

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.104/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2006-07)

DCIT, CC-8(1) Room No.656, 6 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	M/s. Raymond Ltd. New Hind House, Norottam Morarji Marg, Ballard Estate, Mumbai-400001.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACR4896A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Raghuveer Madana	
Assessee by:	Shri Anuj Kisnadwala	

सुनवाई की तारीख / Date of Hearing: 18/11/2021
घोषणा की तारीख /Date of Pronouncement: 05/01/2022

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 10.11.2020 passed by the Commissioner of Income Tax (Appeals) -50 Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2006-07.

2. The revenue has raised the following grounds: -

“1. “Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the addition made u/s 14A not considering 10% of the exempt income and restricting to 2% of the exempt income?”

2. “Whether on the facts and circumstances of the case and in law, the Ld. CITA) is correct in treating the disallowance of 10% of the exempt



income u/s 14A as unreasonable when the expenses to earn exempt income cannot be separated from the expenditure done for earning taxable income.”

3. “On the facts and circumstance of the case and law, the Ld. CIT(A) erred in restricting the disallowance @ 2% of the exempt income when there was no reasonable basis defined anywhere pre rule 8D.”

4. The appellant craves leave to amend or alter any ground and/or add new grounds which may be necessary.”

3. The brief facts of the case are that the assessee filed its return of income on 28.10.2006 declaring total income to the tune of Rs.90,95,43,921/-. The assessment u/s 143(3) was completed on 23.12.2008 determining total income to the tune of Rs.1,04,55,632/-. Subsequently, on account of search and seizure action, the order u/s 153A r.w.s. 143(3) was passed on 31.03.2014 and the total income of the assessee was determined at Rs.1,08,53,06,632/- by virtue of order dated 28.10.2015. The assessee travelled upto Hon’ble ITAT and the appeal of the assessee was allowed for statistical purposes by the Hon’ble ITAT in which the Hon’ble ITAT has directed the AO to determine the disallowance u/s 14A r.w. Rule 8D on the basis of decision of the Hon’ble High Court in the case of Godrej & Boyce Ltd. Mfg. Co. The AO determined the expenditure to earn the exempt income of Rs.2,95,86,742/- which was 10% of the dividend income of Rs.29,58,67,429/- from share and mutual fund. The total income of the assessee was assessed to the tune of Rs.1,04,07,27,036/- . Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted he addition to the extent of 2% of the share and divided income of



Rs.29,58,67,429/- but the revenue was not satisfied, therefore, revenue has filed the present appeal before us.

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4. All the issues are in connection with the restriction the addition to the extent of Rs.2% of the share and dividend income i.e. 29,58,67,429/-. The Ld. Representative of the revenue has argued that the CIT(A) has wrongly reduced the expenditure to earn the exempt income in view of the provisions u/s 14A r.w. Rule 8D, therefore, the finding of the CIT(A) is not justifiable, hence, liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has refuted the said contention. Before going further, we deem it necessary to advert the finding of the CIT(A) on record:

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“9.0 I have considered the facts of the case, submissions of the appellant, the observations of the AO contained in the assessment order and the other materials on record on this issue.

9.1 The appellant is engaged in the business of manufacturing and sale of ready-made garments. The above grounds are against the disallowance u/s.14A r.w.r. 8D amounting to Rs.2,95,8,742/- made by the AO in the assessment order. The facts are that during the year under consideration, the Appellant has earned Rs.29,58,67,429/- as exempted income from various vestments during the year. The Appellant has made a suo-motu disallowance Rs.86.28 lacs in the return of income.

9.2 The ld. AO has noted in the assessment order that in the given facts of the case disallowance @10% is reasonable. However, he has



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not discussed any reason why he considered the disallowance at the rate of 10% as reasonable.

9.3 It is a fact that the Assessment Year under consideration is 2006-07, which is outside the scope of provisions of Rule 8D of the Income-tax Rules. The said provisions cannot be treated as applicable to the A.Y.2006-07 when the same is precluded by the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT, reported in (2010) 328 ITR 81(Bom). The Hon'ble Bombay High Court also in the case of CIT vs. M/s. Godrej Agrovet Ltd vide Income Tax Appeal No. 934 of 2011, dated 8.1.2013, has held that percentage of the exempt income can constitute a reasonable estimate for making disallowance in the years earlier to the assessment year 2008-09. The relevant portion of the said judgment of the Hon'ble High Court (supra) reads as under:

“4. So far as question (b) is concerned, the Tribunal in its impugned order dated 17.9.2010 while applying the decision of this court in the matter of Godrej(supra) has disallowed the expenditure only to the extent of 2% of the total exempt income earned by the respondent assessee on the basis its order dated 27.2.2009 for the assessment year 2002-2003 and order dated 10.9.2009 for the Assessment Years 2003-2004 and 2004-2005 wherein disallowance was restricted to 2% of the exempt income. Further; the Tribunal has remanded the matter to the AO to verify the disallowance claimed and restrict the disallowance only to the extent to 2% of the total exempt income. We find no fault with the order of the Tribunal.”

9.4 I find that the similar issue has arisen for adjudication before my ld. Predecessor CIT(A)-50, Mumbai in the case of appellant's own group company i.e. M/s. Colorplus Fashions Ltd for the A.Y. 2004-05



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& 2005-06, wherein the Ld. CIT(A) deleted the disallowance made under section 14A by invoking Rule 8D by placing reliance on the order of Hon'ble Supreme Court in the case of CIT vs. Essar Teleholdings Limited [401 ITR 445], wherein the Apex Court dismissed the appeal of the Revenue by holding that n be applied only from A.Y. 2008-09 and not retrospectively. The findings of predecessor CIT(A)-50 for A.Y. 2004-05 & 2005-06, vide order dated 28.08.2019 is as under:-

“13.2. The Hon'ble Courts have ruled that Rule 8D can be applied only from A.Y. 2008-09 and not retrospectively. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of CIT vs. Essar Teleholdings Limited [401 ITR 445], wherein the Apex Court dismissed the appeal of the Revenue and held, as under:

“The method for determining the amount of expenditure brought in force w.e.f. 24.03.2008 has been given a go-bye and a new method has been brought into force w.ef. 02.06.2016, by interpreting the Rule 8D retrospective, there will be a conflict in applicability of 5th & 14th Amendment Rules which clearly indicates that the Rule has a prospective operation, which has been prospectively changed by adopting another methodology.

It is relevant to note that impugned judgment in this appeal relies on earlier judgment of Bombay High Court in Godrej and Boyce Manufacturing Co. Ltd. (supra) where the Division Bench of the Bombay High court after elaborately considering the principles to determine the prospectivity or retrospectivity of the amendment has concluded that Rule 8D is prospective in nature. Against the aforesaid judgment of the Bombay High court dated 12.08.2010 an appeal was



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filed in this court which has been decided by vide its judgment reported in Godrej and Boyce Mfg Co. Ltd. (supra). This Court, while deciding the above appeal repelled the challenge raised by the assessee regarding vires of Section 14A. In para 36 of the judgment, this Court noticed that with regard to retrospectivity of provisions Revenue had filed appeal, hence the said question was not gone into the aforesaid appeal. In the above case, this Court specifically left the question of retrospectivity to be decided in other appeals filed by the Revenue. We thus have proceeded to decide the question of retrospectivity of Rule 8D in these appeals.

In view of our opinion as expressed above, dismissal of the appeal by the Bombay High Court is fully sustainable. As held above, the Rule 8D is prospective in operation and could not have been applied to any assessment year prior to Assessment Year 2008-09.”

13.3 Further, in the case of Godrej & Boyce Mfg. Co. Ltd. vs. DCIT [194 taxman 203], the Hon'ble Bombay High Court had held as under:

“The provisions of rule 8D of the Income-tax Rules which have been notified with effect from 24-3-2008 shall apply with effect from assessment year 2028-09.”

Even prior to the assessment year 2008-09, when rule 8D was not applicable, the Assessing Officer had to enforce the provisions of sub-section (1) of section 14A. For that purpose, the Assessing Officer was duty bound to determine the expenditure which had been incurred in relation to income which did not form part of the total income under the Act. The Assessing Officer must adopt a reasonable basis or method consistent with all the relevant facts and circumstances after



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furnishing a reasonable opportunity to the assessee to place all germane material on the record”

13.4 In the present case at hand, the Rule 8D cannot be applied for working out the disallowance. Therefore, application of Rule 8D made by the AO is invalid. The AO should have adopted a reasonable basis or method consistent with all the relevant facts and circumstances after furnishing a reasonable opportunity to the assessee to place all germane material on the record.

13.6 It is seen that the CIT(A) in the assessee’s own case for A.Y. 2004-05 has restricted the disallowance u/s 14A @ 2% of the dividend income earned.

13.7. Following the decision of CIT(A) for AY. 2004-05, I direct the AO to restrict the disallowance u/s. 14A to 2% of the dividend income i.e. Rs.50,883/-.”

9.5 Since, the Id.AO has not provided any basis for making disallowance @10% in the case of the assessee, I find it reasonable to follow the guidance available from the decision of Hon’ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT, (2010) 328 ITR 81(Bom)and findings of my ld. Predecessor, in the aforesaid order in the case of another Group Concern, and it is held that in the present case also it will be reasonable to restrict the disallowance u/s 14A to 2% of the exempt income earned by the appellant. The assessee has submitted that it has made a suo motu disallowance of Rs.86.28 lacs in the computation of income. Since, the suo motu disallowance made by the assessee is more than 2% of the exempt income no further disallowance is to be made. The AO is directed to verify the claim of suo motu disallowance and delete the



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further' disallowance' accordingly. The grounds are accordingly allowed subject to factual verification as above."

5. On appraisal of the above mentioned finding, we noticed that the CIT(A) has decided the matter of controversy on the basis of the guidelines of Hon'ble Bombay High Court in the case of **Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT, reported in (2010) 328 ITR 81 (Bom)**. The assessee has suo-moto disallowed the expenditure to earn the exempt income to the tune of Rs.86.28 lacs which was more than 2% of the exempt income. The CIT(A) has assessed the expenditure to earn the exempt income on reasonable basis. The assessment year of the assessee is 2006-07 in which the strict applicability of the rule of Section 14A r.w. Rule 8D is not applicable. The AO nowhere justified the restriction to the extent of 10% of the exempt income. Anyhow, the CIT(A) has decided the matter of controversy judiciously and correctly specifically in view of the guidelines of Hon'ble Bombay High Court in case of **Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT, reported in (2010) 328 ITR 81 (Bom)**, therefore, the order under appeal is not liable to be interfered with at this appellate stage. Accordingly, we affirm the finding of the CIT(A) on this issue and decide all the issues in favour of the assessee against the revenue.

6. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 05/01/2022

Sd/-
(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 05/01/2022
Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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आदेश की 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**