

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 1952/मुं/2020 (नि.व 2017-18)
ITA NO.1952/MUM/2020(A.Y 2017-18)

M/s. Avinash Bhosale Infrastructure Pvt. Ltd.
2, ABIL House, Ganesh Khind Road,
Range Hill Corner, Pune 411 007.

PAN: AABCA-5452-C

..... अपीलार्थी /Appellant

बनाम Vs.

DCIT Central Cir 2(3),
8th Floor, Room No.803,
Old CGO Bldg. Pratistha Bhavan,
M.K. Road, Mumbai 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Vijay Mehta

प्रतिवादी द्वारा/Respondent by : Shri T. Shankar

सुनवाई की तिथि/ Date of hearing : 28/12/2021

घोषणा की तिथि/ Date of pronouncement : 25/03/2022

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals) -48, Mumbai [in short 'the CIT(A)'] dated 19/08/2020 for the assessment year 2017-18.

2. The assessee in appeal has raised four grounds of appeal and two additional grounds of appeal. The ground No.1 & 2 of appeal are in respect of addition of Rs.1,08,79,056/- u/s. 14A r.w.r.8D of the Income Tax Act, 1961 [in short 'the Act']. In additional grounds of appeal the assessee has assailed the

action of Assessing Officer in invoking the provisions of section 14A of the Act without recording his satisfaction as envisaged under section 14A of the Act .

2.1 The assessee in ground No.3 of appeal has assailed addition of Rs.2,40,000/- towards consultancy fees paid to Smt. Tanya Luthra. The Id. Authorized Representative for the assessee stated at the outset that he is not pressing ground No.3 of appeal.

3. Shri Vijay Mehta appearing on behalf of the assessee submitted that in additional grounds of appeal the assessee has raised a legal issue assailing invoking of section 14A of the Act without recording satisfaction. The Id. Authorized Representative for the assessee submitted that a perusal of the assessment order would show that before computing disallowance u/s 14A r.w.r. 8D of the Act, the Assessing Officer has not recorded his satisfaction having regard to the accounts of the assessee and correctness of the claim of the assessee in respect of expenditure in relation to earning of exempt income. For adjudicating the legal ground raised by way of additional grounds, no additional evidence is required to be adduced. The legal ground can be adjudicated on the basis of documents already on record. The Id. Authorized Representative for the assessee placed reliance on the following decision to contend that the additional grounds of appeal raising pure question of law where no new facts are required to be brought on record should be admitted.

(i) National Thermal Power Corporation v. CIT, 229 ITR 383(SC)

(ii) Jute Corporation of India Ltd. vs. CIT, 187 ITR 688(SC)

(iii) Ahmedabad Electricity Co. Ltd. vs. CIT, 199 ITR 351(Bom)

3.1 The Id. Authorized Representative for the assessee submitted that during the period relevant to assessment year under appeal, the assessee has

earned exempt income of Rs.1,05,27,666/- as share in the profits of the partnership firm. The assessee has claimed total expenditure of Rs.37,75,374/- only, without prejudice to primary contention, at the most proportionate disallowance of said expenditure could be made towards earning of exempt income, the assessee has not made any suo-motu disallowance u/s. 14A. The Id. Authorized Representative of the assessee asserted that the statute requires that before proceeding to make disallowance u/s. 14A of the Act in terms of Rule 8D, the Assessing Officer having regard to the accounts of the assessee, if not satisfied with the correctness of the claim in respect of expenditure in relation to earning of the exempt income shall determine the amount of expenditure incurred for earning of exempt income. In the present case there is no such satisfaction by the Assessing Officer. The Assessing Officer has merely reproduced the submissions of the assessee and after rejecting the same without referring to the accounts of the assessee proceeded on to make disallowance u/s.14A(3) r.w.r.8D. The Id. Authorized Representative for the assessee placed reliance on the following decisions to assert that without recording satisfaction as envisaged u/s. 14A of the Act disallowance made u/s. 14A of the Act is not sustainable.

1. CIT vs. Deepak Mittal, 38 taxmann.com 83(P&H)
2. CIT vs. Sociedade De Formento Industrial (P) Ltd.,
123 taxmann.com 38(Bom)
3. PCIT vs. Bombay Stock Exchange, 113 taxman.com 303(Bom)
4. Per contra, Shri T. Shankar representing the Department vehemently supported the assessment order. The Id. Departmental Representative submitted that the Assessing Officer in para- 4 of the assessment order has recorded satisfaction. The Id. Departmental Representative submitted that there is no specific format or manner for recording of the satisfaction. In

support of his contention he placed reliance on the decision rendered in the case of Devarsons Industries Pvt. Ltd. Vs. ACIT, 84 taxmann.com 244 (Guj).

5. Both sides heard, orders of authorities below examined. The assessee in appeal has raised additional grounds assailing addition made u/s. 14A of the Act on the ground that the satisfaction with regard to the accounts of the assessee as envisaged u/s. 14A of the Act has not been recorded by the Assessing Officer. The additional grounds raised by the assessee are as under:-

“ 1. On the facts and circumstances of the case and in law, the CIT(A) has erred in upholding disallowance u/s.14A of the Act.

2. The CIT(A) ought to have held that no disallowance can be made u/s. 14A of the Act since no satisfaction has been recorded by the Assessing Officer in response to the claim of the assessee that no expenditure has been incurred for the purpose of earning exempt income.”

The additional grounds raised by the assessee are purely legal, no fresh evidence is required to be examined for adjudicating the legal grounds. Hence, the legal issue raised by way of additional grounds is admitted for adjudication on merits.

6. The assessee has earned exempt income of Rs.1,05,27,666/- during the period relevant to the assessment year under appeal. No suo-motu disallowance has been made by the assessee for earning of exempt income. The assessee has earned exempt income from investment in partnership firm. The contention of the assessee is that for earning exempt income no expenditure has been incurred. Section 14A of the Act provides for disallowance of expenditure incurred in relation to earning of income not includable in total income. However, the provisions of section 14A of the Act does not apply automatically. Where the assessee has made suo-motu disallowance in respect of earning of exempt income or no such disallowance is

made by the assessee, the Assessing Officer having regard to the accounts of the assessee has to record satisfaction with regard to the correctness of the claim of assessee in suo-motu disallowing expenditure or not disallowing any expenditure for earning of the exempt income. Undisputedly, there is no particular format or prescribed manner for recording of the satisfaction by the Assessing Officer. At the same time the Assessing Officer while considering the investment made, income earned thereon and the assessee's claim of disallowance of corresponding expenditure, if any, has to record his satisfaction/dissatisfaction on the disallowance computed by the assessee or no suo-motu disallowance as the case may be, having regard to the accounts of the assessee and this satisfaction should be distinctly decipherable in the assessment order. In the instant case it is observed that the Assessing Officer while dealing with issue has recorded the submissions of the assessee and has thereafter held the same to be unacceptable. However, while giving reasons for not accepting the same there is no reference to the accounts of the assessee. **Recording of satisfaction having regard to the accounts of assessee is sine-qua-non for making disallowance u/s. 14A r.w.s. 8D of the Act.**

7. The Hon'ble Jurisdictional High Court in the case of CIT vs. Sociedade De Formento Industrial (P) Ltd. (supra) has held that application of section 14A of the Act and Rule 8D is not automatic to each and every case, where there is income not forming part of the total income. Before application of section 14A of the Act it needs to be justified as to how expenditure incurred by the assessee during the relevant year is related to earning of exempt income. The relevant extract of the judgment reads as under:

"19. Here, on facts, the Tribunal noted that the AO only discussed the provisions of section 14A(1) but has not justified how the expenditure the Assessee incurred during the relevant year related to the income not forming part of its total income. The AO,

according to the Tribunal, straightaway applied Rule 8D. Indeed, there must be a proximate relationship between the expenditure and the tax-exempt income. Only then would a disallowance have to be effected. This Court, we may note, on more than one occasion, has held that the onus is on the Revenue to establish that there is a proximate relationship between the expenditure and the exempt income. That is, the application of section 14A and rule 8D is not automatic in each and every case, where there is income not forming part of the total income. No doubt, the expenditure under section 14A includes both direct and indirect expenditure, but that expenditure must have a proximate relationship with the exempted income. Surmise or conjecture is no answer.

20. We may further reiterate that before rejecting the disallowance computed by the Assessee, the Assessing Officer must give a clear finding with reference to the Assessee's accounts as to how the other expenditure claimed by the Assessee out of the non-exempt income is related to the exempt income."

(Emphasized now]

8. The Hon'ble Bombay High Court in the case of PCIT vs. Bombay Stock Exchange (supra) held that prior to working of disallowance u/s. 14A of the Act by applying Rule-8D, the Assessing Officer should record a conclusion that he is not satisfied with the suo-motu disallowance offered by the assessee. The relevant extract of the judgment is 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. CIT 254 Taxman 325/402 ITR 640 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 appointment of expenses can arise."

[Emphasized now]

9. The Department has placed reliance on the decision in the case of Deversons Industries Pvt. Ltd. vs. Asstt. CIT (supra). In the said case, the Hon'ble Gujarat High Court in para-8 of the judgment observed as under:

“..... Section 14A as well as Rule 8D require the Assessing Officer to arrive at a satisfaction that the claim of the expenditure made by the assessee is not correct. It is only then he can apply the formula under sub-rule (2) of Rule 8D. However, these statutory provisions do not require that such satisfaction must be arrived at in a particular manner. As long as there is sufficient material to enable the Assessing Officer to arrive at such a satisfaction and which is also recorded by him in the order of assessment, the requirements of statute would be satisfied. In the present case, we have noted that the Assessing Officer has given detailed reasons for discarding the assessee's theory that to earn the assessable income the assessee incurred no expenditure whatsoever. The Tribunal confirmed such view. Decision of the Assessing Officer to apply the formula under Rule 8D was therefore correct. Tax appeal is accordingly dismissed.”

The Hon'ble High Court has laid emphasis on recording of satisfaction before invoking of section 14A r.w. Rule 8D. In the facts of the said case the Tribunal held that the Assessing Officer has recorded satisfaction. The view of Tribunal was upheld by the Hon'ble High Court in appeal by the assessee. In so far as legal requirement of recording satisfaction is not in dispute. It is also not in dispute that there is no particular manner of recording satisfaction. However, the satisfaction recorded by the Assessing Officer as per the requirement of statute should be discernible from the assessment order.

10. Thus, in the light of the facts of the case and the decisions referred above I am of considered view that disallowance computed by the Assessing Officer under section 14A r.w.r.8D of the Act is not sustainable in the absence of satisfaction as envisaged u/s. 14A of the Act. Hence, assessee succeeds on additional grounds raised in the appeal.

11. The relief sought in ground No.1 and 2 of the appeal has become infructuous in light of the fact that assessee's additional grounds challenging disallowance u/s. 14A of the Act without recording proper satisfaction has been allowed.

12. The Id. Authorized Representative for the assessee has stated at Bar that on instructions from assessee, he is not pressing ground No.3 of appeal. Hence, the said ground is dismissed as not pressed.

13. In the result, appeal by the assessee is partly allowed.

Order pronounced in the open Court on Friday the 25th day of March, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 25/03/2022

Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai