

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

**BEFORE SHRI AMIT SHUKLA, JM, &
SHRI GAGAN GOYAL, AM**

आयकरअपीलसं./ I.T.A. No. 3032/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2012-13)

DCIT-8(3)(2), R. No. 615, Aayakar Bhavan, M. K. Road, Mumbai-400020	बनाम/ Vs.	M/s Vyoman Tradelink India Pvt. Ltd. (earlier known as M/s Rupee Finance and Management Pvt. Ltd.), 135, Continental Building, Dr. Annie Besant Road, Worli, Mumbai-400 018
स्थायीलेखासं ./जीआइआरसं ./PAN No. AABCR9194C		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Nimesh Yadav, Ld. DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Jay Bhansali, Ld. AR
सुनवाईकीतारीख/ Date of Hearing	:	20.06.2022
घोषणाकीतारीख / Date of Pronouncement	:	29.06.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the revenue against the impugned order dated 05.12.2018 passed by Ld. CIT(A)-14, Mumbai

for quantum of assessment passed u/s 143(3) r.w.s. 147 for the AY 2012-12. The revenue has taken the following grounds of appeal:-

1. *On the facts and circumstances of the case and in law, the Hon'ble CIT(A) was not justified in holding that reopening done by the AO is on account of change of opinion and accordingly, the case of the assessee was not validly reopened u/s. 147 of the Act, ignoring the fact that the AO has not expressed any opinion on the issue of disallowance u/s. 14A in the original assessment order passed by him, as held by the Hon'ble Supreme Court in the case of ITO vs. Tech Span India (P) Ltd. (2018) 92 taxmann.com 361(SC)."*

2. The facts in brief are that, assessee has filed its return of income on 25.09.2012 declaring total income of Rs. (-) 3,91,741/-. Thereafter the case was selected for scrutiny and assessment was completed vide order dated 13.03.2012 accepting the return of income. Subsequently, assessee's case was reopened u/s 147 on the following reasons recorded:-

The assessee M/s Rupee Finance and Management Pvt. Ltd., having PAN NO: AABCR9194C is assessed to tax in this charge. The assessee has filed the return of income declaring total income of Rs.3,91,741/- and the same was assessed us 143(3) of the I.T. Act accepting the total income at Rs.3,91,740/-.

In this case, it was noticed from the computation of total income that the assessee has made disallowance u/s. 14A suo moto, while computing disallowance according to the rule 8D the assessee has considered first and second limb of the said rule 8D and made disallowance of Rs. 10,30,52,629/- but failed to consider third limb i.e. 0.5% of average total investment that comes to Rs. 31,64,455/-. If rule 8D applied in any case, the third limb of the rule 8D is mandatory whereas limb one and second is applies on the basis of fact of the case.

In view of the above fact, no addition in respect of the third limb of the rule 8D was made thereby resulting in underassessment of income by 31,64,455/-. As such there is failure on part of the assessee to disclose fully and truly all material fact necessary for its assessment for the year under consideration.

In view of the above, I have reason to believe that the income chargeable to tax u/s 14 A Rule 8D to the tune of Rs. 31,64,455/- have escaped assessment for Y. 2012-13 within the meaning of Section 147 of the I.T. Act, 1961, Therefore, I am satisfied that this is a fit case to issue notice u/s. 148 r.w.s. 147 of the I.T. Act 1961.

The period of 4 years from the end of the assessment year has not elapsed hence, the approval of the Addl. CIT-8(1), Mumbai is required in view of the provisions of Section 151(2) of the L T. Act 1961. Therefore, your kind approval solicited for reopening the assessment for the A.Y .2012-13.

3. Accordingly, notice u/s 148 was issued on 24.03.2017. Assessee has raised the objections before the AO on various grounds; firstly, assessee itself has computed disallowance u/s 14A at Rs. 10,30,48,274/- on dividend income of Rs. 1,70,57,826/- which mostly consisted of disallowance of interest expenditure and financial charges. Secondly, it was also submitted that during the course of original assessment proceedings, the assessee has given the detail working and reasons for disallowance u/s 14A. Thus, reopening amounts to 'Change of Opinion' and there is no tangible material coming on record to show that there is any income chargeable to tax as escaping income. Apart from that, it was submitted that out of total expenses of Rs. 7,46,793/- debited to the profit and loss account, assessee has already added back Rs. 5,52,000/- and only balance expenditure of Rs. 1,90,429/- was claimed. However, Ld. AO rejected the assessee's objection and made further disallowance under Rule 8D(2)(iii) by taking 0.5% of the average investment and made disallowance of Rs. 31,64,455/-.

4. Ld. CIT(A) held that reopening has been done by the AO on the basis of same material which was available before him during the

course of original assessment proceedings and vide letter dated 22.01.15, assessee had submitted that details of suo moto disallowance made u/s 14A read with Rule 8D. Further the assessee has also specifically pointed out as to why 0.5% of average investment under Rule 8D cannot be made, it was out of expenses of Rs 7,46,793/- debited to the P & L account. An amount of Rs. 5,52,000/- have already disallowed by the assessee. The only expenditure of Rs. 1,90,438/- pertaining to audit fees, legal and professional fees and misc. expenses were claimed. Accordingly, he held that the reopening is invalid as it amounts to 'Change of Opinion'.

5. After hearing both the parties and on perusal of the impugned order, we find that it is undisputed fact that:-

Firstly, original assessment was completed u/s 143(3) and during the course original assessment proceedings in the computation of income, assessee had given the detail working of disallowance u/s 14A which was calculated and worked out at Rs. 10,30,52,629/- on the dividend income of Rs. 1,70,57,826/-.

Secondly, in reply to specific query raised by AO during original assessment proceedings, assessee vide reply dated 22.01.2015 had given the following working of disallowance and justification for as to why disallowance @ 0.5% cannot be made. The said portion of reply reads as under:-

Working of disallowance u/s. 14A r.w.r 8D as under:

Particulars	31.03.2012	31.03.2011
<i>Investments (as per Balance Sheet)</i>	632,891,153	632,891,153
<i>Average Investments</i>	632,891,153	
<i>Investments</i>	632,891,153	632,891,153
<i>Long-Term Loans & Advances</i>	3,746,982	3,588,583
<i>Current Assets</i>	284,940	14,308,957
<i>Total Assets</i>	636,923,076	650,788,693
<i>Average assets</i>	643,855,885	
<i>%</i>		
<i>Interest expenditure including other financial charges</i>	104,833,568	
<i>Amount of interest disallowable as Clause (ii)</i>	103,048,274	

W.r.t disallowance of expenses @ 0.5% of average investments, we would like to submit that during the year the assessee has incurred total 'other expenditure' of Rs. 746,793/-, out of which the assessee has already disallowed demat charges of Rs.

4,355/- specifically pertaining to share investment capable of earning tax free income .Further, the assessee has also disallowed retainership charges of Rs. 552,000 in the computation of income and the balance expenditure of Rs. 190,4387- incurred by way of audit fees, miscellaneous expenses and legal & professional fees are incurred for maintaining the legal structure. Hence, no part of this expenditure is incurred directly in relation to investments.

Total disallowance u/s 14A=Rs. 103,048,274 + Rs. 4,355 = 103,052,629/-, which is already done in the return of income filed.

Thirdly, AO has accepted the said working and completed the assessment u/s 143(3).

6. Now the assessment has been reopened u/s 147 on the perusal of same material and same computation that assessee should have made disallowance under rule 8D(2)(iii) @ 0.5% of the average investment. Thus, clearly the reopening has been done not on the basis of any tangible material coming on record albeit it is merely a 'Change of Opinion' which now as per the judgment of Hon'ble Supreme Court in the case of **CIT vs. Kelvinator of India**

320 ITR 561 (SC) has held that reopening on 'Change of Opinion' is impermissible.

7. Apart from that, once assessee had duly explained out of total expenditure at Rs. 7,46,793/-, assessee had itself disallowed Rs. 5,52,000/- in the computation of disallowance u/s 14A. The other expenses are nowhere related to earning of the exempt income when total expenditure claimed at Rs. 1,90,438/-. We do not find any justification or reason for making disallowance of Rs. 31,64,455/- which goes to show that there is absolutely no satisfaction or application of mind by the AO having regard to the nature of expenses debited. Thus, Ld. CIT(A) has rightly held that reopening is not valid and same deserves to be quashed. Accordingly, the ground raised by the revenue is dismissed.

8. In the result, the appeal filed by the revenue stands **dismissed**.

Orders pronounced in the open court on 29th June, 2022.

Sd/-
(Gagan Goyal)
Accountant Member

Sd/-
(Amit Shukla)
Judicial Member

मुंबई Mumbai;दिनांक Dated : 29/06/2022

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./ Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai