

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.148/M/2022  
Assessment Year: 2017-18**

The Asstt. Commissioner of Income Tax, Central Circle – 5(4), Room No.1927, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	M/s. Wadhwa Group Holdings Pvt. Ltd., 301 Platina, Plot C-59, G Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 098 <b>PAN: AACCV3961G</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Mahesh O. Rajora, A.R.  
Revenue by : Shri Kishor Dhule, D.R.

Date of Hearing : 21 . 06 . 2022

Date of Pronouncement : 29 . 07 . 2022

**O R D E R**

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

The appellant, Asstt. Commissioner of Income Tax, Mumbai (hereinafter referred to as ‘the Revenue’) by filing the present appeal, sought to set aside the impugned order dated 29.11.2021 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2017-18 on the grounds inter alia that :-

*“On the facts and in circumstances of the case, the Ld CIT (A) erred in restricting the disallowance of Rs. 9,04,40,370/- U/s. 14A to the tune of Ts. 1,08,586/- holding that only those investments on which*

*exempt income has been earned have to be considered for computing the disallowance u/s. 14A even when the AO rightly worked out the disallowance u/s. 14A as per the rule 8D(ii) of Income tax Rule, 1962."*

*On the facts and in circumstances of the case, the Ld CIT (A) erred in restricting the disallowance U/s. 14A r.w.s. 8D to the extent of the exempt income earned by the assessee during the year under consideration without appreciating the CBDT Circular No. 05/2014 dated 11,02.2014 wherein, it has been clarified that Rule 8D r.w.s. 14A provides for disallowance of expenditure even where the assessee in particular has not earned exempt income"?*

*Whether the Ld CIT(A) is justified in deleting the addition of Rs. 9,04,40,370/- made by the assessing officer u/s. 14A r.w. Rule SOD on the basis that the same is not to be applied if no exempt income is earned during the year and neither can it exceed the quantum of exempt income earned during the year, ignoring the clear provisions of the Act and as clarified by the CBDT Circular No. 05/2014 dated 11.02,2014.*

*The appellant craves to leave, to add, to amend and / or to alter any of the ground of appeal, if need be."*

2. Briefly stated facts necessary for adjudication of the controversy at hand are: during the scrutiny proceedings Assessing Officer (AO) has noticed the substantial investment made by the assessee in the shares of companies and partnership firm, for which it has received exempt dividend income of Rs.24,075/-. The assessee had made suo-moto disallowance of Rs.1,08,586/-. Being not satisfied with the computation of total income given by the assessee AO proceeded to invoke the provisions contained under section 14A read with rule 8D and thereby made a disallowance of Rs.9,04,40,370/- and thereby framed the assessment at – Rs.1647429911/- under section 143(3) of the Income Tax Act, 1961 (for short ‘the Act’).

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved

Revenue has come up before the Tribunal by way of filing 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 assessee has made substantial investment in the shares of the company and partnership firm during the year under assessment. It is also not in dispute that during the year under consideration the assessee has earned exempt dividend income of Rs.24,075/-. It is also not in dispute that the assessee has made suo-moto disallowance of Rs.1,08,586/- in the computation of total income.

6. In the backdrop of the aforesaid undisputed facts the Ld. CIT(A) restricted the disallowance to Rs.1,08,586/- the suo-moto disallowed by the assessee under section 14A read with rule 8D of the Act by returning following findings:

*“During the year under consideration, the appellant has earned dividend income of Rs.24,075/- from investment in shares of Nutan Nagrik Sahkari Bank Ltd and The Shamrao Vithal Co-Operative Bank Limited, which was claimed as exempt in its return of income. In the computation of total income, the appellant has suo-moto made disallowance of Rs.1,08,586/- u/s 14A of the Act. It is submitted by the appellant that no exempt income has been earned in respect of other investments made in shares and securities. It is also submitted that for computing disallowance u/s 14A r.w.r.80 only those investments are has to be considered on which the assessee has received the exempt income during the year. To support this argument, the appellant has relied upon the decisions of Hon'ble ITAT Delhi Special Bench in the case of ACIT Vs. Vireet Investments Pvt. Ltd. & Anrs [58 ITR(Trib) 313(Delhi)](SB), ACB India Ltd Vs. ACIT [374*

***ITR (Trib) 108] (Delhi), REI Agro Ltd Vs. DCIT [144 ITD 141] (Kolkata).***

***Identical view has been taken in various decision of jurisdictional Mumbai ITAT in the cases of DCIT Vs. Cox & Kings (I) Ltd [160 DTR 201](Mumbai), DCIT Vs. Ashrit Holdings Ltd [51 CCH 301](Mumbai), ACIT Vs. Af-Taab Investment Company Limited [51 CCH 358](Mumbai), DCIT Vs. Reliance Capital Ltd [51 CCH 427](Mumbai), Sajjan India limited Vs. Addl. CIT [51 CCH 455](Mumbai), DCIT Vs. Bombay Oxegen Corporation Ltd [167 ITD 224UMumbai)***

***Respectfully following the above referred decisions, while making the disallowance u/s 14A r.w.r. 8D only those investments on which the assessee has received exempt dividend income during the year should be considered.***

***The appellant has further submitted that the disallowance u/s 14A r.w.r.SD cannot exceed the exempt income earned by the appellant.***

***The issue is decided by the jurisdictional hon'ble Bombay High Court in the case of Nirved Traders Pvt Ltd Vs. DCIT [421ITR 142] wherein it has held as under:***

***"Held, that the disallowance under section 14A read with rule 3D could not exceed the assessee's exempt income. The disallowance under section 14A was to be limited to the extent of the dividend income earned by the assessee which was exempt from tax."***

***Similar view was taken by the Hon'ble Bombay High Court in the case of PCIT Vs. HSBC Invest Direct (India) Ltd [421 ITR 125] wherein the Hon'ble Bombay High Court directed to restrict the disallowance u/s 14A r.w.r. 8D to exempt income earned by the assessee during the year.***

***To support this claim, the appellant has also relied upon the decision in the case of M/s. Daga Global Chemicals Pvt. Ltd. Vs ACIT [46 ITR(Trib) 70](Mumbai, Joint Investment Private Limited [372 ITR 694](Delhi)***

***Thus, respectfully following the above referred judicial pronouncements, the disallowance u/s 14A is restricted to the extent of exempt income earned during the year.***

***However, as the assessee has suo-moto disallowed a sum of Rs.1,08,586/- in its computation of total income, disallowance, u/s 14A r.w.r. 8D is restricted to the suo-moto disallowance of Rs.1,08,586/- made by the appellant."***

7. Bare perusal of the impugned order of Ld. CIT(A) goes to prove that the same is passed in view of the settled principle of law that in any case disallowance under section 14A of the Act cannot be more than exempt income earned by the assessee during the year under consideration. In the instant case assessee has undisputedly earned Rs.240,75/- from the investment in the shares of Nutan Nagrik Sahkari Bank Ltd. and The Shamrao Vithal Co-operative Bank Ltd. In order to earn the exempt income assessee has suo moto made disallowance of Rs.1,08,586/- under section 14A of the Act. So when disallowance under section 14A cannot exceed exempt dividend income earned during the year under assessment Ld. CIT(A) has rightly restricted the disallowance to Rs.1,08,586/- under section 14A of the Act. So finding no illegality or perversity in the impugned order passed by the Ld. CIT(A) present appeal filed by the Revenue is hereby dismissed.

**Order pronounced in the open court on 29.07.2022.**

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

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

Mumbai, Dated: 29.07.2022.

\* 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.