

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.1394/Mum/2022
(A.Y. 2017-18)**

Tuscan Ventures Private Limited, 11, Silver Arch, Napeansea Road, Mumbai – 400006	Vs.	ACIT, Circle 5(3)(2) 5 th Floor, 573, Aayakar Bhavan, M.K. Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCT7474J		
Appellant	..	Respondent

Appellant by :	Hiro Rai
Respondent by :	A.B.Koli

Date of Hearing	19.09.2022
Date of Pronouncement	03.10.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by the ld. Pr. CIT-5, Mumbai, which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961, for A.Y. 2017-18. The assessee has raised the following grounds before us:

- “1. The learned Principal Commissioner of Income Tax was not justified in directing the AO u/s 263 to reframe the assessment order denovo.
2. The learned Principal Commissioner of Income Tax erred in holding that the assessment order passed u/s 143(3) was erroneous in so far as it was prejudicial to the interests of the revenue.

3. *The learned Principal Commissioner of Income Tax erred in stating that application of amended Rule 8D is mandatory and therefore the method of disallowance followed by the assessee company and accepted by AO has made the assessment order erroneous and prejudicial to the interest of the revenue.*
4. *The learned Principal Commissioner of Income Tax erred in concluding that the assessment had been completed without proper application of law and without making proper inquires and verifications.*
5. *The Learned Principal Commissioner of Income Tax erred in not specifying as to how the assessment order is erroneous except stating that disallowance was not as per amended provisions of section 14A r.w.rule 8D.*
6. *The learned Principal Commissioner of Income Tax erred in not specifying as to how the assessment order is prejudicial to the interest of revenue, except stating that disallowance has not been worked out as per amended rule applicable for AY 2017-18.*
7. *The learned Principal Commissioner of Income Tax erred in not considering the assessee's contention that disallowance u/s 14A cannot exceed exempt income of Rs.42,028 and therefore assessment order wherein disallowance u/s 14A is of Rs.14,31,713 cannot be prejudicial to interest of revenue.”*

2. The fact in brief is that return of income declaring total loss of Rs.73,58,803/- was filed on 31.01.2017. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 27.08.2018. The assessment u/s 143(3) of the Act was finalized on 14.11.2019 assessing the income as per the return filed by the assessee. Subsequently, the Pr. CIT on perusal of the record observed that scrutiny assessment in the case of the assessee was completed without making any disallowance u/s 14A r.w. Rule 8D of the I.T. Rule. The ld. Pr.CIT was also of the view that amount of Rs.14,31,713/- offered by the assessee was not in accordance with the provision of Sec. 14A r.w.rule 8D. Therefore, notice dated 12.03.2022 was issued to the assessee. In response vide letter dated 17.03.2022 the assessee had made detailed submission. The detailed submission of the assessee have been

reproduced at page no. 2 to 9 of the order u/s 263 of the Act passed by the ld. Pr.CIT. The assessee has explained with the supporting detail and evidences that it had made disallowance of Rs.14,31,713/- and same was duly verified by the A.O during the course of assessment proceedings. However, the ld. Pr.CIT has not agreed with the submission of the assessee and stated that Rule 8D has been amended from A.Y. 2017-18 vide notification dated 02.06.2016, therefore held that the assessment order is erroneous insofar as it is prejudicial to the interest of the revenue.

3. During the course of appellate proceedings before us the ld. Counsel contended that during the course of assessment proceedings the A.O had verified and enquired about the disallowance of expenditure u/s 14A made by the assessee company for earning the exempt income by issuing of notice u/s 142(1) of the Act. The ld. Counsel also referred the reply of the assessee dated 17.09.2019 vide which detailed computation of disallowances u/s 14A was worked out. The ld. Counsel further submitted that during the course of proceedings u/s 263 of the Act ld. Pr. CIT has neither specified how the A.O has not verified the disallowance made u/s 14A r.w.r 8D of the I.T. Rule nor controvert the submission made by the assessee to point that how the assessment order was erroneous.

On the other hand, the ld. D.R supported the order of the lower authorities.

4. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above the assessment u/s 143(3) of the Act in the case of the assessee was finalized on 14.11.2019. Subsequently, the ld. Pr.CIT has passed the order u/s 263 of the Act on

26.03.2022 holding that assessment order is erroneous insofar as it is prejudicial to the interest of the revenue particularly on account of not examining the working of disallowance u/s 14A by the A.O in accordance with the amended rule 8D w.e.f assessment year 2017-18. In this regard on perusal of the material on record filed before us it is noticed that during the course of assessment proceedings the A.O has issued notice u/s 142(1) of the Act on 09.09.2019 and as per annexure to the notice vide serial no. 5 to 7 the A.O has asked the assessee to furnish the following details:

- “5. *Details of exempt income earned during the year under consideration. Also furnish working of disallowance of expenditure u/s 14A made by the assessee company for earning the exempt income.*
6. *Please furnish details of expenditure directly relating to income which does not form part of total income.*
7. *Please furnish opening and closing balance of monthly average value of investment as well as annual average value of investment, income from which does not form or shall not form part of total income.”*

In response to notice issued the assessee has made its submission vide letter dated 17.09.2019 vide serial number 4 to 7 in response to query raised by the A.O. The relevant part of the reply submitted by the assessee as under:

- “4. *Copy of the Income Tax Return for the assessment year 2017-18 is attached herewith as Annexure “4”.*
5. *Details of exempt income earned and working of disallowances made u/s 14A of the Act is attached herewith as Annexure “5”*
6. *There are not expenditure directly relating to income which does not form part of total income.*
7. *The working of monthly and annual average of investments income from which is excluded from the total income is submitted in point number 5 of the submission.”*

Tuscan Ventures Pvt. Ltd.

Previous year -2016-17

Assessment Year 2017-18

Details of Exempt income

	Rs.
Paragon partners Growth Fund	38,337
Dividend Income exempt u/s10 (34)/10(35)	<u>3,691</u>

**Working of disallowances of
Expenditure u/s 14A**

Opening	Closing	Average Monthly
285,42,637	1620,42,850	952,92,743.78
1620,42,850	1570,43,007	1595,42,928.47
1570,43,007	1570,43,163	1570,43,085
1570,43,163	1555,43,365	1562,93,264
1555,43,365	1520,43,560	1537,93,462
1520,43,560	1594,43,728	1557,43,644
1594,43,728	1519,43,861	1556,93,795
1519,43,861	1409,76,494	1464,60,177
1409,76,494	1409,76,540	1409,76,517
1409,76,540	1307,84,542	1358,80,541
1307,84,542	1307,84,607	1307,84,574
1307,84,607	1303,16,548	1305,50,577
		1431,71,276
	1% of average monthly invt.	14,31,713
Add	Expenses directly incurred	-
	Total Disallowance u/s 14A	14,31,713

During the course of proceedings u/s 263 of the Act, the assessee had brought to the notice of the ld. Pr.CIT that it had made disallowance of Rs.14,31,713/- as against exempt income earned of Rs.42,028/- resulting in excess disallowance of Rs.13,89,685/- and A.O had accepted the disallowance u/s 14A made in the return of income after making necessary enquiry regarding 14A disallowance. The assessee has also submitted the complete detail regarding the enquiry made by the A.O as reproduced in the order of Pr.CIT as referred above in this order. However, it is noticed that ld. Pr.CIT has not controverted the detailed submission filed by the assessee during the course of proceeding u/s 263 of the Act. We have also perused Rule 8D which was amended w.e.f 02.06.2016, the same is reproduce as under:

- “8D. (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with-
- (a) the correctness of the claim of expenditure made by the assessee, or
 - (b) the claim made by the assessee that no expenditure has been incurred in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).
- (2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:-
- (i) the amount of expenditure directly relating to income which does not form part of total income; and
 - (ii) an amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:
- Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.]”

In this regard we have perused the working of disallowance of expenditure u/s 14A determined by the assessee which were also produced before the A.O during the course of assessment proceedings. From the perusal of working of disallowance in the computation made by the assessee as reproduced above it is clearly shown that assessee has made disallowance in accordance with amended rule at 1% of average monthly investment and assessee had also shown the opening closing and average monthly balance in its working for computing the disallowance u/s 14A to the amount of Rs.14,31,713/-. Further it is noticed that in the statement of computation of income filed by the assessee it is noticed that assessee has clearly disallowed an amount of Rs.14,31,713/- u/s 14A r.w.rule 8D from its computation of income. In the light of the above facts and from the submission of the ld. Counsel and material on record we observe that ld. Pr.CIT has failed to controvert the relevant supporting material and documents produced by the assessee in support of its claim that impugned issue of disallowance of

expenditure u/s 14A r.w.Rule 8D was dully verified by the A.O during the course of assessment proceedings. It is further noticed that the ld. Pr. CIT has also not pointed out how the computation of disallowance made by the A.O was not in accordance with amended rule 8D. After taking into consideration the above facts and circumstances we find that order of the ld. Pr.CIT u/s 263 of the Act dated 26.03.2022 is not justified to treat the order u/s 143(3) passed by the assessee as erroneous insofar as it is prejudicial to the interest of the revenue. Therefore, we set aside the order of the ld. Pr.CIT and allow the appeal of the assessee.

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

Order pronounced in the open court on 03.10.2022

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 03.10.2022

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