

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 6456/Del/2019 : Asstt. Year : 2016-17

DCIT, Central Circle-01, New Delhi	Vs	M/s Sahara India Mass Communication 1, Kapoorthala Complex, Sahara India Bhawan, Aliganj, Lucknow-226024
(APPELLANT)		(RESPONDENT)
PAN No. AAJFS8722L		

Assessee by : Sh. Paritosh Garg, Adv.

Revenue by : Sh. Kanav Bali, Sr. DR

Date of Hearing: 26.10 .2022	Date of Pronouncement: 31.10.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-23, New Delhi dated 31.05.2019.

2. Following grounds have been raised by the Revenue:

"1. That on the facts and circumstances of the case, Id. CIT(A) has erred in deleting addition of Rs.1,78,66,468/- on account of disallowance u/s 14A, even though heading of Section 14A of the Income Tax Act, 1961 as well as Rule 8D has used the phrase 'Income not includible', with respect to expenditure to be disallowed under the said section/rule."

3. From the record, we find that the Id. CIT(A) deleted the addition, categorically holding that the assessee has not claimed any income as exempt and therefore, no addition can be made. The Id. CIT(A) relied on the judgment of the Hon'ble Jurisdictional High Court in the case of Joint Investments Pvt.

Ltd. (2015)-TIOL- 574 and CIT Vs Holcim India Pvt. Ltd. in ITA No. 486 & 299/2014. The facts are not been in dispute.

4. We have perused the material on record. It is settled position of law that disallowance cannot exceed the amount of dividend income earned during the relevant assessment year. In this context, the following judicial pronouncements support the stand of the assessee,

- i) Joint Investments Pvt. Ltd. vs. CIT (59 com 295) – it was held that disallowance u/s 14A of the Act is to be restricted to the tax exempt income.
- ii) Daga Global Chemicals Pvt. Ltd. vs. ACIT [2015-ITRV-ITAT-MUM-123) – has held that disallowance u/s 14A r.w. Rule 8D cannot exceed the exempt income.
- iii) M/s. Pinnacle Brocom Pvt. Ltd. vs. ACIT (ITA No.6247/M/2012) – has held that disallowance u/s 14A cannot exceed the exempt income.
- iv) DCM Ltd. vs. DCIT (ITA No.4567/Del/2012) – held that the disallowance u/s 14A of the Act cannot exceed the exempt income.
- v) Hon'ble Madras High Court in the case of M/s. Marg Limited vs. CIT in Tax Case Appeal Nos.41 to 43 & 220 of 2017 (judgment dated 30.09.2020). The Hon'ble Madras High Court followed the judgment of the Hon'ble Karnataka High Court in the case of Pargathi Krishna Gramin Bank vs. JCIT[(2018) 95 taxman.com 41 (Kar.)]. In the case considered by the Hon'ble Madras High Court, the assessee therein had made voluntarily disallowance u/s 14A of the I.T. Act more than the dividend income

earned and the Tribunal confirmed the disallowance made u/s 14A of the I.T. Act. However, the Hon'ble Madras High Court held that the disallowance u/s 14A of the I.T. Act cannot exceed the exempt income earned during the relevant assessment year.

5. The relevant finding of the Hon'ble Madras High Court reads as follows:

"20. Before parting, we may also note with reference to the Table of disallowance voluntarily made by the Assessee, which is part of the Paper Book before us for the four assessment years in question. In the Table quoted in the beginning of the order, shows that the Assessee himself computed and offered the disallowance beyond the exempted income in the particular year, namely AY 2009-10, as against the dividend income of Rs.41,042/- and the Assessee himself computed disallowance under Rule 8D of the Rules to the extent of Rs.2,38,575/-, which was increased to Rs.98,16,104/- by the Assessing Authority. Similarly, for AY 2012-13, against Nil dividend income, the Assessee himself computed disallowance at Rs.8,50,000/-, which was increased to Rs.2,61,96,790/-.

21. We cannot approve even the larger disallowance proposed by the Assessee himself in the computation of disallowance under Rule 8D made by him. These facts are akin to the case of Pragati Krishna Gramin Bank(2018) 95 com 41 (Kar.) decided by Karnataka High Court. The legal position, as interpreted above by various judgments and again reiterated by us in this judgment, remains that the disallowance of expenditure incurred to earn exempted income cannot exceed exempted income itself and neither the Assessee nor the Revenue are entitled to take a deviated view of the matter. Because as already noted by us, the negative figure of disallowance cannot amount to hypothetical taxable income in the hands of the Assessee. The disallowance of expenditure incurred to earn exempted income has to be a smaller part of such income and

should have a reasonable proportion to the exempted income earned by the Assessee in that year, which can be computed as per Rule 8D only after recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure under Section 14A made by the Assessee or his claim that no expenditure was incurred is validly rejected by the Assessing Authority by recording reasonable and cogent reasons conveyed to Assessee and after giving opportunity of hearing to the Assessee in this regard.

22. We, therefore, dispose of the present appeal by answering question of law in favour of the Assessee and against the Revenue and by holding that the disallowance under Rule 8D of the IT Rules read with Section 14A of the Act can never exceed the exempted income earned by the Assessee during the particular assessment year and further, without recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure made by the Assessee with respect to the exempted income is not acceptable for reasons to be assigned the Assessing Authority, he cannot resort to the computation method under Rule 8D of the Income Tax Rules, 1962.” (underlining supplied)

6. In view of the above judgment of the Hon'ble Madras High Court in the case of M/s. Marg Limited vs. CIT (supra), judgments of Hon'ble Jurisdictional High Court in the case of Joint Investments Pvt. Ltd. (supra) and CIT Vs Holcim India Pvt. Ltd. (supra), it is clear that the disallowance u/s 14A of the I.T. Act cannot exceed the exempt income earned during the relevant assessment year. Accordingly, as no exempt income has been claimed by the assessee, no disallowances called for in the instant case.

7. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 31/10/2022.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 31/10/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR