

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : C : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.5991/Del/2018
Assessment Year: 2014-15

Jindal Export & Import (P) Ltd., Vs DCIT,
110, Babar Road, Circle-13(2),
New Delhi. New Delhi.

PAN: AAACJ0474G

(Appellant)

(Respondent)

Assessee by : Shri Madhur Aggarwal, Advocate
Revenue by : Shri Kumar Padmapani Bora, Sr. DR
Date of Hearing : 18.11.2021
Date of Pronouncement : .02.2022

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 26th July, 2018 of the CIT(A)-5, Delhi, relating to AY 2014-15.

2. Facts of the case, in brief, are that the assessee is a company and engaged in the business of trading in precious metals. It filed its return of income on 22.11.2014 declaring a loss of Rs.3,30,19,180/- under the normal provisions and at book loss of Rs.3,31,15,818/-. During the course of assessment proceedings, the AO asked the assessee to explain as to why disallowance u/s 14A r.w. Rule 8D

should not be made in respect of the investment made.. It was explained by the assessee company that it has earned dividend income of Rs.62,28,673/- only and has not incurred any expenditure in the current year for earning such exempt income.

3. However, the AO was not satisfied with the arguments made by the assessee. Relying on various decisions, the AO computed the disallowance at Rs.12,51,461/- u/s 14A r.w. Rule 8D and, accordingly, made the addition of the same to the total income of the assessee.

4. In appeal, the CIT(A) upheld the action of the AO by observing as under:-

“Findings & determination:

The singular issue in the appeal is with reference to disallowance of Rs. 12,51,461/- of invoking section 14A r.w.r. 8D. The computation given by the AO for the purpose of disallowance is as under:-

Total loss declared by the assessee	3,30,19,180
Addition/disallowances (as discussed above)	
1. Disallowance u/s14A of the Act - 12,51,461	12,51,461
Total loss	3,17,67,719
Rounded off	3,17,67,720

4.2 The appellant has stated that while making the disallowance the opening balance of investment has been taken as Rs. 22,62,37,201/-and is the closing balance of investment has been taken at Rs. 27,43,47,139/-. On this opening and closing balance the disallowance has been worked out. In

his submissions, the appellant has given detailed table indicating the scrips in which the investment stood on the opening day and the closing day of the financial year under reference. It was submitted that there was no dividend received from the investments on the basis of which the deduction was being claimed. The appellant therefore claims that the addition should be deleted.

4.3 It is, however, seen from the submissions that the appellant has income from dividend amounting to Rs. 62,28,673/- in the current year. On this the appellant explained that the income was from investments which were held at any time during the year but were not there on the opening day and the closing day. Appellant is choosing to rely on various judgments where it was held that in the absence of exempt income no disallowance was possible. In the appellant's case, however, this is not so. In the appellants case there were investments which were held during the year and the same were giving exempt income. It cannot be denied that the funds and non allocable expenses of the appellant were utilized for the purpose of earning exempt income.

4.4 Logically therefore there is no infirmity in invoking section 14A. Therefore, the disallowance in the present case is certainly required to be made it is however seen that the mechanism and the rule 8D does not envisage such a situation specifically. In fact there is certainly an anomaly which provides for no disallowance in accordance with 8D(2)(iii) if there is a hoisting period of 2nd of April to 30th of March of any financial year. The same has been amended and in fact in any subsequent years this problem of investment only being held during the year would also be utilized in computation of the disallowance. There is no direct case wherein it is stated or held that the disallowance could not be made where exempt income was received by the appellant on the asset per se was not existing at the end of the year. The specific assets which yielded exempt income were not there at the end of the fiscal but equivalent investments in different scrips were available. Therefore once the mechanism for computation of disallowance has been laid down, a disallowance is necessary if there is exempt income. Assessee, therefore, fails in appeal.”

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

“1. That the learned Commissioner of Income Tax (Appeals)-5, New Delhi has erred both in law and on facts in upholding the disallowance of sum of Rs. 12,51,461/- by incorrectly invoking

section 14A of the Act read with Rule 8D of the Income Tax Rules' 1962.

1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that in absence of satisfaction of statutory precondition provided in section 14A(1) of the Act, no disallowance could be validly upheld by mechanically applying Rule 8D of the Income Tax Rules '1962.

1.2 That without prejudice computation of disallowance under Rule 8D of Income Tax Rules' 1962 is not in accordance with law and in any case, excessive.

1.3. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the submission furnished by the appellant and evidence placed on record and, therefore the disallowance upheld is not in accordance with law.

It is therefore, prayed that disallowance made and upheld by the learned Commissioner of Income Tax (Appeals) may kindly be deleted and appeal of the appellant company be allowed.”

6. The Id. Counsel for the assessee referring to the decision of the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd., reported in 394 ITR 449, submitted that the provisions of section 14A would apply to dividend income on which tax is payable u/s 115O of the IT Act. He submitted that the assessee, in the instant case, has given reasons as to why the provisions of section 14A r.w.r. 8D should not be applied. Therefore, the order of the CIT(A) being not in accordance with the law, should be set aside and the grounds raised by the assessee should be allowed.

7. Alternatively, the Id. Counsel for the assessee submitted that the assessee has received dividend income in respect of only one scrip and the average

investment on such scrip comes to Rs.55,17,694/-, therefore, disallowance under Rule 8D(2)(iii) being 0.5% of the average investment comes to Rs.27,588/- only and, therefore, he has no objection if the issue is restored to the file of the AO for verification of the disallowance at Rs.27,588/-.

8. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

9. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We have also gone through the various decisions cited before us. We find, the assessee, in the instant case, has earned dividend income of Rs.62,22,673/-. We find, the AO, invoking the provisions of section 14A r.w.r 8D made a disallowance of Rs.12,51,461/- which has been upheld by the CIT(A), the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the ld. Counsel for the assessee that in absence of recording of proper satisfaction, the disallowance made by the AO and sustained by the CIT(A) is not correct. It is his alternate contention that for the purpose of computing the average investment, the investments which has actually yielded dividend income should be considered. Since the assessee has received dividend income only in respect of one scrip and the average investment of which comes to Rs.55,17,694/-, therefore, the disallowance u/s 14A r.w.r. 8D comes to Rs.27,588/-. We find, the Special Bench of the Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd., reported in 165 ITD 27 (Delhi SB) has held that only the investments that has yielded exempt income during the year has to be

considered for computing the average value of investment u/s 14A r.w.r. 8D of the Income-tax Rules, 1962.

10. We find, the Hon'ble Delhi High Court in the case of ACB India Ltd. vs. ACIT, reported in 374 ITR 108 has held that for the purpose of provisions of section 14A, instead of taking into account the total investment, the investment attributable to dividend was required to be adopted and, thereafter, the disallowance was to be arrived at. We, therefore, deem it proper to restore the issue to the file of the AO with a direction to recompute the disallowance u/s 14A r.w.r. 8D by considering the investments which has actually yielded dividend income and decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16th February, 2022.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated:16th February, 2022.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi