

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA Nos.2467 & 2468/M/2022  
Assessment Years: 2018-19 & 2020-21**

<b>M/s. Edelweiss Financial Services Ltd., M/s. Edelweiss House, Off CST Road, Kalina, Santacruz East, Mumbai – 400 098 PAN: AAACE1461E</b>	Vs.	<b>DCIT, Central Circle-1(1), Room No.903, 9<sup>th</sup> Floor, Old CGO Building Annexue, Maharishi Karve Road, Mumbai - 400020</b>
(Appellant)		(Respondent)

**ITA No.2469/M/2022  
Assessment Year: 2015-16**

<b>M/s. Edelweiss Rural &amp; Corporate Services Ltd., (Erstwhile Edelweiss Agri Valule Chain Ltd.), M/s. Edelweiss House, Off CST Road, Kalina, Santacruz East, Mumbai – 400 098 PAN: AADCE7266Q</b>	Vs.	<b>DCIT, Central Circle-1(1), Room No.903, 9<sup>th</sup> Floor, Old CGO Building Annexue, Maharishi Karve Road, Mumbai - 400020</b>
(Appellant)		(Respondent)

**ITA Nos.2470 & 2478/M/2022  
Assessment Years: 2017-18 & 2018-19**

<b>M/s. Edelweiss Rural &amp; Corporate Services Ltd., M/s. Edelweiss House, Off CST Road, Kalina, Santacruz East, Mumbai – 400 098 PAN: AAKCS7311R</b>	Vs.	<b>DCIT, Central Circle-1(1), Room No.903, 9<sup>th</sup> Floor, Old CGO Building Annexue, Maharishi Karve Road, Mumbai - 400020</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Ravikant Pathak, A.R.  
Revenue by : Shri Yashwant Kumar Bhaskar, D.R.

Date of Hearing : 22 . 11 . 2022  
Date of Pronouncement : 30 . 11 . 2022

**O R D E R****Per : Kuldip Singh, Judicial Member:**

Since common question of law and facts have been raised in these inter-connected appeals, the same are being disposed of by way of composite order to avoid repetition of discussion.

2. The appellants, M/s. Edelweiss Financial Services Ltd., M/s. Edelweiss Rural & Corporate Services Ltd., (Erstwhile Edelweiss Agri Valule Chain Ltd.) and M/s. Edelweiss Rural & Corporate Services Ltd. (hereinafter referred to as 'the assessees') by filing the present appeals, sought to set aside the impugned orders dated 12.07.2022, 20.07.2022, 26.07.2022, 13.07.2022 and 08.07.2022 for assessment years 2018-19 & 2020-21, 2015-16 and 2017-18 & 2018-19 respectively passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] on the identically worded grounds except the difference of disallowance/suo-moto disallowance/dividend earned (for the sake of brevity we are taking grounds of appeal of ITA No.2467/M/2022 for A.Y. 2018-19) inter-alia that :-

***“1. (i) The Commissioner of Income Tax (Appeals) - 47, Mumbai [hereinafter referred as CIT(A)] erred in upholding the action of the Deputy Commissioner of Income Tax, Central Circle -1(1) [AO] in making disallowance u/s 14A of Income Tax Act, 1961 (Act) r.w. Rule 8D of the Income Tax Rules, 1962 (Rules) without recording his dissatisfaction with respect to correctness of the claim of the Appellant having regard to its books of accounts.***

*(ii) The CIT(A) erred in upholding the action of the AO in considering all investment for the purposes of making disallowance as per rule 8D(2) of the Rules as against only those investment on which Appellant has actually earned the exempt income.*

*(iii) The CIT(A) erred in upholding the action of AO in making the disallowance u/s 14A of the Act while computing the book profit u/s 115JB of the Act.*

*2. The CIT(A) erred in not adjudicating the ground pertaining to the TDS credit as to when the income has been offered in the subjected year, TDS thereon has been claimed in the subjected year; however, the TDS is reflected in Form 26AS of the immediate next year then the Appellant shall be allowed the TDS credit in the year in which income is offered to tax (i.e. subjected year).*

*The Appellant craves leave to add, amend, modify, substitute the above grounds of appeal.”*

3. Briefly stated facts necessary for adjudication of the issues at hand are : assessee a public limited company is into the business of advisory & transactional services and its books of accounts are audited under section 44AB of the Income Tax Act, 1961 (for short ‘the Act’) and under the Company Act, 2013. During the scrutiny proceedings the Assessing Officer (AO) noticed that the assessee has received a dividend income of Rs.85,08,38,041/- on securities held as investment in A.Y. 2018-19 (this figure differs in the other appeals being disposed of by way of present order). Assessee made suo-moto disallowance of Rs.37,00,514/- under section 14A of the Act in ITA No.2467/M/2022 of A.Y. 2018-19 and ITA No.2478/M/2022 for A.Y. 2018-19 and ITA No.2468/M/2022 for A.Y. 2020-21. The AO also computed the book profit as per section 115JB of the Act by taking into account the disallowance made under section 14A of the Act. In ITA No.2467/M/2022 of A.Y. 2018-19 assessee also challenged the impugned order passed by the Ld. CIT(A) that grounds raised by the assessee that TDS

claimed in current year on the basis of income offered whereas TDS appearing in form 26AS in the next year has not been decided by the Ld. CIT(A). After making aforesaid additions the AO framed the assessment orders under section 143(3) of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the appeals filed by the assessee. Feeling aggrieved assessee has come up before the Tribunal by way of filing aforesaid appeals.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

**Ground No.1(i), 1(ii), 1(iii) of ITA No.2467/M/2022, ITA No.2468, 2469, 2470 & 2478/M/2022:**

5. The Ld. A.R. for the assessee challenging the impugned order passed by the Ld. CIT(A) contended inter-alia that before rejecting the disallowances made by the assessee under section 14A of the Act the AO has not recorded valid satisfaction rather it is no satisfaction with regard to the disallowance computed by the assessee under section 14A of the Act; that the AO as well as Ld. CIT(A) considered entire investments as against only those investments on which assessee has actually earned the exempt income in order to make the disallowance; that in ITA No.2469/M/2022 for A.Y. 2015-16 the assessee has not earned any exempt income even then the disallowance has been made/confirmed vide impugned order and relied upon the order

assed by co-ordinate Bench of the Tribunal in assessee's own case in Edelweiss Financial Services Ltd. vs ACIT in ITA No. 92 & 93/Mum/2022, Financial Services Lid. Vs DCIT in ITA No. 1283/Mum/2021, ITO vs. Centrum Capital Limited in ITA No.497/Mum/2019 and ECL Finance Limited vs. ACIT in ITA No.899/M/2018.

6. However, on the other hand, the Ld. D.R. for the Revenue in order to repel the argument addressed by the Ld. A.R. for the assessee contended that the disallowance has been made by the AO after recording valid satisfaction in accordance with the provisions contained under section 14A rule 8D of the Act and relied upon the order passed by the Ld. CIT(A).

7. In all the aforesaid appeals we have perused the dissatisfaction recorded by the AO qua the expenditure/no expenditure claimed by the assessee which is identical in all the appeals.

8. For ready perusal dissatisfaction recorded by the AO while rejecting the expenditure claimed to have been incurred by the assessee in order to make disallowances under section 14A read with rule 8D (para 4.3 from ITA No.2467/M/2022 is taken) are as under:

***“4.3 The case records and the replies submitted by the assessee have been perused. It is a fact that the assessee cannot earn Dividend income to the tune of Rs. 85,08,38,041/- without any systematic management of its investment portfolio. Further, investment decisions being complex in nature require market research, day to day analysis and planning. Furthermore, the assessee has not maintained separate accounts for its taxable and exempt income. Hence, the present case is a fit case to invoke Rule 8D of the IT Rules. The assessee has suo moto worked ad-hoc disallowance u/s***

**14A amounting to Rs.37,00,514/-.** However, as stated above, the disallowance is required to be calculated as per Rule 8D. Following the ruling of the Apex court in the case of Maxopp Investments [(2018) 402 ITR 0640 (SC)], the disallowance in the instant case is computed as under:

<b>Rule 8D (i)</b>	<b>Nil</b>
<b>Rule 8D(ii)</b>	<b>Nil</b>
<b>Rule 8D(iii)</b>	
<b>1% of annual average of the monthly average of investments</b>	<b>Rs. 18,39,14,215/-</b>
<b>Disallowance u/s 14A as per Rule 8D</b>	<b>Rs. 18,39,14,215/-</b>
<b>Less: Disallowance already made</b>	<b>Rs. 37,00,514/-</b>
<b>Total disallowance u/s 14A</b>	<b>Rs. 18,02,13,701/-</b>

9. The Ld. A.R. for the assessee drew our attention towards a letter dated 19.03.2021 supported with exhibit 1 to 5 pertaining to ITA No.2467/M/2022 for A.Y. 2018-19, which is written to AO containing complete detail of exempt income, submissions made, working of disallowance under section 14A read with rule 8D. For ready perusal working of disallowance made by the assessee for A.Y. 2018-19 which is a lead case is extracted as under:

**Working of Disallowance u/s 14A as per Computation of Total Income**

<i>Particulars</i>	<i>Amount</i>	<i>Proportionate expenses</i>	<i>Basis of allocation</i>
<i>Employee costs</i>	<i>90,34,13,660</i>	<i>30,00,000</i>	<i>Salary cost of an employee</i>
<i>Communication</i>	<i>61,19,900</i>	<i>20,323</i>	<i>% of employee cost</i>
<i>Electricity charges</i>	<i>95,85,770</i>	<i>31,832</i>	<i>% of employee cost</i>
<i>Office expenses</i>	<i>71,10,948</i>	<i>23,614</i>	<i>% of employee cost</i>
<i>Insurance</i>	<i>2,35,76,740</i>	<i>78,292</i>	<i>% of employee cost</i>
<i>Postage and Courier</i>	<i>14,11,848</i>	<i>4,688</i>	<i>% of employee cost</i>
<i>Printing and Stationery</i>	<i>89,73,493</i>	<i>29,799</i>	<i>% of employee cost</i>
<i>Repairs and Maintenance</i>	<i>14,48,404</i>	<i>4,810</i>	<i>% of employee</i>

			<i>cost</i>
<i>Travelling and Conveyance</i>	<i>7,16,63,613</i>	<i>2,37,976</i>	<i>% of employee cost</i>
<i>Rent</i>	<i>8,10,60,681</i>	<i>2,69,181</i>	<i>% of employee cost</i>
<i>Total</i>		<i>37,00,514</i>	

10. Perusal of the working of suo-moto disallowance made by the assessee under section 14A goes to prove that every minute details have been brought on record by the assessee as to how he has attributed the proportionate expenses towards employee's cost, communication, electricity, charges, office expenses etc. qua the years under consideration. This working of disallowance under section 14A made by the AO has been duly explained in the submissions giving due regard to approximate or immediate nexus to the earning of income not chargeable to tax. All these expenses are duly debited to the profit & loss account.

11. However, when we examine the dissatisfaction made by the AO in pra 4.3 of the assessment order for A.Y. 2018-19 he has recorded generic observation that "investment decisions being complex in nature, require market research, day to day analysis and planning and that the assessee has not maintained separate accounts for its taxable and exempt income whereas in order to record the valid satisfaction as required under section 14A(2) read with rule 8D of the Rules when the AO has not accepted the working of disallowance made by the AO he is mandatorily required to determine the amount of expenditure incurred in relation to such income which does not form part of the total income and that nor the AO has verified the correctness of such claim made by the assessee which is duly audited under section 44AB". The AO

rather straightaway jumped to invoke provisions contained under section 14A read with rule 8D in mechanical manner which is not permissible under law. Hon'ble Bombay High Court in case of PCIT vs. Bombay Stock Exchange Limited in ITA No.1017 of 2017 (Bombay HC) while deciding the identical issue held that non-acceptance of disallowance computed by the assessee has to be in accordance with provisions contained under section 14A(2) which is not a valid satisfaction by returning following findings:

*“11. Non-satisfaction with the disallowance offered by the assessee has to be arrived at on the basis of the accounts submitted by the assessee. In this case, the Assessing Officer had not carried out the aforesaid exercise but rejected the disallowance claimed by the assessee only on the ground that it was not in accordance with Rule 8D of the Rules. The application of Rule 8D of the Rules would only arise once the Assessing Officer is not satisfied on an objective criteria in the context of its accounts, that suo motu disallowance claimed by the assessee is not proper.*

*12. In fact, the Supreme Court in the case of Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154/254 Taxman 325/402 ITR 640 while upholding the view of the Delhi High Court has held that the Assessing Officer needs to record his non-satisfaction having regard to the suo motu disallowances claimed by the assessee in the context of its accounts. It is only thereafter, the occasion to apply rule 8D of the Rules for apportionment of expenses can arise.*

*13. In the present facts, the Tribunal has correctly come to the conclusion that non-satisfaction as recorded by the Assessing Officer for rejecting the suo motu disallowances claimed by the assessee is not done as required under section 14A(2) of the Act. On facts, the view taken by the Tribunal is a possible view and calls for no interference.”*

12. Hon'ble Supreme Court has also held in Maxopp Investment Ltd. vs. CIT 301 CTR 489 that only after recording satisfaction under section 14A(2) the provisions contained under rule 8D of the Rules for apportionment of expenses can be applied by returning following findings:

*“41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying*

*the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.”*

13. Moreover, the AO as well as the Ld. CIT(A) have proceeded to make disallowances in A.Y. 2015-16 challenged by way of ITA No.2469/M/2022 wherein no exempt income has been earned by the assessee in mechanical manner. This is a settled principle of law that where there is no exempt income no disallowance under section 14A of the Act is permissible. This issue has been decided in favour of the assessee by the Hon’ble Delhi High Court in case of Pr. CIT vs. ERA Infrastructure (India) Ltd. in ITA No.204 of 2022 date of decision 20.07.2022.

14. In view of what has been discussed above, we are of the considered view that disallowance made by the AO and confirmed by the Ld. CIT(A) over and above the suo-moto disallowance made by the assessee is not sustainable in the eyes of law in all the aforesaid appeals and as such ordered to be deleted. In ITA No.2469/M/2022 for A.Y. 2015-16, in which assessee has not earned any dividend income the AO made disallowance of Rs.22,51,127/- which is ordered to be deleted. Hence, Ground No.1(i), 1(ii), 1(iii) of ITA No.2467/M/2022, ITA No.2468, 2469, 2470 & 2478/M/2022 are decided in favour of the assessee.

**Ground No.1(iii), 1(iv), 1(iii) in ITA No.2467, 2468 & 2478 of A.Y. 2018-19, 2020-21 & 2018-19 respectively.**

15. The AO while computing the book profit under section 115JB of the Act has also considered disallowance of expenses made under section 14A of the Act which is not in consonance with the order passed by Special Bench of Delhi Tribunal in case of Vireet Investment cited as 165 ITD 27. The AO can only consider the amount of disallowance made by the assessee under section 14A qua the exempt income earned during the years under consideration under section 115JB of the Act. In other words disallowance made under section 14A under the normal provisions of the Act can only be considered for computing book profit under section 115JB of the Act.

16. This issue was also decided in favour of the assessee in its own case in A.Y. 2012-13, 2013-14 & 2014-15 by the Tribunal. So the AO is to verify the facts if the disallowance made by the assessee under section 14A under the normal provisions of the Act is considered while computing the book profit under section 115JB of the Act. However, the disallowance made by the AO by invoking the provisions contained under section 14A read with rule 8D while computing the book profit under section 115JB of the Act is not sustainable in the eyes of law, hence ordered to be deleted. So Ground No.1(iii), 1(iv), 1(iii) in ITA No.2467, 2468 & 2478/M/2022 for A.Y. 2018-19, 2020-21 & 2018-19 respectively are decided in favour of the assessee.

**Ground No.2 of ITA No.2467 for A.Y. 2018-19**

17. The assessee has specifically raised ground No.4 before the Ld. CIT(A) that the AO erred in allowing the TDS credit of Rs.23,02,03,759/- only as against revised TDS credit claim of Rs.25,30,24,296/- by the Appellant during the course of assessment proceedings resulting into short TDS credit of Rs.2,28,20,537/-, but has not been decided by the Ld. CIT(A). The Ld. A.R. for the assessee contended that this issue has already been decided in favour of the assessee by the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2012-13 in ITA No.1283/M/2021. We have perused the order passed by the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2016-17 which is on identical fact.

18. It is the case of the assessee that because of delay in deposit/non deposit of the TDS by the deductor the assessee failed to take the benefit of TDS as the same is not reflected in 26AS and relied upon the memo dated 11.03.2016 issued by the CBDT which says that, "in case the deductor fails to deposit TDS amount to the government account the deductee shall not be called upon to pay the payment to the extent tax has been deducted from his account."

19. So we are of the considered view that the assessee cannot be deprived of taking credit of TDS already deducted. So this issue is remanded back to the AO for the purpose of verification of the TDS amount that has been deducted but not reflected in 26AS statement of the assessee and give the credit to the assessee accordingly. So ground No.2 of ITA No.2467/M/2022 for A.Y. 2018-19 is decided in favour of the assessee.

20. In the result, all the aforesaid appeals filed by the assessee are allowed.

**Order pronounced in the open court on 30.11.2022.**

**Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 30.11.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.