

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 705/Mum/2021 (A.Y. 2015-16)

Dy. CIT, Central Circle-1(4),
9th Floor, Old CGO Building,
M.K. Road, Mumbai-400020.

..... Appellant

Vs.

Essel Mining & Industries Limited
Industry House, 18th Floor,
10, Camac Street, Kolkata,
West Bengal-700017

PAN: AAACE6607L

..... Respondent

Appellant by : Sh. Yogesh Thar
Respondent by : Sh. Amol B. Kirtane

Date of hearing : 20/06/2022

Date of pronouncement : 27/06/2022

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-47, Mumbai [hereinafter referred to as 'the CIT (A)'] vide order dated 05.02.2021 for the Assessment Year (AY) 2015-16. The Revenue has raised the following grounds of appeal:

1. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to rework the computation of disallowance u/s. 14A after netting off the interest expenses with interest earned by the assessee, without appreciating that Rule 8D of the Income Tax Rules, 1962 does not prescribe such netting off."
2. "On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in directing the AO to rework the computation of disallowance u/s. 14A 9 after reducing the interest paid u/s. 234C of the Income Tax Act, 1961 which was included in the

interest expenses, without appreciating the fact that Rule 8D of the Income Tax Rules, 1962 does not prescribe such exclusion.”

3. “On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in directing the AO to rework the computation of disallowance u/s. 14A after reducing the interest paid on borrowed funds which was utilized or Wind Power energy unit, without appreciating the fact that Rule 8D of the Income Tax Rules, 1962 does not prescribe such exclusion.”
4. “On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in directing the AO to rework the computation of disallowance u/s. 14A after excluding investment in subsidiaries company which is claimed to be strategic investment, without appreciating the fact that the Rule 8D of the Income Tax Rules, 1962 does not prescribe any exclusion of such investment.”

2. Brief facts of the case are that the assessee-company filed its return of income on 30.09.2015 declaring a total loss of Rs. 229,54,99,761/-. The case was selected for scrutiny under CASS.

3. During the year under consideration, the assessee was engaged in the business of (i) Raising of Ore, (ii) Mfg. Of Nitrogen Gas & Ferro Alloys, (iii) Trading of Iron Ore & Ferro Alloys, (iv) Generation of electricity (Wind Power & Solar Power), & (v) Railway Siding for captive use and (vi) Operating Lease of Solar Energy Equipment. During the scrutiny assessments following additions were made:

(i)	Disallowance under section 14A	Rs. 35, 88, 82,480/-
(ii)	Disallowance of Club Expenses	Rs. 107,120/-
(iii)	Disallowance of common expenses against deduction claimed u/s 80IA	Rs. 5,92,7000/-
(iv)	Carbon Credit treated as Revenue income u/s 28	Rs. 102, 05, 87/-
(v)	Disallowance of claim u/s 40(a)	Rs. 4, 35,810/-
(vi)	Disallowance U/s 14A added to book profit U/s 115JB also	Rs. 35, 88, 82,480/-

4. Against this order of Assessing Officer (AO), assessee preferred an appeal before the Id. CIT(A)-47, Mumbai. A substantial relief was given to the assessee and following additions were deleted as under:

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|-------|--|----------------------|
| (i) | Disallowance under section 14A | Rs. 35, 88, 82,480/- |
| (ii) | Disallowance of Club Expenses | Rs. 107,120/- |
| (iii) | Disallowance mentioned in (v) & (vi) (supra)
not pressed before the CIT(A), hence, dismissed. | |

5. During assessment proceedings, it was found from the computation of total income that the assessee-company has earned Rs. 994784/- as dividend which has been claimed to be exempt under section 10(34) of the Act. Against this assessee-company suo-moto offered Rs. 17,67,345/- as disallowance of expenditure under section 14A of the Act being a part of salary of three employees and other overheads.

6. Against this suo-moto disallowance of Rs. 17,67,345/- AO applied Rule 8D (ii) & (iii) of the Income Tax Rules, 1962 (for short 'the Rules') as per the calculation prescribed in Rule 8D of the Rules, AO worked out disallowance of Rs. 35,88,82,480/- (Rs. 36,06,49,825 – Rs. 17,67,345). Against this disallowance assessee preferred an appeal before the Id. CIT(A) .

7. Ld. CIT(A) agreed with the contentions raised by the assessee before him, deleted the addition of Rs. 35,88,82,480/- as discussed by him in para-6, 7, 8 & 9.

8. All the grounds of appeal raised by Revenue in the present appeal were thoroughly discussed on factual and legal front. We have duly considered the same with AO's order and found no perversity in the order passed by the Id. CIT(A).

9. As discussed in the preceding paragraphs when admittedly assessee-company has earned exempt dividend income of Rs. 9,94,784/- during the year under assessment and has offered suo-moto disallowance of Rs. 17,67,345/- under section 14A of the Act being part of the salary of three employees and other overhead expenses, deletion of addition of Rs. 35,88,82,480/- made by Id. CIT(A) does not require any interference by the Tribunal. Moreover, it is settled principle of law that in any case disallowance under section 14A of the Act cannot exceed the dividend earned by the assessee during the year under consideration. So we find no scope to interfere in the impugned order passed by Id. CIT(A).

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 27th of June, 2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 27/06/2022

SK, Sr.PS

Copy 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

	Details	Date	Initials	Designation
1	Draft dictated on PC on	20.06.2022		Sr.PS/PS
2	Draft Placed before author	27.06.2022		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			