

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.208/Mum/2022
(Assessment Year :2018-19)**

M/s. Enam Asset Management Company Pvt. Ltd., 810, Raheja Chambers, Free Press Journal Marg Nariman Point Mumbai – 400 021	Vs.	The Deputy Commissioner of Income Tax, NeAc New Delhi
PAN/GIR No.AACE3554C		
(Appellant)	..	(Respondent)

Assessee by	Shri R.V. Chaniyari
Revenue by	Shri Brajendra Kumar
Date of Hearing	12/07/2022
Date of Pronouncement	14/07/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.208/Mum/2022 for A.Y.2018-19 arises out of the order by the Id. Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC) in appeal No.NFAC/2017-18/10018117 dated 08/12/2021 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 06/03/2021 by the Id. Income Tax Officer, National e-Assessment Centre, Delhi (hereinafter referred to as Id. AO).

2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance made u/s 14A of the Act read with Rule 8D(2) of the Income Tax Rules in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee company is engaged in the business of asset management including investment and portfolio management mainly in the equity market space. We find that the assessee claimed exempt income of Rs 7,10, 85,048/- in the return of income as under:-

Long Term Capital Gain (STT Paid) exempt	- Rs 5,856/-
Interest on tax free bonds	- Rs 5,54,78,630/-
Dividend from Mutual Funds and Shares	- Rs 1,56,06,418/-

4. We find that the assessee had voluntarily disallowed a sum of Rs 25,21,223/- u/s 14A of the Act as expenditure incurred for the purpose of earning the aforesaid exempt incomes. The basis of arriving at the aforesaid disallowance of Rs 25,21,223/- was given by the assessee as under:-

Expenses allocated / apportioned	Amount (Rs.)	
Total Custody and transaction Charges on investment		50,000
50% salary of one accountant		7,59,700
Two Director's Remuneration for 15 days		10,65,670

Office Overheads apportioned to the above resources:		6,45,853
Electricity & Rs. 4000/- per month considered	48,000	
Communication Exp.@ Rs. 1000/- per month considered	12,000	
2% of Total Depreciation on Fixed Assets	4,35,853	
Staff Welfare, Conveyance & Other exps (Rs. 500/- per day 25 days in a month for twelve months)	1,50,000	
Total		25,21,223

5. We find that the Id. AO without recording any dissatisfaction as to how the disallowance made by the assessee is incorrect, directly proceeded to apply the computation mechanism provided in Rule 8D(2) of the Rules which is revised from 2.6.2016 and made disallowance u/s 14A of the Act as under:-

1% of average value of investments	- Rs 1,91,72,715
Less: Disallowance made by assessee	- Rs 25,21,223
Disallowance made by Id AO	- Rs 1,66,51,492

6. This action of the Id. AO was upheld by the Id. CIT(A) in NFAC. We find that the Hon'ble Supreme Court in the case of Maxopp Investments Ltd reported in 402 ITR 640 (SC) had categorically held that it is incumbent on the part of the Id. AO to record his dissatisfaction as to why the disallowance made by the assessee is incorrect having regard to the books of accounts of the assessee. This dissatisfaction has to be recorded with cogent reasons with complete objectivity. None of these guidelines of the Hon'ble Supreme Court had been followed by the Id. AO in the instant case. We find that the Id. AO directly held that the disallowance computed by the assessee voluntarily is not in consonance with computation mechanism provided in Rule 8D(2) of the Rules and proceeded directly to make disallowance thereon. This action has been

approved by the Id. CIT(A). This goes to prove that both the lower authorities had completely not applied their mind at all , which fact is also evident from various cut and paste errors in the orders passed by the Id. AO as well as by the Id. CIT(A) with incomplete sentences thereon. Hence respectfully following the decision of Hon'ble Supreme Court referred to supra, we direct the Id. AO to delete the disallowance made u/s 14A of the Act in the sum of Rs 1,66,51,492/-. Accordingly, the Ground No. 1 raised by the assessee is allowed.

7. The Ground No. 2 raised by the assessee was stated to be not pressed at the time of hearing by the Id. AR. The same is reckoned as a statement made from the Bar and hence dismissed as not pressed.

8. The Ground No. 3 raised by the assessee is challenging the initiation of penalty proceedings u/s 270A of the Act which would be premature for adjudication at this stage. Hence dismissed.

9. The Ground No. 4 raised by the assessee is general in nature and does not require any specific adjudication.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 14/07/2022 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 14/07/2022
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai