

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

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.28/Mum/2021
(A.Y. 2005-06)**

DCIT, CC-8(1) Room No. 656, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020	Vs.	M/s Raymond Limited New Hind House, Norottam Morarji Marg, Ballard Estate, Mumbai - 400001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACR4896A		
Respondent	..	Appellant

Appellant by :	Shri Madhur Agrawal
Respondent by :	Smt. Mahita Nair

Date of Hearing	08.08.2022
Date of Pronouncement	23.08.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the revenue is directed against the order passed by the Id. CIT(A)-50, Mumbai, which in turn arises from the order passed by the A.O u/s 143(3) r.w.s 254 of the Act for A.Y.2005-06. The revenue has raised the following grounds before us:

- “1. Whether on the facts and circumstances of the case Ld. CIT(A) erred in deleting the addition made u/s 14A not considering 10% of the exempt income and restricting to 2% of the exempt income.

2. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in treating the disallowance u/s 14A upto 10% of the exempt income unreasonable when there are many expenses to earn exempt income which cannot be separated from the expenditure done to earn taxable income.*
3. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in restricting the disallowance @ 2% of the exempt income when there was no reasonable basis defined anywhere pre rule 8D.”*

2. Fact in brief is that vide order dated 28.10.2015 the ITAT set aside the issue pertaining to determining the disallowance u/s 14A to the file of the A.O for computing the disallowance on reasonable basis as held by the Hon'ble Bombay High Court in Godrej & Boyce Manufacturing Company Ltd. The relevant extract of the order of the ITAT reproduced by the AO in the assessment order is as under:

“...This issue is no more res integra as the applicability of Rule 8D has been held to be prospective from AY 2008-09 by the decision of Hon'ble Bombay High Court in Godrej & Boyce Ltd Mfg Co. We, therefore, restore this issue to the file of the AO to be decided afresh without applying Rule 8D after giving reasonable opportunity of being heard to the assessee.”

3. The Assessing Officer has completed the assessment u/s 143(3) r.w.s 254 of the Act on 08.12.2017 and made disallowance u/s 14A @ 10% of the exempt income to Rs.1,95,16,072/-.

4. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has restricted the disallowance to the extent of 2% of the exempt income.

5. Heard both the sides and perused the material on record. During the year under consideration the assessee has earned exempt income to the amount of Rs.19,51,60,718/-. During the course of assessment the A.O has made disallowance of expenses incurred towards earning exempt income @ 10% of such income. On perusal of the assessment order it is observed that A.O has not given relevant reasons for making such

disallowance @ 10% on exempt income. However, the ld. CIT(A) has considered the decision of Hon'ble High Court in the case of Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT (2010) 328 ITR 81 (Bom) wherein held that percentage of the exempt income can constitute a reasonable estimate for making disallowance in the years earlier to assessment year 2008-09. It is undisputed fact that the year under consideration pertaining to the assessee is assessment year 2005-06 which was outside the scope of provision of Rule 8D of the Income Tax Rules. Since in the various decisions it has been held that Rule 8D can be applied only from assessment year 2008-09 and not retrospectively. The ld. CIT(A) has considered that in assessee's own case for assessment year 2004-05 the disallowance u/s 14A was made @ 2% of the exempt income earned by the assessee. The ld. CIT(A) has taken into consideration the decision of Hon'ble Bombay High Court and restricted the disallowance to the extent of 2% of the exempt income earned by the assessee after considering the similar disallowance on identical facts made in the earlier years in the case of the assessee. In the light of the above facts and material on record we observe that assessing officer has not elaborated any basis for making disallowance @ 10% of exempt income in the case of the assessee. It is also noticed that in the case of the assessee itself i.e DCIT, CC-8(1) Vs. M/s Raymond Ltd. in ITA No. 104/Mum/2021, dated 05.01.2022 the coordinate bench of the ITAT has also sustained the addition to the extent of 2% of the exempt income pertaining to assessment year 2006-07. Therefore, we don't find any reason to interfere in the order of the ld. CIT(A), accordingly the grounds of appeal of the assessee 1 to 3 of the revenue are dismissed.

6. In the result, the appeal of the revenue stand dismissed.

Order pronounced in the open court on 23.08.2022

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 23.08.2022

PS: Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY
ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai