

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

**BEFORE SHRI S. RIFAUZ RAHMAN, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No. 1074/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2017-18)

Kotak Mahindra Asset Management Co. Ltd. 27 BKC, Bandra Kurla Complex, Bandra East, Mumbai-400051.	<b>बनाम/</b> Vs.	DCIT, Circle-14(2)(1) Aayakar Bhavan, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACK5576C		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by:	Shri Farrokh Irani
Revenue by:	Shri Shambu Yadav (DR)

सुनवाई की तारीख / Date of Hearing: 13/01/2022

घोषणा की तारीख /Date of Pronouncement: 02/03/2022

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 15.04.2021 passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the “(NFAC)”] in the relevant A.Y.2017-18.

2. The assessee has raised the following grounds: -

*“1. The Commissioner of Income tax Appeal, National Faceless Appeal Centre (NFAC) (hereinafter referred to as the CIT(A)) erred in confirming the disallowance made by the Dy Commissioner of Income tax, Circle 14(2) 1 amounting to Rs.29,07,525 under section 14A by invoking the provisions of Rule 8D(2)(ii).*



2. *He further erred in confirming the action of AO with respect to invocation of Rule 8D, without recording his satisfaction as regards the correctness of the Appellant's claim.*

3. *He erred in disregarding the accounts of the Appellant and ignoring the detailed submissions made regarding the correctness of the Appellant's claim.*

4. *He further erred in holding that disallowance under section 14A read with Rule 8D is applicable to investments which are strategic in nature.*

5. *He further erred in holding that disallowance under section 14A of the Income Tax Act 1961, read with rule 8D of the Income Tax Rules 1962, is applicable to shares of unlisted companies which are capable to generate taxable capital gains,*

6. *He further erred in passing the orders without properly appreciating the fact and in grossly ignoring various submissions, explanation and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order.*

*He failed to appreciate and ought to have held that:*

*a. In order to attract Section 14A, there needs to be the proximate connection between the expenditure incurred and the exempt income.*

*b. having regard to the accounts and detailed submissions made by the Appellant, there was no basis for making a disallowance in accordance with Rule 8D to Section 14A, without first establishing*



*that such expenditure was indeed incurred for earning exempt dividend income.*

*c. having regard to the accounts, the Appellant has not incurred any expenditure which was directly attributable towards earning of tax free dividend income and such disallowance cannot be made on the basis of presumptions and by applying rules mechanically;*

*d. investment made in group companies being strategic long term investments does not require day to day monitoring or any further administrative expenditure to maintain the same or to earn any dividend income from them.*

*e. application of formula of 1% of annual average of the monthly averages of the opening and closing balances of value of such investments is totally inequitable and this disallowance has no relation to either the exempt income or to the expenditure claimed by the Appellant;*

*f. there was no basis for making such an disallowance in accordance with Rule 8D(ii) to Section 14A without establishing that such expenditure was indeed incurred for earning exempt dividend income;*

*g. the New Rule 8D (2)(ii) goes beyond the authority given to CBDT by S. 14A and Rule only determines the notional cost for holding investments which may or may not yield an exempt income and such notional cost for holding the investment has no relationship with the actual expenditure incurred and claimed by the Appellant;*

*h. under section 14A, it is very much clear that only the expenditure which has been proved to be incurred in relation to earning of tax free*



*income can be disallowed and, the section cannot be extended to disallow even the expenditure which is assumed to have been incurred for earning tax free income.*

*i. the Appellant has made investments in its own group companies in the past which are strategic in nature and which does not require day-today monitoring;*

*j. the Appellant has made investments in its own group companies in the past which are strategic in nature and which does not require day-today monitoring;*

*8. The Appellant prays that the AO be directed to delete the entire disallowance of Rs.29,07,525 u/s 14A made by the AO.*

*9. Without prejudice to the above, the Appellant, prays that the AO be directed to restrict the disallowance made under section 14A to Rs.14,272 as disallowed by the Appellant in Return of Income.*

*10. Without prejudice to the above, the Appellant prays that the AO be directed to exclude strategic Investments and investment made in unlisted companies for working out disallowance u/s 14A.*

*11. Without prejudice to the above, AO be directed to restrict the disallowance u/s 14A r.w. Rule 8D(2)(ii) only w.r.t. those investments which have yielded exempt income during the year and exclude those investments which have not yielded exempt income during the year.*

*12. Without prejudice to the above, disallowance under section 14A cannot exceed the exempt income and therefore, the Appellant prays that the AO be directed to restrict the disallowance under section 14A*



*to the extent of Rs.3,55,000 being exempt income earned by the Appellant.*

*The Appellant craves leave to add, amend, alter or delete any of the above grounds of appeal as may be advised in due course.”*

3. The brief facts of the case are that the assessee filed its return of income on 17.11.2017 declaring total income to the tune of Rs.60,39,06,128/-. Subsequently, the assessee filed its revised return of income on 29.03.2019 declaring total income to the tune of Rs.60,32,87,230/-. The case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. During the year under consideration, the assessee earned the dividend income of Rs.3,55,000/-. The assessee made the disallowance of Rs.14,272/- under Section 14A r.w. Rule 8D. The assessee was asked to furnish the detail of expenditure as to why disallowance u/s 14A of the I. T. Act, 1961 r.w. Rule 8D should not be made. After the reply of the assessee, the AO disallowed the expenditure to earn the exempt income to the tune of Rs.29,07,525/- and assessed the total income to the tune of Rs.60,61,80,480/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who partly allowed the claim of the assessee, therefore, the assessee has filed the present appeal before us.

#### **ISSUE NOS. 1 to 10**

4. At the time of argument, these issues have not been pressed by the Ld. Representative of the assessee, therefore, these issues are kept open and not adjudicated at this stage.



**ISSUE NOS. 11 & 12**

5. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. At the very outset, the Ld. Representative of the assessee has argued that the issue has duly been covered by the assessee's own case for the A.Y.2011-12, 2012.-13, 2013-14, 2014-15 & 2015-16 bearing ITA. No. 3424/Mum/2016, 5239 & 5240/Mum/2016, 824 & 825/Mum/2016 respectively, therefore, the claim of the assessee is liable to be allowed in the interest of justice. It is also argued that the issue is specifically covered by the decision of the Hon'ble Delhi Special Bench in the case of **Vireet Investment (P) Ltd. Vs. ACIT (2017) 82 taxmann.com 415**, therefore, the claim of the assessee is liable to be allowed. Basically contention of the assessee is that those investments which yielded the exempt income is liable to be considered to assess the expenditure to earn the exempt income. In the case of **Vireet Investment (P) Ltd (supra)** the Hon'ble Special Bench has observed as under: -

*"4. We have heard the rival submissions, perused the orders of the authorities below and the decision of the Delhi Special Bench in the case of ACIT v. Vireet Investments Private Limited (supra). We observe that the Special Bench of the Delhi Tribunal held that only those investments are to be considered for computing average value of investments which yielded exempt income during the year. Therefore, respectfully following the said decision, we direct the Assessing Officer to compute the disallowance under Rule 8D(2)(iii) by considering only those investments which yielded exempt income during the year and recompute the income accordingly. Needless to*



ITA. No.1074/Mum/2021  
A.Y. 2017-18

*say that the Assessing Officer shall give adequate opportunity of being heard to the assessee. Since we followed the order of the Special Bench Tribunal and held that the only the investments yielding dividend income should be considered for disallowance under Rule 8D(2)(iii) the other contentions raised by the assessee need not gone in to s they are not relevant as submitted by Ld. A.R.”*

5. Since this issue has duly been covered by the assessee's own case (supra) as well as in view of the decision in the case of **Vireet Investment (P) Ltd. (supra)**, we are of view that those investments which yielded the exempt income is liable to be considered to assess the expenditure to earn the exempt income in accordance with law. Therefore, it is specifically held that the no disallowance u/s 14A r.w. Rule 8D shall exceed with the exempt income. Accordingly, we allowed the claim of the assessee.

6. In the result, the appeal filed by the assessee is hereby allowed accordingly.

Order pronounced in the open court on 02/03/2022

Sd/-

(S. RIFAUH RAHMAN)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 02/03/2022

Vijay Pal Singh, (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA. No.1074/Mum/2021  
A.Y. 2017-18

**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**