rs. 2,20,68,150/- as per Normal provisions of Income tax Act and Rs.

2,54,55,132/- as book profit u/s 115JB of the Act. Subsequently the case was selected for scrutiny under CASS and the A.O has issued notice u/s 143(2) and 142(1) of the Act along with questionnaire. In compliance the Ld. AR of the assessee appeared from time to time and furnished the details and the case was discussed. On perusal of the financial statements, the A.O found that the assessee company has received the dividend income and the income from long term capital Gains and claimed as exempt u/s 10(34) and 10(38) of the Act. Further, the A.O found in computation of income, the assessee has worked out disallowance u/s 14A of Rs. 14,98,978/-.The A.O. has issued show cause notice as disallowance u/sec14A of the Act is not satisfactory and the assessee has huge investments and received higher dividend income and was claimed exempted. The assessee has filed a letter on 19-01-2016 supporting the disallowance U/sec14A of the Act. But the A.O. was not satisfied with the calculations and observed that the disallowance is worked out estimating the employees benefit expenses and general administrative expenses. The assessing officer applied provisions of Rule 8D (2) and worked out disallowance u/sec14A r.w.r 8D(2)(i) &(iii) of IT Rules Rs 65,44,231/- and after set off of suo motto

disallowance of the Assesee, the disallowance is worked out to Rs.50,45,253/- and assessed the total income of Rs.2,71,13,400/- and passed the order u/s 143(3) of the Act dated 10-03-2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) considered the grounds of appeal, findings of the A.O and submissions of the assessee and has directed the A.O. to recompute the disallowance with certain directions and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld.AR of the assessee submitted that the CIT(A) has erred in overlooking the valid facts and reasoning where the assessee has been following the system of consistency from earlier years in respect of disallowance. Further, the A.O has not made any satisfaction note in respect of the disallowance and supported the submissions relying on the order of the Hon'ble Tribunal in assessee's own case for earlier A.Y 2012-13, and prayed for allowing the appeal.

5. Contra, the Ld.DR supported the order of the CIT(A) and further submitted that the A.O has recorded the

satisfaction. Hence the Ld.AR submissions on the issue of satisfaction note is devoid of merits.

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue is with respect to disallowance made by the A.O applying the provisions of Sec. 14A r.w.r 8(D)(2)(iii). The A.O has made the addition considering the investments in the financial statements. The submissions of the Ld.AR are that the satisfaction note on disallowance is not reflected on record but the A.O. has computed the disallowance. Further the Ld. AR submitted that the assessee has been following the consistent methodology which has been adopted from the earlier years and on the similar disallowance for the A.Y 2012-13 where the A.O order was confirmed by the CIT(A), the Hon'ble Tribunal in assessee's own case for the A.Y 2012-13 in ITA No. 5454/Mum2018 dated 25-6-2021 has deleted the addition and observed at Para 9 to 11 of the order, which is read as under:

*“9. We have heard the rival submissions, perused the orders of the authorities below and the decisions relied on. It is not in dispute that the assessee has furnished working for suomoto*

*disallowance of expenses u/s. 14A r.w. Rule 8D of I.T. Rules. This fact was also recorded by the Assessing Officer in the Assessment Order. On a perusal of the Assessment Order we find that Assessing Officer has not recorded any satisfaction as to why this break up of suomoto disallowance of expenses of ₹.19,20,394/- made by the assessee is not satisfactory except stating that assessee is unable to establish beyond doubt the demarcation between the expenses incurred in the course of the business and those incurred for earning exempt income to the satisfaction of the Assessing Officer. The Assessing Officer has not gone into the breakup of expenses submitted by the assessee and has not recorded as to why it is not satisfactorily explained by the assessee the said expenditure incurred is insufficient for earning exempt income.*

*10. In the case of Godrej & Boyce Mfg., Co. Ltd., v. CIT (supra) the Hon'ble Bombay High Court held as under: -*

*“.....What merits emphasis is that the jurisdiction of the Assessing Officer to determine the expenditure incurred in relation to such income which does not form part of the total income, in accordance with the prescribed method, arises if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of the expenditure which the assessee claims to have incurred in relation to income which does not part of the total income. Moreover, the satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the assessee. Hence, Sub section (2) does not ipso facto enable the Assessing Officer to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income is correct. The Assessing Officer must, in the first instance, determine whether the claim of the assessee in that regard is correct and the determination must be made having regard to the VBC 32 ITXA626.10 accounts of the assessee. The satisfaction of the Assessing Officer must be arrived at on an objective basis. It is only when the Assessing Officer is not satisfied with the*

*claim of the assessee, that the legislature directs him to follow the method that may be prescribed. In a situation where the accounts of the assessee furnish an objective basis for the Assessing Officer to arrive at a satisfaction in regard to the correctness of the claim of the assessee of the expenditure which has been incurred in relation to income which does not form part of the total income, there would be no warrant for taking recourse to the method prescribed by the rules. For, it is only in the event of the Assessing Officer not being so satisfied that recourse to the prescribed method is mandated by law.....”*

*11. Further, identical issue came up before Hon'ble Bombay High Court in the case of Pr.CIT v. Bombay Stock Exchange Ltd., (supra), and the Hon'ble Bombay High Court considering the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd., v. CIT [402 ITR 640] held as under: -*

*11. Non-satisfaction with the disallowance offered by the assessee has to be arrived at on the basis of the accounts submitted by the assessee. In this case, the Assessing Officer had not carried out the aforesaid exercise but rejected the disallowance claimed by the assessee only on the ground that it was not in accordance with Rule 8D of the Rules. The application of Rule 8D of the Rules would only arise once the Assessing Officer is not satisfied on an objective criteria in the context of its accounts, that suo motu disallowance claimed by the assessee is not proper.*

*12. In fact, the Supreme Court in the case of Maxopp Investment Ltd. v. Commissioner of Income Tax 2 while upholding the view of the Delhi High Court has held that the Assessing Officer needs to record his non-satisfaction having regard to the suo motu disallowances claimed by the assessee in the context of its accounts. It is only thereafter, the occasion to apply rule 8D of the Rules for apportionment of expenses can arise.*

*13. In the present facts, the Tribunal has correctly come to the conclusion that non-satisfaction as recorded by the Assessing*

*Officer for rejecting the sou motu disallowances claimed by the assessee is not done as required under section 14A(2) of the Act. On facts, the view taken by the Tribunal is a possible view and calls for no interference.*

*14. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.*

*15. Accordingly, appeal is dismissed.””*

7. When the question was raised to Ld.DR on the identical facts in comparison to earlier assessment year, the Ld.DR has fairly accepted. Accordingly, we respectfully follow the judicial precedence and set aside the order of the CIT(A) and direct the Assessing officer to delete the disallowance and allow the grounds of appeal in favour of the assessee.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 16.09.2021.

Sd/-  
(MANOJ KUMAR AGGARWAL)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 16.09.2021

KRK, PS

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai