

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

**BEFORESHRI AMARJIT SINGH, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.4145/Mum/2019 (A.Y 2015-16)
C.O. No. 120/Mum/2021 (A.Y 2015 -16)**

The Dy. Commissioner of Income Tax -9(3)(2), Room No. 418, Aayakar Bhawan, Churchgate Mumbai – 400 020	Vs.	M/s Future Corporate Resources Ltd. Knowledge House, Off. Jogeshwari Vikhroli Link Road, Shyam Nagar, Jogeshwari (E) Mumbai 400 060
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAJCS3979E		
Respondent	..	Appellant

Appellant by :	Dinkle Hariya
Respondent by :	Achal Sharma

Date of Hearing	17.01.2022
Date of Pronouncement	28.01.2022

आदेश / O R D E R

PER AMARJIT SINGH, AM:

Since the appeal of the revenue and cross objection filed by the assessee are based on similar facts and identical issue directed against

the order of the Ld. CIT(A)-16, Mumbai, therefore for the sake of convenience both the appeals are adjudicated together in this order.

ITA No.4145/Mum/2019

“Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) was right in restricting the disallowance u/s 14A to the extent of exempt income earned by the assessee which is contrary to CBDT Circular No. 5/2014 which clarifies that the Rule 8D r.w.s. 14A of the Act provides for disallowance of the expenditure.”

2. Fact in brief is that return of income declaring loss of Rs.94,30,49,104/- was filed on 21.11.2015. The case of the revenue was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 27.09.2016. During the course of assessment the A.O after perusal of the balance sheet and accounting notes observed that assessee has made investment in the shares to the amount of Rs.49,78,58,13,000/-. However it has made disallowance of only Rs.45,52,775/- u/s 14A of the Act towards expenditure incurred for earning exempt income. On query, the assessee has made submission reproduced at para 5.1 of the assessment order. The A.O was not satisfied with the explanation of the assessee stating that suo motto disallowance computed was not appropriate after taking into consideration the huge investment on which it had earned exempt income to the tune of Rs.6,58,95,608/- and paid huge interest approximately to the amount of Rs.99.63 crores. Consequently, the A.O has worked out disallowance u/s 14A as per Rule 8D of the I.T. Rule to the amount of Rs.10,64,57,609/- and added to the total income of the assessee.

3. Aggrieved with the assessment revenue carried the matter before the ld. CIT(A). The ld. CIT(A) partly allowed the appeal of the assessee by restricting the disallowance u/s 14A to the extent of exempt income earned by the assessee of Rs.6,58,95,608/-.

4. Heard both the sides on the issue and perused the material available on record. Without retreating the facts as elaborated above we consider that ld. CIT(A) has rightly restricted the disallowance to the extent of exempt income earned by the assessee after following the decision of Hon'ble Supreme Court in the case of PCIT Vs. State Bank of Patiala (99 taxmann 286) (SC) and Joint Investment Pvt. Ltd. Vs. CIT (372 ITR 694) (Delhi High Court), wherein it is held that disallowance u/s 14A cannot exceed the exempt income. Further, the ld. CIT(A) has also placed reliance on the decision of the Daga Global Chemical Pvt. Ltd. Vs. ACIT (ITA No.5592/Mum/2012) wherein it is held that disallowance u/s 14A cannot exceed exempt income. Respectfully, following the decision of Hon'ble Supreme Court and High Court's as discussed above we don't find any infirmity in the decision of ld. CIT(A) therefore, this ground of appeal of the revenue stand dismissed.

C.O. 120/Mum/2021

- 1.1 The Learned Commissioner of Income - tax (Appeals) - 16, Mumbai, ["Ld. CIT (A)"] erred in confirming the disallowance u/s. 14A made by the Assessing Officer of Rs. 6,13,42,833/- on the ground that the disallowance under section 14A r.w. Rule 8D is to be restricted to the extent of dividend income.
- 1.2 While doing so, the CIT(A) failed to appreciate that, in the facts and the circumstances of the case, the provisions of section 14A r.w. Rule 8D were not applicable to the Appellant's case.
- 1.3 It is submitted that in the facts and the circumstances of the case, and in law, no such part confirmation was called for.

- 1.4 It is submitted that in the facts and the circumstances of the case, and in law, no adjustment in book profit, by way of making disallowance u/s. 14A, was permissible u/s. 115JB
- 1.5 Without prejudice to the above, assuming but not admitting that some disallowance was called for, it is submitted that the computation of the disallowance made by the A.O. is ^arbitrary, excessive and not in accordance with the law.”

5. There was a delay in filing cross objection by 17 days and assessee has filed application along with affidavit for condonation of delay.

6. Heard both the sides and perused the affidavit filed by the assessee stating that the assessee company has received ground of appeal and form no. 36 filed by the department on 04.08.2021 and it has filed cross objection on 20.09.2021 on the basis of advice received from the counsel and there was no deliberate delay in filing the cross objection. Considering the facts reported in the affidavit we condone the small delay of 17 days of filing the cross objection.

Ground Nos. 1.1 to 1.3 and 1.5 of the cross objection are taken together for adjudication as they pertained to the same issue based on identical facts. Without retreating the facts as discussed at para 2 of this order, the A.O has considered the huge investment of Rs.49,78,58,13,000/- made by the assessee in shares and incurring of interest expenditure to the amount of Rs.99.63 crores and earning of exempt income to the amount of Rs.6,58,95,608/- for computing disallowance in accordance to section 14A r.w.rule 8D of the I.T. Rules. Assessing officer has computed disallowance u/s 14A to the amount of Rs.1,06,40,57,609/-. In the appeal the ld. CIT(A) after following the decision of Hon'ble Supreme Court and Hon'ble High Court has discussed supra in the appeal of the revenue has restricted the

disallowance to the extent of exempt income earned by the assessee to the amount of Rs.65,89,508/-.

7. During the course of appellate proceedings before us at the outset of the Id. Counsel has submitted that the A.O ha not discharged the onus of providing justification/reason for rejecting assessee's computation of suo motto disallowance. The Id. Cousel has also contended that similar facts and identical issue, the coordinate bench of the ITAT in the case of the assessee itself for A.Y. 2014-15 vide ITA No. 4557/Mum/2018 has decided the issue in favour of the assessee.

On the other hand the Id. D.R. supported the order of the A.O.

8. Heard both the sides and perused the material on record. Without retreating the fact, after applying provisions of Section 14A r.w.r 8D the A.O has made a disallowance of Rs.106,40,57,609/- and added to the total income of the assessee. The Id. CIT(A) has restricted the disallowance to the extent of the exempt income of Rs.6,58,95,608/- as discussed supra in this order. The A.O has mainly taken into consideration the amount of investment of Rs.49,78,58,13,000/- amount of exempt income of Rs.6,58,95,608/- and payment of interest approximately of Rs.99.63 crores for computing the disallowance u/s 14A without taking into consideration the detailed working of suo motto disallowance as reproduced at para 5.1 & 5.2 of the assessment order. On the identical issue and similar facts, we have perused the decision of co-ordinate bench of the ITAT Mumbai in the case of the assessee itself vide ITA No. 4557/Mum/2018 A.Y. 2014-15. The relevant part of the decision is reproduced as under:

"6. 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 a detailed working on suomoto disallowance of ₹.1,12,58,018/- u/s. 14A r.w. Rule 8D of I.T. Rules. The detailed working was also extracted 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 made by the assessee is not satisfactory except stating that the disallowance worked out by the assessee u/s. 14A of the Act is not appropriate considering the fact that the investments, which have the potential of earning exempt income, as per the annual accounts is to the tune of ₹.3959 crores. 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.

7. In the case of *Godrej & Boyce Mfg., Co. Ltd., v. CIT* [328 ITR 81] 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.....”

8. Further, identical issue came up before Hon'ble Bombay High Court in the case of *Pr.CIT v. Bombay Stock Exchange Ltd., (2020) 185 DTR 390 (Bom)* 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 suo 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. 7 ITA NO. 4557 & 4469/MUM/2018 (A.Y: 2014-15) M/s. Future Corporate Resources Ltd.,

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.”

9. In the circumstances respectfully following the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd., v. CIT (supra) and the decisions of the Hon'ble Jurisdictional High Court referred to above , we direct the Assessing Officer to delete the disallowance made u/s. 14A r.w. Rule 8D of I.T.Rules for the assessment year under consideration by accepting the suomoto disallowance of expenditure considered by the assessee for earning exempt income for the purpose of computing the disallowance u/s. 14A r.w. Rule 8D of I.T.Rules.

10. In the result, appeal of the assessee is allowed and appeal of the revenue is dismissed.”

In the light of the above fact and circumstances respectfully following the decision of the co-ordinate bench in the case of the assessee itself as supra on the similar facts and identical issue, we restrict the disallowance upto the suo motto disallowance made by the assessee. Therefore, appeal of the assessee is allowed.

9. In the result, the appeal of the revenue is dismissed while for the appeal of the assessee is allowed.

Order pronounced in the open court on 28.01.2022

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 28.01.2022

Rohit, PS

आदेश की प्रतिलिपि □ ग्रेषित/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//

(Asst. Registrar)
ITAT, Mumbai