

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 1593/MUM/2020 (A.Y. 2014-15)

Radha Madhav Investments Private Limited 11-A Mittal Chambers Dr. Rajani Patel Marg Nariman Point, Mumbai-400021 PAN: AAACR4063M	v.	DCIT – Central Circle – 3(3)(1) Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee by	:	Shri Madhur Agarwal
Department by	:	Smt Mahita Nair
Date of Hearing	:	13.07.2022
Date of Pronouncement	:	23.08.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals)-8, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 25.02.2020 for the A.Y.2014-15.

2. Brief facts of the case are, assessee is engaged in the business of trading in raw cotton, bales, guar seeds and other commodities and filed

its return of income on 30.09.2014 declaring a total income of ₹.1,28,32,980 under normal provisions of the Income-tax Act, 1961 (hereinafter referred to as "Act") and book profit at ₹.22,13,30,072. The assessee had suo-moto disallowed a sum of ₹.8,636 u/s. 14A applying Rule 8D(2)(i) of I.T.Rules and ₹.10,96,734 towards expenses (being 0.5% of average tax free investments) applying Rule 8D(2)(iii) while computing the income under normal provisions of Act. In the computing average investments for the purpose of Rule 8D(2)(i), the assessee did not include the investments in partnership firm. The case of the assessee was selected for scrutiny assessment vide notice under section 143(2) dated 28.08.2015. The Assessing Officer (hereinafter referred to as "the AO") completed the assessment vide order dated 08.11.2016 accepting the returned income and the suo-moto disallowance made by the assessee. The CIT invoked the provisions of section 263 of the Act and vide order dated 21.12.2017 held that the assessee ought to have included investments in partnership firm while computing disallowance under Rule 8D of I.T. Rules. The invocation of provisions of section 263 has been upheld by the Tribunal vide order dated 30.04.2019. An appeal against the same has been preferred before the Hon'ble Bombay High Court and the same remains pending to be disposed.

3. The Assessing Officer, pursuant to the directions of the CIT, completed the assessment, assessing the total income at ₹.2,67,92,415/- under normal provisions of the Act and book profit at ₹.23,63,86,245. The Assessing Officer computed the disallowance under section 14A read with Rule 8D at ₹.1,50,64,809 by including aforesaid investments in partnership firm. Since, the assessee had already disallowed a sum of ₹.11,05,370, the Assessing Officer restricted the disallowance to ₹.1,39,59,439/- under normal provisions to the Act. Further, as no suo moto disallowance was made to book profit, the Assessing Officer added the entire sum of ₹.1,50,64,809/- to book profit under section 115JB of the Act.

4. Aggrieved, assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-8, Mumbai and Ld.CIT(A) confirmed the addition of ₹.1,39,59,439/- to income under normal provisions of the Act and deleted the disallowance under section 14A to book profit. Aggrieved by the addition of ₹.1,39,59,439, the assessee is in appeal before us.

5. Assessee has raised following grounds in its appeal: -

"1. The Commissioner of Income Tax (Appeals) [hereinafter referred to as "the CIT(A)] erred in upholding the action of the Assessing Officer [hereinafter referred to as "the AO"] in disallowing

Rs. 1,39,59,439/- out of expenses u/s 14A of the Act r.w.r. SD @ 0.5% of the average value of the investment in partnership firm. The reasons given by him for doing so are wrong and contrary to the facts of the case and against the provisions of law;

2. The CIT(A) erred in upholding the action of the AO without appreciating that the provisions of section 14A of the Act are not applicable to investments made in partnership firm as income from the partnership firm is not exempt but tax paid income:

3. The CIT(A) erred in upholding the action of the AO in rejecting the assessee's suo-moto disallowance of Rs 11,05,370 and additionally disallowing Rs 1,39,59,439 although the Assessing Officer failed in recording an objective. satisfaction prior to invocation of Rule 8D or establishing a direct nexus with respect to incurring of such additional expenses for earning the exempt income or maintaining the investments in the firm.

4. The CIT(A) failed to appreciate that the observations of the AO in assessment order are wrong, contrary to facts, merely on surmises and conjectures and cannot be considered as objective satisfaction warranting the aforesaid disallowance under section 14A read with Rule 8D;

5. The above grounds/sub-grounds are without prejudice to each other;

6. The appellant craves the leave to add, alter or amend all or any of the grounds of appeal."

6. At the time of hearing Ld. AR of the assessee submitted as under: -

"2.1. We submit that the AO while recording his satisfaction w.r.t the alleged incorrectness of the disallowance computed by the appellant, as required under section 14A(2) of the Act inter alia held as under

A Mrs. Nalini Sekhsaria is director of the assessee company and the appointed person representing both the partnership firms devoting her time and attention to the partnership business

b. Partnership firms are operating from the same premise as that of the assessee company

The aforesaid satisfaction has been upheld by the CIT(A)

2.2 The purported satisfaction recorded by the AO before proceeding to invoke Rule 8D is contrary to facts and position in law

a. As regards time spent by Mrs. Nalini Sekhsania, director of assessee company, in partnership business

Even if it is accepted that Mrs. Nalini Sekhsaria has been engaged to devote time and attention to affairs of the partnership firm, the assessee company does not pay any remuneration / commission to her (Refer Page 22, Note 30(c) of the Factual Paperbook filed on 17.06.2022). Accordingly, no expense on this account can be attributable to earning of exempt income.

b. As regards the partnership firm operating from the same premise as that of assessee company

The assessee company is itself operating from premise of its group concern M/s Basantial Banarsilal Pvt. Ltd. for which the company is paying service charge of Rs. 8,40,000. Therefore, even if the partnership firms are operating from the same premises as the appellant's premises, there can be no question any expense of the appellant being attributable to the partnership firm.

2.3. In view of the above, the appellant submit that the satisfaction recorded by the AO as required under section 14A(2) of the Act to invoke the applicability of Rule 8D, cannot be said to be an objective satisfaction and hence, the Appellant submits that the invocation of Rule 8D by the AO should be quashed and set aside.

2.4. In support of our contention we rely on the following judicial pronouncements

- Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT (2017) 81 tamann.com 111 (SC)*

- *POIT Vs. UK. Paints (India) (P) Ltd [2016] 76 taxmann.com 348 (Delhi)*
- *ACIT Vs. Magarpatta Township Development & Construction Co Ltd (2014) 46 taxmann.com 284 (Pune-Trib)*

2.5. Without prejudice, the Appellant submits that the Tribunal in the case of *Shri Sudhir Kapadia Vs. ITO (ITA 7888/M/03)* and *Hitesh Gajaria Vs. ACIT (ITA 993/M/07)* have held that the provisions of section 14A do not apply to partnership firms and accordingly investments in the partnership firms are to be excluded while computing the disallowance under section 14A. The Appellant however, submits that, subsequently the issue has been decided against the assessee by the decision of the Special Bench in the case of *Vishnu Anant Mahajan (147 TTJ 142)(Ahd. SB)*. This issue has been admitted and pending adjudication before the Bombay High Court

2.6. Without prejudice, the Tribunal in the assessee's own case for AY 2009-10 [ITA [No 6972/Mum/2012), AY 2010-11 [ITA No 309/Mum/2014] and AY 2011-12 [ITA No 342/Mum/2015] has deleted the additional disallowance made by the AO (by including investment in partnership firm) in the said years under section 14A read with Rule 8D. For AY 2012-13 [ITA No 108/Mum/2017] and AY 2013-14 [ITA No 1028/Mum/2017], the Tribunal has remanded the matter back to the file of the AO for fresh adjudication.

2.7. Status of similar disallowance for AY 2009-10 to AY 2015-16 is as under.

Particulars	Assessment Year						
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Op. Balance of Investments	79,96,738	78,47,656	69,66,263	69,56,818	35,18,909	78,74,403	33,22,968
Less:							
Debentures	5,81,000	5,88,618	31,587	48,230	64,893	46,482	26,825
NSC	28	28	28	28	28	28	13
Mutual Funds FMP & Growth	---	487	---	---	---	44,14,013	2,50,000
Venture Funds	1,38,650	1,80,062	2,13,115	2,49,508	2,59,154	2,31,125	2,06,294

ITA NO. 1593/MUM/2020 (A.Y. 2014-15)
Radha Madhav Investments Private Limited

Particulars	Assessment Year						
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Investment in Partnership Firms	38,40,000	38,40,000	38,40,000	38,40,000	29,40,000	29,40,000	26,40,000
Govt. Securities	---	58,062	---	---	---	---	
Op. Balance of Investments earning exempt income	34,37,060	31,80,397	28,81,531	28,19,052	2,54,834	2,42,754	1,99,836
Cl. Balance of Investments	78,47,656	69,66,263	69,56,817	35,18,909	78,74,403	33,22,847	47,79,565
Less:							
Debtures	5,88,618	31,587	48,230	64,893	46,482	26,825	13,244
NSC	28	28	28	28	28	13	10
Mutual Funds FMP & Growth	487	—	—	—	44,14,013	2,53,775	17,63,322
Venture Funds	1,80,062	21,23,115	2,49,508	2,59,154	2,31,125	2,06,294	1,71,533
Investment in Partnership Firms	38,40,000	38,40,000	38,40,000	29,40,000	29,40,000	26,40,000	26,40,000
Govt. Securities	58,062	2,13,115	—	—	—	—	—
Cl. Balance of Investments earning exempt income	31,80,397	28,81,531	28,19,051	2,54,835	2,42,754	1,95,939	191,456
Disallowance as per Rule made in the Return of Income	16,543	15,154	14,251	7,684	1,243	1,096	978
Disallowance by AO as per Rule 8D(2)(iii) in assessment	19,052	19,200	19,200	17,013	14,700	13,959	13,001
Status of Addition	Deleted by the Hon'ble ITAT	Deleted by the Hon'ble ITAT	Deleted by the Hon'ble ITAT	Remanded back to the file of AO	Remanded back to the file of AO	Present Appeal	Deleted by CIT(A), Dept's appeal before ITAT dismissed for low tax effect

2.8. In view of the above and considering the lack of objective satisfaction recorded by the AO, the impugned addition under section 14A read with Rule 8D of Rs. 1,39,59,439 ought to be deleted. Without prejudice, the matter may be remanded back to the file of the AO for fresh adjudication."

7. On the other hand, Ld. DR relied on the orders passed by lower authorities and in particular Ld. DR brought to our notice Para No. 5.8 of the Assessment Order and submitted that the assessee has incurred certain expenditure like employee's salaries including managerial salaries and also the partnership firm office existing only in the premises of the assessee. Therefore, he supported the disallowance u/s. 14A of the Act and disallowance of administrative expenses @0.5% under Rule 8D(2)(iii) of I.T. Rules.

8. Considered the rival submissions and material placed on record, we observe from the record that assessee is one of the partner in the firm namely NS & Co. wherein assessee is holding 60% of profit sharing ratio and other shares are held by sisters concerns and Managing Director Shri Narotam S. Sekhsaria. In another firm namely NSEK Company wherein assessee hold 90% of the profit sharing ratio and other 10% is held by Shri Narotam S. Sekhsaria.

9. It was submitted that assessee has not incurred any expenditure in running the partnership firms and Mrs. Nalini Sekhsaria, Director of the assessee company, the appointed person representing both the partnership firms devoting her time and attention to the partnership business and however, Mrs. Nalini Sekhsaria has not received any remuneration from the firm nor assessee has paid any remuneration/commission to her. However, we understand Mrs. Nalini Sekhsaria is wife of Shri Narotam S. Sekhsaria who is the Managing Director and one of the main partner in both the partnership firms. However, we also observed that the directors are in receipt of remuneration as a percentage of share of profit from the company which includes income earned from the partnership firm. Therefore, the Directors are in receipt of certain remuneration indirectly from the partnership firm and directly from the company. One of the Director of the company Mrs. Nalini Sekhsaria has devoted time on representing and running the partnership firms. Therefore, the assessee has incurred indirectly certain expenditure like managerial expenditure and other privileges extended to the Directors.

10. Further, we observe that the office of the partnership firm is existing in the same building of the assessee, however, it was claimed that assessee itself is functioning and operating from the premises of its group concerns M/s. Basantlal Banarsilal Pvt. Ltd., for which assessee is paying service charge of ₹.8,40,000/-. In our view, this also shows that even though partnership firm is existing in the building of the groups concerns, however, partnership firm has not paid any service charges; it clearly indicates that the assessee is indirectly bearing the service charges of the partnership firm to exist in the premises of the group concern. By considering the above fact on record, we are inclined to agree with the findings of the Assessing Officer that the administrative expenses as per Rule 8D(2)(iii) of I.T. Rules are applicable in the case of income earned by the assessee through partnership firm. Therefore, we are inclined to sustain the additions made by the Assessing Officer. However, at the same time we direct the Assessing Officer to consider those investments which are yielded exempt income. Accordingly, ground No.1 raised by the assessee is dismissed.

11. Further, we observe that in Ground No. 2 assessee has raised the issue that income from partnership firm is not exempt but tax paid income,

we do not agree to the above grounds raised by the assessee. No doubt assessee receives the income after the tax is paid by the partnership firm, however, as far as the assessee is concerned assessee has received income which is exempt from tax. When assessee receives income which is exempt from tax as per the provisions of section 14A of the Act assessee has to disallow the expenditure which is incurred to earn the above said income. In the given case assessee has not incurred any direct expenditure. However, incurred certain indirect expenditure which we have already discussed in the Para No. 9 and 10. Therefore, this ground of appeal is also dismissed.

12. With regard to Ground No. 3 and 4, assessee has raised an objection that Assessing Officer has not recorded objective satisfaction prior to invoking of Rule 8D of I.T. Rules or established a direct nexus with respect to incurring of additional expenses for earning of exempt income or maintaining the investments in the firm. After careful reading of the Assessment Order and our observation in the above paragraphs shows that Assessing Officer has not disturbed the suomoto disallowance made by the assessee. However, we noticed that assessee has aggrieved with the invoking of Rule 8D but this invocation of the rule by the Assessing

Officer on the directions of the Ld. CIT, which is under appeal before Hon'ble High Court by the assessee itself. This issue cannot be the reason to invoke the issue of objective satisfaction relating to the issue under consideration. Therefore, these grounds are also dismissed with the above observation.

13. Ground Nos. 5 and 6 are general in nature, accordingly, the same are dismissed.

14. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 23rd August, 2022.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai / Dated 23.08.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

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
(Asstt. Registrar)
ITAT, Mum