

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND  
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**ITA No.691/M/2021  
Assessment Year: 2013-14**

M/s. Padmini Trust, 102, Maker Chambers-III, Nariman Point, Mumbai – 400 021 <b>PAN: 400 021</b>	Vs.	ITO – 18(2)(4), Earnest House, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Niraj Sheth, A.R.  
Shri Jay Bhansali, A.R.

Revenue by : Shri C.T. Mathews, S.R. A.R.

Date of Hearing : 05 . 04 . 2022

Date of Pronouncement : 31 . 05 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, M/s. Padmini Trust (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 18.03.2021 passed by Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) [hereinafter referred to as the CIT(A)] qua the assessment year 2013-14 on the grounds inter alia that :-

*“1, Disallowance of expenses of Rs. 3,50,254/- claimed under section 57(iii) of the Income-tax Act, 1961 (hereinafter referred to as "the Act")*

- (i) *The Commissioner of Income Tax (Appeals) [hereinafter referred to as "the CIT(A)] erred in upholding the action of the Assessing Officer [hereinafter referred to as "the AO"] in disallowing Rs. 3,50,254/- under section 57(iii) of the Act, being expenses incurred for earning taxable income. The reasons given by him for doing so are wrong, contrary to the facts of the case and against the provisions of law;*
- (ii) *Without prejudice to above grounds, the CIT(A) / AO failed to appreciate that the entire income received from the Fund is offered to tax and hence, the related legitimate expenses ought to have been allowed as deduction notwithstanding that the expenses are in excess of the income.*

**2. Disallowance of expenses of Rs. 87,70,207/- under section 14A of the Act read with Rule 8D**

- (i) *The CIT(A) erred in upholding the action of the AO in making disallowance of Rs. 87,70,207/- out of expenses under section 14A of the Act r.w.r. 8D @ 0.5% of average investments for reasons which are wrong, contrary to the facts of the case and against the provisions of law;*
- (ii) *The CIT(A) / AO failed to appreciate that the provisions of section 14A read with Rule 8D apply only when an assessee has incurred and claimed expenditure in relation to exempt income, in the absence of which, the said provisions could not be invoked and therefore the disallowance of expenses of Rs. 87,70,207/- not incurred and claimed by the assessee deserves to be deleted;*
- (iii) *The CIT(A) erred in upholding the action of the AO in disallowing the said expenses without establishing direct nexus between the expenditure alleged to have been incurred/claimed with earning of exempt income or even recording his dissatisfaction with the correctness of claim made by the appellant that no expenditure was claimed for earning exempt income;"*

2. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee is a private trust whose beneficiary is Ms. Padmini Somani, deriving income from business,

capital gain and other sources. During assessment proceedings the Assessing Officer (AO) noticed that the assessee has earned interest income of Rs.6,44,700/- under the head “income from other sources” against which interest expenses of Rs.10,25,921/- is claimed. Assessee was called upon to explain since interest income is much higher than the interest expended why the expenses should not be disallowed under section 57 of the Income Tax Act, 1961 (for short ‘the Act’). During the scrutiny proceedings the AO noticed that the assessee has claimed exempt income including dividend from its investments including equity shares. Declining the contentions raised by the assessee the AO invoked the provisions contained under section 14A read with rule 8D and thereby made a disallowance of Rs.87,70,207/- computed as under:

<b>I)</b>	<i>The amount of expenditure directly relating to income which does not form part of the total income-</i>		<b>00</b>
ii)	<i>A. Proportionate of interest expenditure computed in accordance with the formula given in Rule 8D(2)(ii) .</i>	<i>(A X B/C)</i>	<b>00</b>
iii)	<i>B. Amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income as appearing in the Balance Sheet of the assessee, on the first day and last of the previous year.</i>	<i>0.5% of Rs. 1754041446/-</i>	<b>87,70,207</b>
<b>Total expenditure disallowed u/s 14A</b>			<b>87,70,207</b>

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has sustained the addition made by the AO by dismissing the appeal. Feeling aggrieved the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly during the year under consideration the assessee has earned exempt income of Rs.6,55,41,069/- being dividend on shares and mutual funds by claiming that he has not incurred/not claimed any expenses pertaining to such income from investments in the return of income. It is also not in dispute that the assessee has claimed expenses to the tune of Rs.10,25,921/- under section 57(iii) of the Act as incurred by the fund and not by the assessee which the assessee has claimed against the interest income from the fund. It is also not in dispute that in the computation of income the assessee has made a suo-moto disallowance under section 14A read with rule 8D to the tune of Rs.30,967/-.

6. The AO as well as the Ld. CIT(A) without deciding the contentions raised by the assessee that the assessee has claimed Rs.10,25,921/- under section 57(iii) of the Act as incurred by the fund and claimed the same against the interest income, proceeded to invoke the provisions contained under section 14A read with rule 8D. AO also admitted in para 5 of the assessment order that the assessee has interest income of Rs.6,44,700/- under the head "income from other sources" against which interest expenses of Rs.10,25,921/- was claimed. The Ld. A.R. for the assessee challenging the impugned order passed by the AO/Ld. CIT(A)

contended inter alia that when no expenses have been claimed by the assessee in its profit & loss account and only claimed expenses of Rs.10,25,921/- under section 57(iii) of the Act incurred by the venture fund no disallowance under section 14A read with rule 8D is called for; that AO has also not recorded any satisfaction regarding the working of non incurring of any expenses by the assessee in earning the dividend income nor any live nexus between expenditure and tax free income has been brought on record rather AO proceeded to invoke provisions contained under section 14A read with rule 8D mechanically.

7. We have perused the statement of computation of total income of the assessee available at page 3 of the paper book wherein it is categorically shown by the assessee that he has shown interest income of Rs.6,44,700/- under the head “income from other sources” and also shown expenses incurred by the venture capital fund to the tune of Rs.10,25,921/-. Expenses incurred by the venture fund have been duly explained in page 19 & 20 of the paper book which have been passed through to the assessee and offered the income to tax.

8. In the note 3 the assessee has duly explained the income accruing or arising to or received by Venture Capital Fund (VCF) to be taxable in the hands of beneficiary as under:

***“3) Amount of Rs.17,12,391/- has been received from Milestone as surplus distribution. As per section 115U of the Act, Income accruing or arising to or received by VCF will be taxable in hands of the beneficiaries, whether or not such income has been paid or credited to their account. Hence, amount received of Rs.17,12,391/- will not be relevant. Taxability of income is considered as per the***

***Income Tax letter received from Milestone dated 03.07.2013 which is shown as under:***

<i>Folio no.</i>		<i>13786</i>	<i>19136</i>	<i>13840</i>	<i>Total</i>
<i>a) Long Term Capital Gain (taxable @ 20% under head Capital Gain)</i>		<i>368,074</i>	<i>1,104,038</i>	<i>368,074</i>	<i>1,840,187</i>
<i>b) Interest Income Taxable under head Other Source Expenses incurred (claimed against interest income)</i>	<i>A</i>	<i>128,768</i>	<i>386,984</i>	<i>128,947</i>	<i>644,700</i>
<i>Less : Disallowance u/s. 14A</i>		<i>6,193</i>	<i>596,972</i>	<i>198,991</i>	<i>994,954</i>
<i>Balance expenses claimed</i>	<i>B</i>	<i>198,991</i>	<i>596,972</i>	<i>198,991</i>	<i>994,954</i>
<i>Net Income taxed under the head other sources</i>	<i>A-B</i>	<i>(70,222)</i>	<i>(209,988)</i>	<i>(70,043)</i>	<i>(350,254)</i>

9. All these aforesaid facts have not been taken into account by the AO/Ld. CIT(A) while invoking the provisions contained under section 14A read with rule 8D rather mechanically invoked the same Hon'ble Bombay High Court in case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT [(2010) 328 ITR 81 (Bom)] has categorically held that before making disallowance under section 14A AO is required to record his satisfaction that the working of the assessee claiming no expenses to earn the dividend income needs to be recorded on objective basis. Moreover, question of disallowance under section 14A arises only when assessee has claimed expenditure. In the instant case, assessee has admittedly not claimed any expenditure in the profit & loss account

so when expenses have not been claimed as deduction the same cannot be disallowed.

10. Co-ordinate Bench of the Tribunal in case of Everest Finvest (India) Pvt. Ltd. in ITA No.253/M/2014 held that disallowance under section 14A read with rule 8D cannot be more than the expenditure debited by the assessee in the profit & loss account.

11. Co-ordinate Bench of the Tribunal in case of Gillette Group India (P) Ltd. (51 SOT 221) while dealing with the identical issue also decided the issue in favour of the assessee by holding that no amount can be disallowed under section 14A of the Act when it is not claimed as expenses. So the expenses of Rs.10,25,921/- otherwise claimed by the assessee under section 57(iii) of the Act, having been incurred by venture capital fund cannot be attributed to the assessee while deciding the disallowance under section 14A of the Act.

12. In view of what has been discussed above, we are of the considered view that AO/Ld. CIT(A) erred in making disallowance under section 14A read with rule 8D to the tune of Rs.87,70,207/- which is not sustainable in the eyes of law, hence ordered to be deleted. Consequently appeal filed by the assessee is allowed.

**Order pronounced in the open court on 31.05.2022.**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 31.05.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

*//True Copy//*

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.