

आयकर अपीलिय अधिकरण
मुंबई पीठ " डी " मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
आअसं. 4151/मुं/2018 (नि. व. 2014-15)
ITA No. 4151/MUM/2018 (A.Y.2014-15)

M/s Raptakos Brett and Co. Ltd.
253, Dr. Annie Besant Road,
Worli, Mumbai-400030.

PAN: AAACR1772R

..... अपीलार्थी / Appellant

बनाम Vs.

DCIT-5(3)(1),
Mumbai.

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Ronak Doshi
with Ms. Ayushi
प्रतिवादी द्वारा/ Respondent by : Sh. Pankaj Kumar and
Sh. Pavan Kumar Beerla

सुनवाई की तिथि/ Date of hearing : 25/03/2022
घोषणा की तिथि/ Date of pronouncement : 22/06/2022

आदेश / ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-10, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 26.03.2018 for Assessment Year (AY) 2014-15.

2. The assessee in appeal has raised solitary issue assailing the findings of CIT(A) in confirming disallowance under section 14A of the Income Tax Act,

1961 (hereinafter referred to as 'the Act') read with Rule 8D(2)(iii) of the Income Tax Rules, 1961 (hereinafter referred to as 'the Rules').

3. Sh. Ronak Doshi appearing on behalf of the assessee submitted that during the period relevant to the AY under appeal, the assessee has earned dividend income of Rs. 12.40 crores exempt under section 10(34) of the Act. The assessee made suo-moto disallowance of Rs. 19,71,090/- for earning of exempt dividend income. During the assessment proceedings, the assessee furnished report on expenses incurred in relation to income not includable in total income. Along with the report, the assessee had also furnished time sheet indicating the employees and the time spent in respect of investments on which dividend income is received. The Assessing Officer (AO) without recording his dissatisfaction in an objective manner as envisaged under section 14A(2) of the Act rejected assessee's suo-moto disallowance and recomputed disallowance under section 14A r.w.r. 8D to Rs. 2,78,47,591/-. Against the findings of AO, the assessee carried the issue in appeal before the CIT(A). The CIT(A) vide impugned order deleted the disallowance made under Rule 8D(2)(ii), however, in respect of disallowance under Rule 8D(2)(iii) the CIT(A) erred in holding that the AO has recorded proper satisfaction. The CIT(A) has further erred in rejecting assessee's alternative plea that only dividend yielding investment should be considered for the purpose of computing the average value of investment. The CIT(A) has erred in misreading the decision of Special Bench in the case of ACIT Vs. Vireet Investments (P.) Ltd. (82 taxmann.com 415 (Del. Trib.) (SB). The Id. Authorized Representative (AR) pointed that in the preceding AYs, the assessee had made suo-moto disallowance under section 14A on similar lines. The AO rejected the same, however, when the matter travelled to the Tribunal, the Tribunal accepted the working of disallowance

made by the assessee. The Id. AR placed reliance on the order of Tribunal in assessee's own case in ITA No. 7490/Mum/2013 for AY 2010-11 decided on 10.11.2016, order of Tribunal in ITA No. 578/Mum/2015 for AY 2011-12 decided on 23.02.2017 and order of Tribunal in ITA No. 4427/Mum/2016 for AY 2012-13 decided on 20.06.2018.

4. Per contra, Sh. Pankaj Kumar representing the Department vehemently defended the assessment order and the findings of CIT(A) in upholding disallowance under Rule 8D(2)(iii). The Id. Departmental Representative (DR) submitted that the AO has recorded his reasoned dissatisfaction, rejecting assessee's suo-moto disallowance under section 14A of the Act. The Id. DR asserted that the requirements to invoke Rule 8D have been duly complied with. The Id. DR prayed for dismissing the appeal of assessee and upholding the findings of the CIT(A) with respect to disallowance under Rule 8D(2)(iii) of the Rules.

5. Both sides heard, orders of the authorities below examined and the decision on which reliance has been placed by Id. AR of the assessee considered. The solitary issue in appeal is against the disallowance under section 14A r.w.r. 8D(2)(iii) upheld by the CIT(A). The contention of the assessee is that the AO has failed to record satisfaction as envisaged under section 14A(2) of the Act and rejecting scientific calculation made by assessee for making disallowance under section 14A of the Act. We find that the assessee has furnished a detailed report on expenses incurred in relation to earning of exempt income. The AO while passing assessment order has rejected the report furnished by the assessee out rightly and has thereafter placed reliance on various decisions to contend that disallowance under section 14A has to be made in accordance with Rule 8D w.e.f. AY 2008-09.

A bare perusal of section 14A would show that application of Rule 8D is not automatic. The mandate of section 14A(2) is that where the assessee has made suo-moto disallowance of expenditure in relation to income which does not form part of the total income, the AO **“having regard to the accounts of assessee”** if not satisfied with the correctness of the claim of the assessee shall determine the amount of expenditure in relation to earning of exempt income. Though there is no prescribed format for recording of dissatisfaction by the AO, however, while recording dissatisfaction, the mandate of sub-section (2) to section 14A has to be observed. The AO has to analyse suo-moto disallowance made by the assessee vis a vis the accounts of the assessee. In the instant case, we find that the dissatisfaction recorded by the AO falls short of the legal requirement. The AO while recording his dissatisfaction has made no reference to the account of assessee and expenditure claimed therein. Consequently, the disallowance under section 14A r.w.r. 8D(2)(iii) re-worked by the AO is unsustainable. The assessee succeeds on ground no. 1 & 2 of the appeal.

6. In ground no.3 of appeal, the assessee has raised alternate contention. Since, we have accepted ground no. 1 & 2 of appeal, the alternate plea raised in ground no.3 has become academic, consequently, the same is not deliberated upon.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on **Wednesday**, the **22nd** day of June, 2022.

Sd/-
(AMARJIT SINGH)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 22/06/2022

S.K., Sr. PS

प्रतिलिपि अग्रेषितCopy 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