

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.955/Chny/2020
निर्धारण वर्ष /Assessment Year: 2017-18

M/s.SVL Ltd.,
Shriram House,
1st Floor, No.4,
Burkit Road,
T. Nagar, Chennai.
[PAN: AAACS 7696 D]
(अपीलार्थी/Appellant)

v. The Asst. Commissioner-
of Income Tax,
Corporate Circle-6(2),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.R.Sivaraman, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.P. Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 28.06.2022
घोषणा की तारीख /Date of Pronouncement : 29.07.2022

आदेश / ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-15, Chennai, in ITA No.285/2019-20/CIT(A)-15 dated 23.09.2020. The assessment was framed by the Asst. Commissioner of Income Tax, Corporate Circle-6(2), Chennai, for the AY 2017-18, u/s.143(3) of the Income Tax Act, 1961 (hereinafter "the Act") vide his order dated 24.12.2019.

2. The only issue in this appeal of the assessee is against the order of the Ld.CIT(A) confirming the action of the AO in making disallowance on

:: 2 ::

expenses relatable to exempt income by invoking provisions of Sec.14A r.w.r.8D of the Income Tax Rules, 1962 (hereinafter "the Rules"). For this, assessee has raised the following five grounds:

1. The order of the CIT(A)-15 in IT.A.No.285 / 2019-20 / CIT(A)-15 dated 23.09.2020 is against law and facts of the case.

2. The CIT(A) erred in confirming part of the disallowance made u/s.14A r.w Rule 8D.

3. The CIT(A) erred in not appreciating the fact that the entire dividend income was credited to the appellant's bank account under ECS and the appellant has already disallowed Rs.1,03,470/- u/s.14A.

4. The CIT(A) erred in no appreciating the fact that the appellant is in the business of investment promotion and therefore provisions of section 14A r.w Rule 8D are not attracted.

5. The CIT(A) appeal erred in not appreciating the fact that the Assessing Officer has applied Rule 8D without recording having regard to the accounts of the assessee as to why he was not satisfied about the correctness of the amount disallowed by the appellant of Rs.1,03,470/-. In this connection, the appellant relied on the following decisions:

i) Principal CIT Vs Reliance Capital Asset Management Limited (Bombay HC (400 ITR 217)). SLP against this judgment has been dismissed by the Hon'ble SC. SLP(C) No. 11379 of 2018 dated 07.09.2018 (259 Taxman 83).

ii) Marg Limited Vs CIT [2020] 120 Taxmann.com 84 (Madras)

iii) CIT Vs Taikisha Engineering India Ltd (229 Taxman 143) Delhi HC.

iv) CIT Vs I.P.Support Services India P Ltd (378 ITR 240) Delhi HC.

For these and other grounds that may be adduced before or at the time of hearing the Hon'ble ITAT may be pleased to delete the addition made u/s.14A r.w Rule 8D.

3. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has earned dividend income from mutual funds amounting to Rs.51,75,516/- and claimed the same as exempt. The assessee has made suo moto disallowance of expenses relatable to exempt income u/r.8D(2) of the Rules, at Rs.10,33,470/-. The AO while computing disallowance u/r.8D(2)(iii) of the

:: 3 ::

Rules made disallowance of Rs.14,61,83,00,000/- and since the assessee has received dividend income and claimed exemption of income to the extent of Rs.51,75,516/-, the Ld.CIT(A) also restricted the disallowance at Rs.51,73,516/-. The Ld.CIT(A) also given rebate of suo moto disallowance made by the assessee to Rs.1,03,470/- and thereby balance amount disallowed u/s.14A of the Act at Rs.50,70,046/- and added to the returned income of the assessee.

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A). The Ld.CIT(A) has not accepted the contention of the assessee, recording of satisfaction vide Para No.5.1.1 and dismissed the assessee's contention by observing as under:

5.1.1 The Appellant contended that A.O did not record his satisfaction for applying Rule 8D for computation of disallowance. However, the A.O, in the opening para of para-4 at page2 of assessment order, has categorically stated that the assessment has been taken up for scrutiny as expenses debited to P&L account for earning exempt income as per ITR was significantly lower compared to investments made to earn such exempt income. Further, the A.O, in the assessment order, discussed in details the background of the case and particulars of Appellant's investment and other details in this regard. From this, his satisfaction for necessity to examine Appellant's case and bring-in it within the scope of examination for applying provisions of sec.14A r.w.r. 8D is discernible. Hence, this objection of the Appellant is not acceptable and hence, dismissed.

Aggrieved the assessee is in appeal challenging the issue of non-recording of satisfaction.

5. We noted that the AO has nowhere recorded the satisfaction qua the expenses relatable to exempt income by going through the amount of the assessee, despite the fact that the assessee produced complete books of accounts. We noted that the Tribunal has already taken a view on the issue

:: 4 ::

of non-recording of satisfaction after considering the decisions of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT reported in [2018] 402 ITR 640 (SC), decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. v. DCIT [2010] 328 ITR 81 (Bom), Hon'ble jurisdictional High Court in the case of Marg Ltd. v. CIT reported in [2020] 120 taxmann.com 84 (Madras), and also the decision of the co-ordinate Bench of the Tribunal in ITA No.941/Chny/2020 in the case of M/s.Shriram Capital Ltd., for the AY 2017-18, and in ITA No.942/Chny/2020 in the case of M/s.Shriram Financial Ventures (Chennai) Pvt. Ltd., for the AY 2017-18, dated 29.07.2022, wherein, it was held as under:

10. *We have heard rival contentions and gone through the facts and circumstances of the present case. We have also perused the case laws cited by both the sides and material placed before us including assessment order and the order of CIT(A). We noted that the AO in Para No.5.1 has simply issued show cause notice, as to why, the expenditure in relation to exempt income cannot be disallowed as per Sec.14A r.w.r.8D of the Rules and then he resorted to the disallowance of expenses relatable to exempt income by invoking formula prescribed u/r.8D of the Rules vide Para No.5.6 (both paras are re-produced hereinabove in this order at Para No.7) as pointed out by the Ld.Counsel for the assessee on a specific query whether the copy of show cause notice issued by the AO is available, he referred to his Paper Book consisting of Pages 1-166 and particularly, he drew our attention to Page No.34, where show cause notice issued is enclosed and the relevant queries raised by the AO in the show cause notice reads as under:*

*Government of India
Ministry of Finance
Income Tax Department
Office of the Assistant Commissioner of Income Tax
Corporate Circle-6(1), Chennai*

*To
Shriram Capital Ltd.,
4, Shriram House,
Burkit Road, T.Nagar,
Chennai-600 017,
Tamil Nadu, India*

:: 5 ::

PAN: AABCS 2726 B	AY: 2017-18	DIN & Notice No. ITBA/AST/F/143(3)(SCN)/2019- 20/1023343877(1)	Dated: 28.12.2019	Hearing Date & Time: 30.12.2019 10:00 AM
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SHOW CAUSE NOTICE

1. On perusal of your financials, it is seen that you have made payment to Shriram Ownership Trust for Artistic copy Right Fee of Rs.5,41,49,057/-. Hence, please explain the purpose of your payment and so as to why it should not be treated as capital in nature as per provision of section 32.

2. In light of above observations please furnish the following:

Q.1 Why recent judgement passed by the Hon'ble Supreme Court of India in the case of Maxopp Investment vs CIT [2018] 91 Taxmann.com154 (SC) should not be applied for calculating 14A disallowance in your case based on the Theory of apportionment as enumerated in the case law cited supra?

Chandan Kumar
Corp. Circle-6(1), Chennai

11. The Ld.Counsel for the assessee produced copies of the assessee's reply vide letter dated 28.12.2019, whereby the assessee filed entire details of expenses before the AO along with investments made which are enclosed in assessee's Paper Book at Page Nos.37-41 and also filed computation of income at Pages Nos.1-33, he referred to particular Page No.3, where disallowance of expenditure u/s.37 and particularly relatable to exempt income disallowed u/s.14A is Rs.10,66,916/-. The Ld.Counsel for the assessee brought to our notice that all these details were before the AO and even the AO called for the books of accounts which were produced during the course of scrutiny assessment proceedings and this fact is noted by the AO in Para No.3 which reads as under:

3. The submissions of the assessee company have been duly considered. On the basis of submissions of the assessee paid on verification of books of accounts and in view of the facts & circumstances of the case, the assessment is completed as under:

12. We noted that the assessee has made disallowance of expenses relatable to exempt income suo moto at Rs.10,66,916/- and the AO simpliciter relying of Rule 8D issued show cause notice which does not carry out any analysis or exercise as noted by the Hon'ble Delhi High Court in the case of Indiabulls Financial Services Ltd. (supra) and even from the assessment order, we noted from Para Nos.5.1 & 5.6 that the AO simpliciter adopted the formula prescribed under Rule 8D of the Rules without recorded any finding as to correctness of claim made by the assessee qua the expenses relatable to exempt income.

13. Now as argued by both the sides, we have gone through the provisions of Sec.14A of the Act and the relevant provisions i.e. Sec.14A (1) to (3) reads as under:

(1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred79a by the

:: 6 ::

assessee in relation to income which does not form part of the total income under this Act.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed⁸⁰, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:

14. Similarly, we have gone through the Rule 8D(1) which provides when the AO can exercise this power before invoking of formula, he has to record satisfaction as regards the correctness of claim expenditure made by the assessee. The relevant Rule 8D(1) reads as under:

".....(1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with -

(a) the correctness of the claim of expenditure made by the assessee; or

(b) the claim made by the assessee that no expenditure has been incurred, in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provision of sub-rule (2)....".

15. On perusal of the provisions of Sec.14A of the Act, more specifically sub-section 2 & 3 makes it clear that if the AO is not satisfied with the correctness of the claim of the assessee, then the AO shall determine the amount of expenditure incurred in relation to such income, which does not form part of total income under this Act. We noted that for the purpose of computation of disallowance a formal method is prescribed u/r.8D(2)(i) the direct expenses, (ii) the interest disallowance and (iii) the administrative expenses i.e.0.5% of average value of investments. The provisions of Sec.14A(3) specifies the applicability of the provisions of Sec.14A(2) of the Act, where the assessee makes a claim that there is no expenditure incurred, but the provisions of Sec.14A(2) makes it clear that where the assessee makes disallowance u/s.14A of the Act, in its computation of total income while filing return of income, then after satisfying the conditions mentioned the AO should be satisfied having regard to the Accounts of the assessee with the correctness of the claim of the assessee in respect of such expenditure in relation to income, which does not form part of total income under this Act. In this situation, the AO can make disallowance u/s.14A of the Act r.w.rule 8D of the Rules. Thus, according to the above provisions of Sec.14A where the assessee makes a claim that there is expenditure relatable to exempt income and he makes disallowance i.e. suo moto disallowance u/s.14A of the Act, if the AO proposed to invoke Sec.14A, he has to record satisfaction. That this satisfaction cannot be plain or simple satisfaction or simply invoking the formula prescribed u/r.8D(2), but it is to be done with regard to the analysis carried out on the accounts of the assessee.

16. The Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra) has considered this issue and finally at Para No.41, held as under:

:: 7 ::

41) Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.

17. We also gone through the case law cited by the Id.CIT-DR, Dr.S.Palani Kumar, of Hon'ble Delhi High Court in the case of India Bulls Finance Ltd. (supra), wherein the Hon'ble High Court has discussed in Para No.8 that AO has carried out elaborate analysis in regard to the expenditure incurred by the assessee in relation to exempt income and the Hon'ble High Court has recorded this finding in Para No.8 as under:

"...8. In this instance the elaborate analysis carried out by the AO - as indeed the three important steps indicated by him in the order, shows that all these elements were present in his mind, that he did not expressly record his dissatisfaction in these circumstances, would not per se justify this Court in concluding that he was not satisfied or did not record cogent reasons for his dissatisfaction to reject the AO's conclusion. To insist that the AO should pay such lip service regardless of the substantial compliance with the provisions would, in fact, destroy the mandate of Section 14A....".

18. Further, the reliance placed by Ld.Counsel for the assessee on the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. (supra), the Hon'ble Bombay High Court has considered the issue recording of satisfaction as under:

"...33. Under sub-section (2), the Assessing Officer is required to determine the amount of expenditure incurred by an assessee in relation to such income which does not form part of the total income under the Act in accordance with such method as may be prescribed. The method, having regard to the meaning of the expression 'prescribed' in Section 2(33), must be prescribed by rules made under the Act. What merits emphasis is that the jurisdiction of the Assessing Officer to determine the expenditure incurred in relation to such income which does not form part of the total income, in accordance with the prescribed method, arises if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of the expenditure which the assessee claims to have incurred in relation to income which does not part of the total income. Moreover, the satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the assessee. Hence, Sub section (2) does not ipso facto enable the Assessing Officer to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income is correct. The Assessing Officer must, in the first instance, determine whether the claim of the assessee in that regard is correct and the determination must be made having regard to the accounts of the assessee. The satisfaction of the Assessing Officer must be arrived at on an objective basis. It is only when the Assessing Officer is not satisfied with the claim of the assessee, that the legislature directs him to follow the method that may be prescribed. In a situation where the accounts of the

:: 8 ::

assessee furnish an objective basis for the Assessing Officer to arrive at a satisfaction in regard to the correctness of the claim of the assessee of the expenditure which has been incurred in relation to income which does not form part of the total income, there would be no warrant for taking recourse to the method prescribed by the rules. For, it is only in the event of the Assessing Officer not being so satisfied that recourse to the prescribed method is mandated by law. Sub section (3) of Section 14A provides for the application of sub section (2) also to a situation where the assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under the Act. Under the proviso, it has been stipulated that nothing in the section will empower the Assessing Officer, for an Assessment Year beginning on or before 1 April 2001 either to reassess under Section 147 or pass an order enhancing the assessment or reducing the refund already made or otherwise increasing the liability of the assessee under Section 154.

34. The circumstances in which the provisions of sub sections (2) and (3) were introduced by an amendment have been adverted to in a circular of the CBDT dated 28 December 2006.¹¹ The circular notes that in the existing provisions of Section 14A no method for computing the expenditure incurred in relation to income which does not form part of the total income had been provided. As a result, there was a considerable dispute between tax payers and the Revenue on the method of determining such expenditure. In this background, sub section (2) was inserted so as to make it mandatory for the Assessing Officer to determine the amount of expenditure incurred in relation to income which does not form part of the total income in accordance with the method that may be prescribed. The circular, however, reiterates that the Assessing Officer has to follow the prescribed method if he is not satisfied with the correctness of the claim of the assessee having regard to the accounts of the assessee...".

19. Even, the Hon'ble jurisdictional High Court in the case of Marg Ltd. v. CIT reported in [2020] 120 taxmann.com 84 (Madras), had considered the issue on satisfaction and held that the disallowance u/r.8D of the Rules r.w.s.14A of the Act, can be computed only after recording satisfaction by the AO in terms of provisions of Sec.14A r.w.r.8D of the Rules. The Hon'ble jurisdictional High Court held in Para Nos.21 & 22 are as under:

21. We cannot approve even the larger disallowance proposed by the Assessee himself in the computation of disallowance under Rule 8D made by him. These facts are akin to the case of Pragati Krishna Gramin Bank (supra) decided by Karnataka High Court. The legal position, as interpreted above by various judgments and, again reiterated by us in this judgment, remains that the disallowance of expenditure incurred to earn exempted income cannot exceed exempted income itself and neither the Assessee nor the Revenue are entitled to take a deviated view of the matter. Because as already noted by us, the negative figure of disallowance cannot amount to hypothetical taxable income in the hands of the Assessee. The disallowance of expenditure incurred to earn exempted income has to be a smaller part of such income and should have a reasonable proportion to the exempted income earned by the Assessee in that year, which can be computed as per Rule 8D only after recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure under section 14A made by the Assessee or his claim that no expenditure was incurred is validly rejected by the Assessing Authority by recording reasonable and cogent

:: 9 ::

reasons conveyed to Assessee and after giving opportunity of hearing to the Assessee in this regard.

22. We, therefore, dispose of the present appeal by answering question of law in favour of the Assessee and against the Revenue and by holding that the disallowance under rule 8D of the IT Rules read with Section 14A of the Act can never exceed the exempted income earned by the Assessee during the particular assessment year and further, without recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure made by the Assessee with respect to the exempted income is not acceptable for reasons to be assigned the Assessing Authority, he cannot resort to the computation method under Rule 8D of the Income-tax Rules, 1962.

6. As the facts are identical in the present case too, the above case laws of the co-ordinate Bench, respectfully following the same, we are of the view that the AO has not recorded any satisfaction nor analyzed the accounts of the assessee in respect of expense relatable to exempt income. Hence, we reverse the order of the lower authorities on this issue and allow the appeal filed by the assessee.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 29th day of July, 2022, in Chennai.

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated: 29th July, 2022.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF