

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

(Hearing through Video Conferencing Mode)

आयकर अपील सं/ I.T.A. No.594/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2000-01)

DCIT-4(1)(1) Room No.640, 6 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	ICICI Securities Primary Dealership Ltd. 4 th Floor, ICICI Centre, H. T. Parekh Marg, Churchgate, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACI0995H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Dharmvir	
Assessee by:	Shri Krupa Gandhi	

सुनवाई की तारीख / Date of Hearing: 09/11/2021
घोषणा की तारीख /Date of Pronouncement: 05/01/2022

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 12.11.2018 passed by the Commissioner of Income Tax (Appeals) -02 Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2000-01.

2. The revenue has raised the following grounds: -

"1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) was not justified in directing the AO to restrict the disallowance u/s 14A at 2% of exempt income relying on the decision of Hon'ble Bombay High Court in the case of M/s. Godrej Agrovet ltd. For AY 2005-06 without



appreciating the fact that the assessing officer has rightly calculated the disallowance @ 5% u/s 14A out of other expenses.

2. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”*

3. The brief facts of the case are that the assessee filed its return of income on 27.11.2000 declaring total income to the tune of Rs.74,36,73,625/-. The assessee has also computed the income u/s 115JA and showed its taxable income to the tune of Rs.21,33,53,042/-. The assessment of the assessee was reopened. Necessary notices u/s 143(2) & 142(1) of the Act were issued. The assessee company is a non-banking financing company and merchant banker and it is carrying out trading in shares and securities. It is registered with SEBI for carrying out all these activities. The assessee company received huge amount of dividends. The assessee received the dividend income on stock-in-trade amounting to Rs.32.053 crores. The dividend income claimed as exempt u/s 10(33) of the Act. The assessee company failed to attribute any expense towards such exempted income. Necessary notice was given and after the reply of the assessee, 5% of the dividend income was treated as expenses, therefore, the claim to the tune of Rs.17,84,10,000/- was disallowed u/s 14A of the I. T. Act. The assessee claim bad debts written off to the tune of Rs.6,67,22,090/- but the bad debts to the tune of Rs.5,69,69,000/- due from M/s. Nucent Finance Ltd. And interest to the tune of Rs.79,75,660/- was disallowed and added to the income of the assessee. The assessee raised the claimed of Rs.81,69,611/- being amount of TDS deducted by various parties. The assessee failed to prove the claim, hence, the said written off in



ITA No. 594/Mum/2019
A.Y.2000-01

sum of Rs.81,69,611/- was also disallowed and added to the income of the assessee. The assessee invested its funds in certain deep discount bonds and receipt of interest to the tune of Rs.84,50,164/-. The assessee claimed that the said amount is not taxable but the same was found taxable after inquiry, therefore, an amount in sum of Rs.84,50,164/- was added to the income of the assessee. The assessee also claimed Y2K expenses in sum of Rs.18,00,000/-. On verification, the amount in sum of Rs.63,90,000/- was disallowed and added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.1,010,002,060/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee partly but the revenue was not satisfied with the allowance of the claim of expenses incurred to earn the exempt income u/s 14A, therefore, revenue has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record carefully. We find that the present assessment year of the assessee is the assessment year of 2000-01. The AO assessed the expenditure to earn the exempt income to the tune of Rs. 17,84,10,000/- u/s 14A @ 5% of the total exempt income in appeal. The CIT(A) has assessed the expenditure incurred @ 2% of the exempt income. Before going further, we deem it necessary to advert the finding of the CIT(A) on record:-

“5. I have considered the AO’s order, the submissions made by the appellant on the above said set aside issue of disallowance u/s 14A of the Act.



5.1 I find that the AO has considered the following facts for making disallowance u/s 14A of the Act.

i) Nature of the appellant's business, which is dealing in Securities and Shares of various companies, Government and RBI Bonds which has generated income from operations as under:

<i>Interest Income</i>	<i>Rs. 2060.70</i>
<i>Income from services</i>	<i>Rs. 163.31</i>
<i>Profit/(Loss) on securities</i>	<i>Rs. 306.15</i>
<i>Dividend income</i>	<i>Rs. 320.53</i>
<i>Other income</i>	<i><u>Rs. 98.88</u></i>
<i>TOTAL</i>	<i>Rs.2999.57</i>

ii) Assessee has earned exempt dividend of Rs.320.53 million which amounts to more than 10% of total operating income.

iii) The appellant has considered the entire indirect expenses towards earning of taxable income alone and no amount has been apportioned towards the earning of exempt income.

iv) Earning of dividend income was an important consideration in making the investments in shares and securities and this would involve the services of highly trained, professionally qualified and experienced team of persons. This would also involve a well-equipped research department with back office to which most of the indirect expenses are related.



v) *In case where indivisible business and /or source of income exist, producing both taxable and exempt income i.e. investment in shares held as stock in trade yielding exempt dividend income, the expenses allocable to such source needs to be disallowed in appropriate ratio.*

vi) *Since the appellant has not apportioned any indirect expenses towards earning of exempt dividend income and has not provided details of such expenses to be apportioned /disallowed, the AO, after considering the accounts of the appellant company, has made a estimate on conservative basis to disallow 5% of the indirect expenses of 500.33 million, amounting to Rs.25.01 million.*

5.2 In View of the detailed reasons given by the AO as noted above, I am of the considered Opinion that the AO has arrived at requisite satisfaction after considering the accounts of the appellant to make a reasonable disallowance in respect of indirect expenses as per the provisions of Sec.14A, since this assessment year happens to be prior to A.Y. 2008-09. The appellant's submission that direct nexus between expenditure incurred and tax free income earned is not proved by the AO, is found to be without merit since the AO has brought out in detail that substantial expenditure was incurred to make investments in the shares which have yielded exempt dividend income and as per the principle of apportionment disallowance from indirect expenses was warranted even in relation to exempt dividend income arising from shares held as stock in trade. Thus, AO has



demonstrated that there was causal connection between the expenditure incurred and the exempt income earned. Reliance is placed on the decision in the case of Maxopp Investment Ltd. (2018) 91 Taxmann.com 154 (SC). In the said decision, in Para.39, it has been held that the applicability of Sec.14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income, as held in Walfort Shares and Stock Brokers Pvt. Ltd. (2010) 192 Taxmann 211(SC), will be triggered even in cases where the shares are held as stock in trade and certain dividend is also earned though incidentally and expenditure incurred in acquiring those shares will have to be apportioned depending on the facts of the case.

5.3 The appellant has submitted that the AO had disallowed 5% of the indirect expenses of Rs.50,03,02,868/which included an expenditure amounting to Rs.18,23,39,510/which was disallowed by it while computing the taxable income under the head income from business and profession. This resulted into double taxation to the extent of 5% of Rs. 18,23,39,510/i.e. Rs.91,16,975/-. From the details filed, I find this contention of the appellant to be correct as the appellant had disallowed following expenses in the computation of total income:

<i>Depreciation on leased assets</i>	<i>3,50,07,000</i>
<i>Depreciation on other assets</i>	<i>1,75,93,016</i>
<i>Interest tax</i>	<i>3,55,00,000</i>



<i>Lease equalization</i>	41,52,834
<i>Provision for doubtful debts</i>	7,56,01,571
<i>Deferred revenue expenditure</i>	1,44,84,089
<i>Total</i>	18,23,39,510

The said disallowance is not under Sec.14A of the Act but the additions are made keeping in view the provisions of Sections 28 to 44 in Chapter-IV, while computing the income from business and profession. In fact, one of the issues to be considered in the set aside proceedings was to verify this fact. Accordingly, it is held that the appellant company has disallowed an amount of Rs.18,23,39,510/not u/s.14A of the Act, but under the provisions of the Act while computing the income from business and profession.

5.4 While setting aside the issue, it was also directed by the Hon'ble ITAT that all the judgement placed by the appellant or available with this office may be considered before passing the order on this issue. The appellant has submitted that disallowance u/s.14A may be restricted to 1% to 2% of the exempt income and has relied on various decisions reproduced in the written submissions in para 3 above. In this regard, I find that the AO has made the disallowance as a certain percentage of the indirect expenditure incurred. However, the Courts have held that the disallowance u/s.14A has to be made on a reasonable basis for assessment years prior to 2008-09 and such reasonable disallowance has been upheld @ 2% of exempt income in the case of CIT v. M/s.



Godrej Agrovet Ltd. (ITA No. 934 of 2011) (AY 2005-06), by the Hon'ble Bombay High Court. Further, following the decision in the case of Godrej Agrovet Ltd. (supra), the disallowance was restricted to 2% of dividend income in the following decisions:

i) Mahanagar Gas Ltd. v. DCIT (I.T.A. No.958 & 402/M/2011) (AY 2007-08)

ii) Shri Purshottam G Budhwani v. ACIT (I.T.A. No.2468/Mum/2013) (AY 2007-08)

iii) Shakuntaladevi Trade & Investments Pvt. Ltd. (I.T.A. No.8006/M/2010) (AY 2007-08)

5.5 In view of the above said decisions of the Jurisdictional High Court and the Tribunal, I am of the considered opinion that the disallowance in the appellant's case towards the portion of indirect expenses u/s.14A, is to be reasonably estimated at 2% of the exempt income since the appellant has substantial activity of investment in shares and securities which have yielded over 10% of operating income as exempt dividend income. The AO is directed to re-compute the disallowance u/s.14A in respect of the indirect expenses @ 2% of exempt income and allow appropriate relief to the appellant."

5. On appraisal of the above mentioned finding, we find that the CIT(A) has restricted the addition to the extent of 2% of the exempt income in view of the decision of the Hon'ble Bombay High Court in the case of **CIT Vs. M/s. Godrej Agrovet Ltd. (ITA. No.934 of 2011) A.Y.2005-06.**



ITA No. 594/Mum/2019

A.Y.2000-01

The CIT(A) has also relied upon the some specific judgment cited in the order mentioned above passed by Hon'ble ITAT Mumbai Benches in which the claim on reasonable basis @ 2% expenses were assessed on exempt income. The CIT(A) has assessed the expenditure @ 2% of the exempt income on reasonable basis and also considered the finding of the Hon'ble Bombay High Court in the case of **Godrej Agrovet Ltd. (supra)** and other judgement. The case of the assessee for A.Y.2000-01. We nowhere found any illegality or irregularity in the order passed by CIT(A) in question. We find justifiable to assess the expenditure to earn the exempt income @ 2% of the exempt income. Accordingly, we affirm the finding of the CIT(A) on this issue and decide this issue 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



ITA No. 594/Mum/2019
A.Y.2000-01

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**