

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD**

**BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No. 325/Ahd/2020
Assessment Year : 2014-15**

Shri Vimal Ramniklal Ambani, 7, Gadhvi Society, Navrangpura, Ahmedabad PAN : AADPA 7562 Q	Vs	DCIT, Circle-4(1)(1), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	None	
Revenue by :	Shri Shramdeep Sinha, Sr. DR	

सुनवाई की तारीख/Date of Hearing : 25/08/2022
घोषणा की तारीख /Date of Pronouncement: 28/09/2022

आदेश/O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal filed by the assessee is directed against the order of learned Commissioner of Income-tax (Appeals)-8, Ahmedabad ["CIT(A)" in short] dated 11.03.2020 and the solitary issue involved therein relates to the disallowance of Rs.10,90,721/- made by the Assessing Officer and sustained by the learned CIT(A) under Section 14A of the Income-tax Act, 1961 ("the Act" in short) read with Rule 8D(2)(iii).

2. The assessee, in the present case, is an individual who is engaged in the business of investment and trading in securities and real estate. The return of income for the year under consideration was filed by him on 29.10.2014 declaring a total income of Rs.4,99,633/-. In the said return, the dividend income of Rs.40,13,591/- received during the year under consideration was claimed to be exempt by the assessee. No disallowance on account of expenses incurred in relation to the said exempt income,

however, was offered by the assessee. In this regard, it was contended on behalf of the assessee before the Assessing Officer that the administrative and other expenses claimed by him had no nexus with the exempt income earned in the form of dividends during the year under consideration. In this regard, a detailed submission was made by the assessee in writing in support of his case that no disallowance under Section 14A of the Act on account of administrative and other expenses was warranted in the facts and circumstances of the case. This stand taken by the assessee was not found acceptable by the Assessing Officer and after recording the reasons for the same in paragraph No.5.3 of his assessment order, he held in paragraph No. 5.4 of the assessment order that he was not satisfied with the contention of the assessee that no expenditure was incurred for earning dividend income. He accordingly made a disallowance of Rs.13,65,448/- under Section 14A of the Act after working out the same by applying Rule 8D(2)(iii) as under:-

<i>“Opening Investment</i>	-	<i>Rs.27,64,20,148/-</i>
<i>Closing Investment</i>	-	<i>Rs.26,97,59,338/-</i>
		<u><i>Rs.54,61,79,486/-</i></u>
<i>Average Investment : Rs.54,61,79,482/2=</i>		<i>Rs.27,30,87,743/-</i>
<i>0.5% of Average Investment</i>	=	<i>Rs. 13,65,448/-“</i>

3. The disallowance made by the Assessing Officer under Section 14A of the Act read with Rule 8D was challenged by the assessee in an appeal filed before the learned CIT(A); and, after considering the submissions made by the assessee as well as the material available on record including the order of the Tribunal passed in assessee’s own case for AYs 2012-13 and 2013-14, the learned CIT(A) restricted the disallowance of Rs.13,65,448/- made by the Assessing Officer under Section 14A read with Rule 8D(2)(iii) to

Rs.10,90,721/- vide paragraph No.5.1 of his impugned order which reads as under:

"5.1 The appellant vide synopsis of his submission had furnished details of the shares/mutual fund on which dividend was received during the F.Y. 2013-14. From the list it is seen that the opening value of investments as on 01.04.2013 is Rs.21,80,98,892/- and as on 31.03.2014 is Rs.21,81,89,360/-. Therefore the average value of assets is Rs.21,8144,126/-. Since the issue is covered in favour of the appellant by the judgment of ITAT Ahmedabad, I direct the AO similarly to adopt the figures as furnished by the appellant of Rs.21,81,44,126/- pertaining to shares / MFs on which dividend was earned during the relevant F.Y. for calculation of disallowance u/s 14A r.w.r.8D(2)(iii). Accordingly, disallowance of half percent of Rs.21,81,44,126/- i.e. Rs.10,90,721/- is sustained and the remaining amount of Rs.2,74,727/- made by the AO is deleted. The ground of appeal is partly allowed."

4. Aggrieved by the order of the learned CIT(A), the assessee has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that a similar issue relating to the disallowance under Section 14A r.w.r. 8D(2)(iii) was involved in assessee's own case for AYs 2012-13 & 2013-14 and the Tribunal vide its common order dated 18.07.2019 passed in ITA Nos.2499 & 2500/Ahd/2017 decided the same vide paragraph Nos. 10 to 10.3 as under:-

"10. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the case on hand relates to two disputes. Firstly, whether the disallowance under rule 8D of the Income Tax Rules can be enhanced over and above the amount calculated therein. Secondly, whether the investments which have yielded the dividend income in the year under consideration should only be considered for the purpose of the disallowance under rule 8D(2)(iii) of the Rules."

10.1 Regarding the 1st question, we are of the view that once the AO has invoked the provisions of rule 8D for the disallowance of the expenses incurred by the assessee in relation to exempted income, then the same has to be made within the parameters as specified under rule 8D(2)(iii) of the Income Tax Rules. As such the provisions of the law require disallowance being an amount equal to ½% of the average of the value of investment. The AO has made the disallowance in accordance with the provision of law. Thus in our considered view, the disallowance cannot exceed the amount calculated in the manner as described above.

10.2 In case the Revenue was of the view that the assessee has incurred traveling expenses, not for the business than it can make the disallowance under the provisions of section 37(1) of the Act. As such, these expenses, i.e. traveling cannot be disallowed under the provisions of section 14A read with rule 8D of Income Tax Rule despite the fact these expenses were not incurred in connection with the business.

10.3 Regarding the 2nd question, we note that the disallowance under rule 8D can be made only after considering the investments which have yielded dividend income to the assessee in the year under consideration. In this regard we find support and guidance from the order of Coordinate Bench of this Tribunal in the case of REI Agro Ltd. v. Dy. CIT [2013] 35 taxmann.com 404/144 ITD 141 (Kol.) which was also affirmed by the Hon'ble Calcutta High Court vide Order dated 09.04.2014 in GA No. 3581 of 2013, wherein it was held that the disallowance as per Rule 8D shall be made by taking into consideration only those shares, which have yielded dividend income in the year under consideration. Therefore we direct the AO to make the disallowance under rule 8D after considering the investments which have yielded the dividend income during the year.

In view of the above, we hold that the learned CIT-A cannot enhance the disallowance made by the AO as per rule 8D of the Rules. Accordingly, we direct the AO to delete the addition for the enhanced disallowance made by the learned CIT-A. We further direct that the AO shall make the disallowance under rule 8D of the Rules considering only those investments which have yielded the dividend income in the year under consideration. Hence the ground of appeal of the assessee is partly allowed."

6. As the issue involved in the year under consideration as well as all the material facts relevant thereto are similar to that of AYs 2012-13 & 2013-14 and the learned CIT(A) has decided the issue vide its impugned order

following the order of the Tribunal for AYs 2012-13 & 2013-14, we respectfully follow the order of the Co-ordinate Bench of this Tribunal passed for AYs 2012-13 and 2013-14 and uphold the impugned order of the learned CIT(A) sustaining the disallowance made by the Assessing Officer under Section 14A r.w.r. 8D(2)(iii) to the extent of Rs.10,90,721/-.

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

Order pronounced in the open Court on 28th September, 2022 at Ahmedabad.

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad, Dated 28/09/2022

SR

Sd/-

(P.M. JAGTAP)
VICE-PRESIDENT

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

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

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आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण