

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
and  
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**ITA No.1965/Del./2018  
(ASSESSMENT YEAR : 2014-15)**

Sun Vacuum Formers Pvt. Ltd.,  
A – 47, LGF, Hauz Khas,  
New Delhi.

vs. ACIT, Central Circle 6,  
New Delhi.

**(PAN : AABCS3431P)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Apoorva Bhardwaj, CA  
REVENUE BY : Shri Kumar Pranav, Senior DR

Date of Hearing : 23.11.2021  
Date of Order : 24.01.2022

**ORDER**

**PER AMIT SHUKLA, JM :**

Aforesaid appeal has been filed by the assessee against the impugned order dated 17.01.2018, passed by the ld. CIT (Appeals)-24, New Delhi for the quantum of assessment passed under section 143(3) of the Income-tax Act, 1961 (for short 'the Act') for the assessment year 2014-15.

2. In various grounds of appeal, the assessee has challenged the disallowance of Rs.4,54,538/- as confirmed by the Ld. CIT(A) u/s 14A read with Rule 8D.

3. The facts in brief are that the assessee company is engaged in the activity of manufacturing of various plastic automobile components mainly for Maruti Suzuki Ltd. Assessing Officer noted that the assessee has shown dividend income of Rs.40,24,170/-, and for the purpose of disallowance u/s 14A, assessee had suo moto made disallowance of Rs.9,94,117/-. Assessee has also provided the details of working before the AO as required by him. On examination of details, AO noted that, neither investment nor the value of investment as shown in the balance sheet matched with the corresponding figure shown in the computation sheet of said disallowance. Again in response to the show-cause notice as to why disallowance under Rule 8D be not made, the assessee stated that it has not incurred any expenditure which can be directly said to be related to earning of any exempt income. Thereafter, AO proceeded to make disallowance u/s 14A at Rs.19,52,949/- and after reducing the amount disallowed by the assessee itself, the final disallowance was computed at Rs.9,58,832/-.

4. Ld. CIT (A) insofar as disallowance of Rule 8D (2) had reduced the interest from Rs.7,86,148/- made by the AO to Rs.2,81,854/- and insofar as disallowance u/s Rule 8D(2)(iii) is concerned, he confirmed the disallowance of Rs.11,66,801/- as made by the AO.

5. Now, the net addition challenged before us is the difference between disallowance suo motu made by the assessee; as per the AO and ld. CIT (A) is as under :-

<b>Relevant Clause u/R 8D</b>	<b>As per assessee</b>	<b>As per Ld. AO</b>	<b>As per ld. CIT(A)</b>	<b>Net alleged addition before the Hon'ble ITAT</b>

<b>(i)</b>	-	-	-	-
<b>(ii)</b>	<b>1,93,418</b>	<b>7,86,148</b>	<b>2,81,854</b>	<b>88,436</b>
<b>(iii)</b>	<b>8,00,699</b>	<b>11,66,801</b>	<b>11,66,801</b>	<b>3,66,102</b>
<b>Total</b>	<b>9,94,117</b>	<b>19,52,949</b>	<b>14,48,655</b>	<b>4,54,438</b>

6. Before us, Id. counsel has filed a comparative detail showing disallowance u/s 14A and the computational aspect by the assessee vis-à-vis AO as well as Id. CIT(A) which was for the sake of ready reference is reproduced as under :-

S. No.	Particulars	Amount in Rs.					
		As per Assessee		As per Ld. AO		As sustained by Ld. CIT(A)	
		Sub-Amount	Amount	Sub-Amount	Amount	Sub-Amount	Amount
1	Expenses Directly related to Earning of Exempt Income						
2	Allocated Interest Expenditure						
	Interest Expenditure (A)	13,03,715		36,36,323		13,03,715	
	Average Value of Investment (B)	16,01,39,709		23,33,60,218		23,33,60,218	
	Average Value of Assets (C)	1,07,94,05,905		1,07,94,05,905		1,07,94,05,905	
	(A)*(B)/(C)		1,93,418		7,86,148		2,81,854
3	0.5% of Average Value of Investment [0.5% of B]		8,00,699		11,66,801		11,66,801
			<b>9,94,117</b>		<b>19,52,949</b>		<b>14,48,655</b>
A	<b>Interest Expenditure</b>						
	Interest on Cash Credit	13,03,715		36,36,323		13,03,715	
B	<b>Average Value of Investment</b>	As on 31-03-2014	As on 31-03-2013	As on 31-03-2014	As on 31-03-2013	As on 31-03-2014	As on 31-03-2013
	Investment in Mutual Funds	20,30,77,973	10,63,13,161	20,30,77,973	10,63,13,161	20,30,77,973	10,63,13,161
	Investment in Shares - Other than subsidiaries	1,47,500	1,47,500	1,47,500	1,47,500	1,47,500	1,47,500
	Investment in Bonds	25,00,000	25,00,000	25,00,000	25,00,000	25,00,000	25,00,000
	Investment in Debenture	28,37,000	28,37,000	28,37,000	28,37,000	28,37,000	28,37,000
	Investment in Subsidiaries & Joint Ventures	-	-	7,31,70,514	7,32,70,504	7,31,70,514	7,32,70,504
	Less: Provision for diminution in value of investment	(80,717)	-	(80,717)	-	(80,717)	-
	Investments - Generating Tax Free Income	20,84,81,756	11,17,97,661	28,16,52,270	18,50,68,165	28,16,52,270	18,50,68,165
	Average Value of Investment - (B)	16,01,39,709		23,33,60,218		23,33,60,218	
C	<b>Average Value of Assets</b>	As on 31-03-2014	As on 31-03-2013	As on 31-03-2014	As on 31-03-2013	As on 31-03-2014	As on 31-03-2013
	Total of Asset side of Balance Sheet	1,11,23,40,022	1,04,64,71,788	1,11,23,40,022	1,04,64,71,788	1,11,23,40,022	1,04,64,71,788
	Average Value of Assets - (C)	1,07,94,05,905		1,07,94,05,905		1,07,94,05,905	

7. Ld. Counsel submitted that the only dispute is with regard to calculation of average value of investment, because as per the assessee not all the investments as appearing in the balance sheet generated exempt income during the year under consideration. For which, he has given following details :-

<b>Particulars</b>	<b>Amount as on 31.03.2014</b>	<b>Amount as on 31.03.2013</b>	<b>Average Investment</b>
<b>Total Investments (as considered by ld. CIT(A))</b>	<b>28,16,52,270</b>	<b>18,50,68,165</b>	<b>23,33,60,218</b>
<b>Investments considered by the Appellant while computing suo-moto disallowance</b>	<b>20,84,81,756</b>	<b>11,17,97,661</b>	<b>16,01,39,709</b>

8. He pointed out that it was from average investment of Rs.8,96,96,668/- which has generated tax free income which is as under :-

<b>Particulars</b>	<b>Amount as on 31.03.2014</b>	<b>Amount as on 31.03.2013</b>	<b>Average Investment</b>
<b>Investments from which tax free income generated</b>	<b>6,20,81,153</b>	<b>11,73,12,183</b>	<b>8,96,96,668</b>

9. He further pointed out that in assessee's own case for the immediately preceding year for AY 2013-14, ld. CIT (A) held that only such investments are to be considered which has yielded tax free income during the year. Thus, if average value of investment is considered as Rs.8,96,96,668/- then the calculation under Rule 8D be worked out to Rs.5,56,820/-. The working of which was given was under :-

<b>S.No.</b>	<b>Particulars</b>	<b>Sub-Amount</b>	<b>Amount (Rs)</b>
<b>1</b>	<b>Expenses Directly related to earning of exempt income</b>		
<b>2</b>	<b>Allocated interest Expenditure</b>		
	<b>Interest Expenditure (A)</b>	<b>13,03,715</b>	
	<b>Average Value of Investment (B)</b>	<b>8,96,96,668</b>	
	<b>Average value of assets (C)</b>	<b>1,07,94,05,905</b>	
	<b>(A)*(B)/(C)</b>		<b>1,08,336</b>
<b>3.</b>	<b>0.5% of average value of investment (0.5% of B)</b>		<b>4,48,483</b>
	<b>Total disallowance</b>		<b>5,56,820</b>

10. Thus, he submitted that the assessee itself has disallowed more at Rs.9,94,117/- which is higher than what is required under the law i.e. Rs.5,56,820/-, therefore, no further addition is required.

11. Alternatively, Ld. Counsel submitted that addition on account of interest cannot be made as assessee had huge surplus interest free funds in the form of share capital and reserves which was in the amount of Rs.93,43,93,371/- as on 31.03.2014, whereas investment considered by the AO/ld. CIT(A) is Rs.18,50,68,165/-. Thus, disallowance of interest could not be made. On this aspect, it has been appreciated by the Tribunal in the **assessee's own case in ITA No.1135/Del/2016 for AY 2012-13**.

12. On the other hand, ld. DR strongly relied upon the order of AO and ld. CIT (A).

13. After considering the aforesaid submissions and on perusal of the material placed on record, we find that it is undisputed fact that assessee had exempt income of Rs.1,18,64,642/- against which assessee had made suo motu disallowance of Rs.9,94,117. Disallowance made by the AO has been computed at Rs.19,52,949/- under Rule 8D which has been restricted to Rs.14,48,655/- by the ld. CIT (A) resulting into net addition of Rs.4,54,538/-. First of all, insofar as disallowance of interest under Rule 8D(2)(ii), we agree with the contentions of the ld. counsel for the assessee, which is also evident from the balance sheet that assessee had interest free funds of approximately Rs.93.40 crores, whereas the investment considered by the AO for the purpose of disallowance was Rs.18.50 crores. Under these circumstances, no disallowance could have been made. This aspect has also been decided in favour of the assessee on this very

issue by the Tribunal in **assessee's own case for AY 2012-13** (supra). Apart from that, as demonstrated by the ld. counsel before us, if only those investments are considered for computing the average value of investment under clause (iii) of Rule 8D(2) during the relevant year, then average investment comes down to Rs.8,96,96,668/-as compared to total investment considered by the ld. CIT (A) at Rs.28,16,52,270/-. Now, it is well settled by the **Hon'ble jurisdictional High Court in the case of ACB India Ltd. vs. ACIT (2015) 374 ITR 108** which has been followed in catena of decisions that only those investments are to be considered for the purpose of computing the disallowance of average value of investment for the purpose of disallowance under Rule 8D which have exempt income during the year. If that principle is adopted here then disallowance will work out to Rs.5,56,820/- as demonstrated in the foregoing paragraphs. Thus, on these facts and circumstances, there is no scope of any disallowance under Rule 8D over and above the disallowance offered by the assessee and accordingly, the addition/disallowance made under Rule 8D as sustained by the ld. CIT (A) is deleted.

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

**Order was pronounced in open court on 24<sup>th</sup> day of January, 2022.**

**Sd/-**  
**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

**sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Dated: 24.01. 2022**

**TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT

- 4.CIT(A-24, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.