

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 1509/MUM/2021
Assessment Year: 2016-17
&
ITA No. 1510/MUM/2021
Assessment Year: 2017-18**

M/s Aachman Vanijya Pvt. Ltd.,
Main Building, 2nd floor, Kolkata,
West Bengal-700 001.

Vs. DCIT, Central Circle-8(4),
6th floor, Aayakar Bhavan,
M.K. Road,
Mumbai-400020.

**PAN No. AACCA 5165 H
Appellant**

Respondent

Assessee by : None
Revenue by : Ms. Shailja Rai, CIT-DR

Date of Hearing : 24/08/2022
Date of pronouncement : 28/09/2022

ORDER

PER OM PRAKASH KANT, AM

These Appeals by the assessee are directed against two separate orders, each dated 13.08.2021, passed by the passed by the Ld. Commissioner of Income-tax (Appeals)-50, Mumbai [in short 'the Ld. CIT(A)']. In these two appeals common issue-in-dispute,



permeating from same set of facts and circumstances is involved, and therefore, these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. Firstly, we take up the appeal of the assessee for AY 2016-17. The grounds raised in appeal for assessment year 2016-17, as under:

1. *On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding addition of Rs.4,37,130/- made by the Ld AO by wrongly concluding that actual interest has been received on refund without appreciating the fact that assessee never received any intimation nor any communication from the department in respect of credit of refund and its corresponding interest and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.*
2. *On the facts and in the R circumstances of the case and in law the Hon'ble CIT(A) erred in upholding addition of Rs.14,51,111/- made by the Ld AO by wrongly invoking provisions of section 14A r.w.r 8D of the Act and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.*



3. *Your appellant craves leave to add to, amend alter or delete any of the above grounds of appeal on or before the date of hearing.*

3. Briefly stated, facts of the case are that the assessee filed its return of income for the year under consideration on 06.10.2016 declaring total income at ₹2,81,21,040/-. In the case of the assessee, a search and seizure action u/s 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out on 03.07.2019 and thereafter, following the due process laid down in the Act, the assessment was completed u/s 153A r.w.s. 143(3) of the Act on 28.12.2019, wherein the Assessing Officer made addition for interest on income-tax refund of ₹4,37,130/- and disallowance u/s 14A amounting to ₹14,51,111/-.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A) but did not find any favour and additions made by the Assessing Officer were confirmed by the Ld. CIT(A).



5. Aggrieved, the assessee has filed appeal before the Tribunal raising the grounds as reproduced above.

6. We note that despite notifying for the hearing, neither anyone appeared on behalf of the assessee nor any adjournment was sought. On perusal of the record, it is found that on earlier occasions also none attended on behalf of the assessee even after duly notified by registered post. In the circumstances, we were of the opinion that no purpose would be served in further adjourning the appeal and, therefore, the appeal was heard ex-parte qua the assessee after hearing arguments of the Ld. Departmental Representative (DR).

6.1 As far was Ground No. 1 of the appeal is concerned, the Ld. CIT(A) has adjudicated as under :

“6.4.1 I have considered the submissions of the appellant and perused the materials available on record. The appellant has requested to delete the impugned addition of Rs.4,37,130/-, being amount of interest received on IT refund omitted to be included in the total income. The appellant has made elaborate submissions and the same are considered carefully. The main contention of the



appellant is that since said interest on IT refund was not received in Bank account but the same was adjusted against the outstanding demand, so the appellant has not offered the same to tax in R/I filed. The contentions of the appellant is devoid of merits as it is admitted fact that during the year under consideration, the appellant did receive interest of Rs.4,37,130/- on IT refund and the appellant itself has confirmed that the same was adjusted against the outstanding demands. The outstanding demands were liabilities of the appellant and adjustment of said interest on IT refund against the outstanding demand liabilities would tantamount to payment made on behalf of the appellant for which due credit will be allowed to the appellant. Mere fact that said interest income on IT refund was adjusted against outstanding demands would not change its character and the same remains income in the hands of the appellant. In view of the facts and the circumstances of the case, no fault can be found with the action of the Ld. AO in making addition on account of interest received on IT refund. Hence, the impugned addition of Rs.4,37,130/- is CONFIRMED. Therefore, the Ground No.1 raised in appeal is DISMISSED."

6.2 We find that the interest arose on the refund issued to the assessee, however, the said refund was directly adjusted against the outstanding demand of the assessee. The grievance of the assessee is that he was not aware about such adjustments made by the Income-tax Department and therefore, no addition should have been made for interest amount in the year under consideration. In our



opinion, the argument of the assessee is not justified. It is undisputed that interest has been allowed to the assessee and that an interest has been adjusted against the tax liability of the assessee so undisputedly, the interest income has accrued to the assessee in relevant assessment year when the refund along with interest has been adjusted against tax liability. However, the assessee is a liberty to take this plea in penalty proceedings if any. Accordingly, we do not find any error in the order of the Ld. CIT(A) on the issue-in-dispute and we accordingly, uphold the same.

6.3 As far as, Ground No. 2 of the appeal is concerned, the Ld. CIT(A) has observed as under:

“7.4.1 I have considered the submissions of the appellant and perused the materials available on record. The appellant has requested to delete the disallowance made u/s 14A rw Rule 8D at Rs.14.51.111/-. The appellant has made detailed submissions as above and the same have been considered carefully. The appellant's main contention is that the provisions of Rule 8D cannot be invoked automatically, without AO drawing his satisfaction in this regard.



7.4.2 *The appellant's contention is that the application of Rule 8D is not automatic and the same cannot be invoked until and unless the Ld. AO records the cogent reasons for disregarding the claim of the appellant. It is an admitted fact that the appellant himself has made disallowance under sec 14A of the Act and hence it cannot be held that the Ld. AO has erred in invoking the provisions of sec 14A of the Act. It is also an admitted fact that the Ld. AO has given a factual finding in the assessment order that based on the submissions made by the assessee, the working of disallowance w/s 14A rw Rule 8D is computed. The Ld. AO has duly discussed the facts of the case and then made said disallowance u/s 14A of the Act w Rule 8D. It is also an admitted fact that the appellant has not given any basis, whatsoever, for making suo motto disallowance u/s 14A of the Act at Rs.95,535/-, The methodology adopted by the appellant for computation of suo-moto disallowance under Section 14A of the Act is without any basis and totally arbitrary and hardly the same can be considered as scientific. It is incumbent upon the appellant to substantiate the suo-moto disallowance computed us 14A of the Act with facts and figures available on record. This is the precise reason as to why the Ld. AO did not accept the suo-moto disallowance computed by the appellant and proceeded to compute the disallowance as per Rule 8D of the Rules. The Hon'ble Gujarat High Court in the case of Devarsons Industries P Ltd, reported in 84 taxmann.com 244 has held that mere fact that the Assessing Officer did not arrive at satisfaction in a particular manner while making disallowance, would not per se destroy mandate of sec 14A of the Act. For the sake of convenience, the finding of the Hon'ble Gujarat High Court in the above referred case is reproduced as under.*



8. To give effect to the provision of Section 14A and in particular sub-section (2) thereof, Rule 8D of the Rules provides the method for determining the amount of expenditure in relation to the income not includable in the total income. Sub-rule (1) echoes the provision of sub-sections (2) and (3) of Section 14A where it provides that if the Assessing Officer having regard to the accounts of the assessee is not satisfied with the correctness of the claim of the expenditure or the claim made is that no expenditure has been incurred in relation to the income which does not form part of the total income, he would determine the amount of expenditure in relation to such income in accordance with the HC-NIC Page 6 of 7 Created On Mon Aug 21 03:13:37 IST 2017 O/TAXAP/522/2017 ORDER provisions of sub-rule (2). Sub-rule (2) of Rule 8D prior to its amendment with effect from 02.06.2016 provided a formula to apportion the expenditure in connection with the tax free income. Section 14A as well as Rule 8D require the Assessing Officer to arrive at a satisfaction that the claim of the expenditure made by the assessee is not correct. It is only then he can apply the formula under sub-rule (2) of Rule 8D. However, these statutory provisions do not require that such satisfaction must be arrived at in a particular manner. As long as there is sufficient material to enable the Assessing Officer to arrive at such a satisfaction and which is also recorded by him in the order of assessment, the requirements of the statute would be satisfied. In the present case, we have noted that the Assessing Officer has given detailed reasons for discarding the assessee's theory that to earn the assessable income the assessee incurred no expenditure whatsoever. The Tribunal confirmed such view. Decision of the Assessing Officer to apply the formula under Rule 8D was therefore correct.



From the provisions of sec 14A wr 8D, it is evident that it is sufficient if the Ld. AO comes to the conclusion that the claim of the assessee in this regard is not correct and it is not necessary for him to decide the extent or quantum of the incorrect claim. Under similar circumstances, the Hon'ble Punjab & Haryana High Court in the case of Punjab Tractors Ltd reported in 78 taxmann.com 65 has held as under.

33. In our view it is sufficient if the Assessing Officer comes to the conclusion that the claim of the assessee in this regard is not correct. It is not necessary for him to decide the extent or the quantum of the incorrect claim. He must, however, correctly conclude that the claim of the assessee is incorrect. It is necessary for the Assessing Officer to rightly come to the conclusion that the claim of the assessee is incorrect. The language of Section 14(2) is "is not satisfied with the correctness of the claim" and not "reasonably doubts it" or "has reasons to doubt the correctness of the claim".

34. Mrs. Suri's reliance upon the word "determine" in sub section (2) of Section 14A as regards the second part of her submission is misplaced. The term determination" in Section 14A(2) applies to the computation of the expenditure incurred in relation to exempt income by resorting to the method as may be prescribed. The method is prescribed by Rule 8D. Under section 14A(2) where the Assessing Officer is not satisfied with the correctness of the claim in respect of the expenditure in relation to exempt income or the assessee's claim that no expenditure has been incurred in relation to such income, 'he shall' determine the amount of such expenditure in accordance with the method prescribed, namely, Rule 8D. The word



'determine' in Section 14A(2), therefore, is in respect of the exercise to be undertaken for the purpose of computing the expenditure in relation to exempt income in accordance with the method as may be prescribed. The Assessing Officer is not required to quantify the amount prior to the invocation of Rule 8D.

35. For an Assessing Officer not to be satisfied with the correctness of the claim of the assessee, it is not necessary for him to determine the expenditure incurred for earning the exempt income. Indeed, if that were so, Rule 8D would be redundant. It is sufficient for the Assessing Officer to come to the conclusion that the claim of the assessee is not correct. It is not necessary, however, for him to determine the extent to which it is incorrect in order to resort to Rule 8D.

36. There would be several instances where an Assessing Officer can come to the conclusion that the claim is incorrect but would be unable to assess the extent of the inaccuracy. That is precisely the purpose of Rule 8D. For instance in the present case, the Assessing Officer was entitled to presume that a part of the expenses from the common fund are attributable to the expenditure incurred for earning the exempt income. He was entitled to resort to Rule 8D without determining the amount expended by the assessee towards earning the exempt income. Indeed if he could have done so, it would not have been necessary for him to resort to Rule 8D at all.

37. It follows, therefore, that Mrs. Suri's submission that a determination means an actual quantification of the expenditure incurred for earning exempt income is erroneous. As Mr. Klar rightly pointed out an Assessing Officer can on the basis of inferences, adverse inferences and reasonable presumptions come



to the conclusion that the claim of the assessee in relation to such expenditure is not correct.

38. In the case before us, the Assessing Officer cannot be faulted for not being satisfied with the claim of the assessee. As we noted earlier the Assessing Officer was entirely justified in presuming that the assessee had incurred expenditure lowards administrative activities nocossary to earn the exempt incore. If the presumption or inference is correct, as we have held it is, the Assessing Officer is entitled to resort to Rule 8D.

39. We are, however, unable to agree with Mr.Klar that the assessee is estopped from challenging the Assessing Officer's application of Rule 8D, as the assessee had itself furnished its working under Rule 8D. The assessee furnished a calculation only to show that the Assessing Officer's calculation is in any event incorrect. That is not an admission by the assessee that Rule 8D was validly invoked. It was only an alternative case assuming that Rule 8D was validly invoked or ought to be invoked.

40. . The Assessing Officer on not being satisfied with the correctness of the claim by the assessee in respect of the expenditure incurred to earn exempt income ought to have applied Rule 8D which he did not. Instead he made an estimate on the basis that he considered to be reasonable. This he was not entitled to do. Where an Assessing Officer is not satisfied with the correctness of the claim of the assessee, in this regard, he is bound by the provisions of sub section (2) of Section 14A to follow the prescribed method which at the relevant time was Rule 8D."



7.4.3 The appellant has also submitted that the Ld. CIT(A) in appellant's own case for A.Y. 2012-13 has allowed relief to the appellant on identical facts of the case and placed reliance on the same. From perusal of the said decision of the Ld. CIT(A) in appellant's own case for A.Y. 2012-13, it is observed that therein he has not considered the above referred decisions of the Hon'ble Gujarat High Court in the case of Devarsons Industries P Ltd, reported in 84 taxmann.com 244 and that of the Hon'ble Punjab & Haryana High Court in the case of Punjab Tractors Ltd reported in 78 taxmann.com 65. In view of the above discussions, with due respect to the Ld. CIT(A), it is held that the decision rendered by him in A.Y. 2012-13 in appellant's own case cannot be followed. In view of the above discussions, there is no substance in the claim of the appellant that before invoking the provisions of sec 14A rwr 8D, the Ld. AO has not passed a speaking order on the claim of the appellant and hence the same is herewith rejected.

7.4.4 The Hon'ble Bombay High Court in the case of Godrej and Boyce Mfg. Co Ltd. vs. CIT reported in 328 ITR 81 has held that provisions of rule 8D are applicable from the assessment year 2008-09 onwards and the same has been confirmed by the Hon'ble Supreme Court in the case of CIT vs. Essar Teleholdings Ltd, reported in 90 taxmann.com 2. As the assessment year involved is 2016-17, so in present assessment year the provisions of Rule 8D are applicable. In this respect it is observed that recently, the Hon'ble Supreme Court in the case of Maxopp Investment Ltd vs CIT reported in 402 ITR 640 has put rest to many controversies under sec 14A of the Act. The Hon'ble Supreme Court held that if expenditure is incurred on earning the dividend income that much of the expenditure which is attributable to the dividend income has



to be disallowed and cannot be treated as business income. The uses of word 'in relation to the income' in sec 14A of the Act brings the principle of apportionment of expenses into play and that is the principle which is engrained in sec 14A of the Act, which was so held in the case of Walfort Share & Stock Brokers P Ltd. The Delhi High Court, therefore, correctly observed that prior to introduction of Section 14A of the Act, the law was that when an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. The principle of apportionment was made available only where the business was divisible. It is to find a cure to the aforesaid problem that the Legislature has not only inserted Section 14A by the Finance (Amendment) Act, 2001 but also made it retrospective, i.e., 1962 when the Income Tax Act itself came into force. The aforesaid intent was expressed loudly and clearly in the Memorandum explaining the provisions of the Finance Bill, 2001. The Hon'ble Supreme Court in the above referred case has also held that the dominant purpose of investment is of no consequence for applicability of provisions of section 14A r.w. Rule 8D.

7.4.5 In view of the above, no fault can be found with the action of the Ld. AO in invoking the provisions of sec 14A of the Act and computing disallowance as per Rule 8D. It is also not the case of the appellant that the disallowance u/s 14A rw Rule 8D exceeds the exempt income earned/claimed during the year, as the Ld. AO has given a factual finding that during the year the appellant has received dividend income of Rs.29,42,875/, which has been claimed as exempt and the total disallowance u/s 14A rw Rule 8D has been



computed at Rs.15,46,646/-, Hence, the impugned disallowance at Rs.14,51,111/- us 14A of the Act is CONFIRMED. Therefore, the Ground No.2 raised in appeal is DISMISSED.”

6.4 We find that main grievance of the assessee before the Ld. CIT(A) was that Rule 8D cannot be invoked automatically without recording of dissatisfaction on the account of the assessee by the Assessing Officer. The Ld. CIT(A) however has relied on the decision of the Hon'ble Gujarat High Court in the case of **Devarsons Industries P. Ltd. reported in 84 taxmann.com 244**, wherein it is held that mere fact that the Assessing Officer did not arrive at satisfaction in a particular manner while making disallowance would not per se destroy section 14A of the Act. It is undisputed that assessee did not provide any basis for *suo motu* disallowance of ₹95,538/- u/s 14A of the Act and because of this precise reason, the Assessing Officer has not accepted the suo motu disallowance made by the assessee.



6.5 Further, we find that Hon'ble Delhi High Court in decision dated 21.11.2016 in the case of **Indiabulls Financial Services Ltd. v. DCIT in ITA No. 470/2016**, held that even dissatisfaction recorded impliedly by the Assessing Officer is sufficient to invoke Rule 8D r.w.s. 14A of the Act. The relevant finding of the Hon'ble High Court is reproduced 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."

6.6 In the circumstances, we do not find any error in the order of the Ld. CIT(A) on the issue-in-dispute and accordingly, we uphold the same.

7. Now we take up the appeal of the assessee for AY 2017-18. As far as ground No. 1 of the appeal of the assessee for AY 2017-18 is



concerned same is identical to ground No. 2 decided in the case of the assessee for AY 2016-17, therefore, following our finding in AY 2016-17 this ground of appeal is decided *mutatis mutandis*. This ground of appeal of the assessee is dismissed.

8. In the result, the both appeals filed by the assessee are dismissed.

Order pronounced in the open Court in 28/09/2022.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 28/09/2022

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai