

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI RAHUL CHAUDHARY, JM

**ITA No. 2534/Mum/2019**

(Assessment Year 2010-11)

**ITA No. 2535/Mum/2019**

(Assessment Year 2013-14)

JSW Holdings Ltd. JSW Centre, Bandra Kurla Complex Mumbai-400 051 <b>(Appellant)</b>	Vs.	DY CIT-5(3)(1) 571, Aayakar Bhavan MK Road, Mumbai-400 020 <b>(Respondent)</b>
<b>PAN No. AABCJ1531F</b>		

**Assessee by** : Shri Hiro Rai, AR  
**Revenue by** : Shri Nishant Somaiya, DR

**Date of hearing:** 19.09.2022  
**Date of pronouncement:** 15.12.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. These are two appeals of the same assessee for A.Ys. 2010-11 & 2013-14 involving similar issues of disallowance u/s 14 A of the Act, therefore, disposed of by this common order.
02. ITA No. 2534/Mum/2019 for A.Y. 2010-11 is filed by assessee against appellate order passed by the learned Commissioner of Income-tax (Appeals)-10, Mumbai [the

learned CIT (A)] dated 25<sup>th</sup> January, 2019 for A.Y. 2010-11 raising following grounds of appeal:-

*"1. The learned CIT (Appeals) was not justified in confirming the disallowance of Rs.1,24,87,000/- u/s 14A of the Act. The reasons given by him in this regard are incorrect and unjustified.*

*2. The learned CIT (Appeals) has erred in not deciding Ground Nos. II and III raised before him regarding interest u/s 234B and 234D respectively. He has erred in directing*

*"... the AO is directed to re-computed interest u/s 234B and 234D as per provisions of the Act."*

*3. The appellant craves leave to add to, to alter or to amend the above Grounds of Appeal."*

03. The brief fact of the case shows that assessee is a company engaged in the business of advancing loans and investments in shares and securities. For A.Y. 2010-11, it filed its return of income on 26<sup>th</sup> August, 2010 declaring total income of ₹4,10,33,345/-. Return of income of the assessee was picked up for scrutiny.
04. The learned Assessing Officer found that assessee has earned dividend income of ₹2,06,63,690/- and has Suo moto disallowed ₹35,37,388/-. Assessee was asked that why disallowance should not be worked out according to Rule 8D of the Income Tax Rules, 1962 (the Rules).
05. Assessee submitted calculation of disallowance of ₹35,37,388/- and submitted that it is proper. Assessee



has worked out total expenditure of ₹1,24,58,287/- reduced therefrom other disallowable expenditure. Out of the balance allowable expenditure of ₹1,20,41,584/-, the assessee made proportionate disallowance applying the ratio of exempt income to total income and disallowed above sum. Therefore, the assessee gave an explanation that ₹35,37,388/- is the sum disallowable u/s 14A of The Act. Assessee also stated that for A.Y. 2007-08, the disallowance on identical basis was accepted by the learned Assessing Officer.

06. For this year, the learned Assessing Officer held that principle of res-judicata does not apply, and worked out disallowance under Rule 8D. However, as the disallowance under Rule 8D was exceeding total expenditure debited in the profit and loss account of ₹1,24,87,000/-, he restricted the disallowance to ₹1,24,87,000/-, reduced Suo moto disallowance and made balance disallowance of ₹89,49,612/-. The assessment order under Section 143(3) of the Act was passed on 12<sup>th</sup> February, 2013.
07. Matter travelled to the ITAT as the learned CIT (A) confirmed the above disallowance. Coordinate Bench vide order dated 29<sup>th</sup> June, 2015 vide paragraph no.6, set aside the matter back to the file of the learned Assessing Officer directing the learned Assessing Officer to consider the explanation of assessee with respect to strategic investment. Consequent to that, the learned Assessing Officer reiterated the disallowance originally made by order dated 21/11/2016 passed u/s 143 (3) read with



Section 254 of the act. The same was challenged before the learned CIT (A), who held that as the ITAT has set aside the order to consider the ground of strategic investment for working out disallowance under Section 14A of the Act, the above ground has no longer need to be followed in view of the decision of Hon'ble Supreme Court in case of Maxopp Limited Investment VS. CIT. He further considered the argument of the assessee in paragraph no.6.3.3 that the learned Assessing Officer has failed to record any satisfaction about the correctness of the claim of the assessee of Suo moto disallowance offered and therefore, the disallowance deserves to be deleted. The learned CIT (A) held that though ITAT has directed the learned Assessing Officer to look at only the issue of disallowance of strategic investment which has become unsustainable after the decision of the Hon'ble Supreme Court in case of Maxopp Limited Investment vs. CIT. The learned CIT (A) further held that as his powers are co-terminus with the powers of the learned Assessing Officer, he proceeded to examine the working of disallowance made by the assessee. He examined the claim of the assessee of Suo moto disallowance of ₹35.37 lacs. He held that from A.Y. 2008-09 there is a change in the provisions of the Act and Rule 8D has been introduced to compute the disallowance under Section 14A of the Act, therefore, disallowance made by the assessee based on disallowance accepted by the learned Assessing Officer for A.Y. 2007-08 is not relevant. He further held that disallowance made by the assessee is not based on actual expenditure and there

is no justification of allocating the same in the ratio of exempt income to total income. He further considered the cash flow statement of the assessee to support his finding that apportionment of expenses is not justifiable as it does not reflect the time and resource for investment in such assets. Accordingly, he rejected the Suo moto disallowance. However, he considered the explanation of the assessee that Suo moto disallowance for A.Y. 2011-12 is accepted by the learned Assessing Officer on similar lines, he held that that an erroneous view cannot be allowed to perpetuate. He also rejected the explanation of the assessee that for working out disallowance only this investment which has yielded exempt income should be considered. Accordingly, appeal of the assessee was dismissed.

08. On appeal before us, the learned Authorized Representative submitted that the Provision of Section 14A of the Act clearly lays down that before proposing to invoke Rule 8D of the Rules, the learned Assessing Officer should record the satisfaction about the correctness of claim of the assessee. Unless there is a satisfaction recorded by the learned Assessing Officer on verification of the claim, the disallowance under Rule 8D cannot be made. For this proposition, he referred to the provisions of Section 14A of the Act and submitted that the assessment order passed under Section 143(3) of the Act on 12<sup>th</sup> February 2013 does not show any satisfaction recorded. With respect to the finding of the learned CIT (A), he submitted that the satisfaction has to be of the Assessing

Officer and not of the learned CIT (A). He submitted that in absence of such satisfaction of the learned Assessing Officer the disallowance invoking the provision of Section Rule 8D is not sustainable.

09. The learned Departmental Representative supported the order of the learned CIT (A) and submitted that the powers of the learned CIT (A) are co-terminus with the powers of the learned Assessing Officer and therefore the recording of satisfaction of the learned CIT (A) is valid.
010. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that the assessing officer recorded that assessee has earned dividend income of ₹ 20,663,690/- and assessee has disallowed only its own a sum of Rs. 35,37,388 on account of Section 14 A. There from straightway assessing officer jumped to the conclusion that why the disallowance should not be made u/s 14 A and is required to be worked out as per rule 8D of the income tax rules. We find that before invoking the provisions of rule 8D of the income tax rules for working out disallowance u/s 14 A, there is a mandatory requirement of recording of the satisfaction about the correctness of the claim of the assessee by the learned assessing officer on examination of accounts of the assessee. We find that there is no such satisfaction recorded by the learned assessing officer. This is also confirmed when the learned CIT – A, proceeded himself to record such satisfaction. The law mandates that such satisfaction is required to be recorded by the learned

assessing officer and not by the learned CIT – A. Therefore, we find that the disallowance made by the learned assessing officer and confirmed by the learned CIT – A, is not in conformity with the provisions of Section 14 A (2) of the act. Hon supreme court in Maxopp Investment Ltd.[2018] 91 taxmann.com 154 (SC) has held that having regard to the language of section 14A(2), read with rule 8D of the Rules, it is also made clear that before applying the theory of apportionment, the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee, Suo motu disallowance under section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the Assessing Officer was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. In view of this, the disallowance made by the learned assessing officer and confirmed by the learned CIT – A is not sustainable in law. Accordingly, we direct the learned assessing officer to delete the disallowance u/s 14 A of the act amounting to ₹ 12,487,000/-. Accordingly ground number 1 of the appeal is allowed.

011. As disallowance is deleted, ground number 2 of the appeal does not survive, hence, dismissed.
012. In the result appeal of the assessee for assessment year 2010 – 11 is partly allowed.
013. Now we come to the appeal of the assessee for assessment year 2012 – 13 in ITA number 2535/M/2019



wherein the assessee is challenging the disallowance u/s 14 A of the act of ₹ 20,348,423/-. The fact shows that the assessee filed its return of income on 26/9/2013 declaring a total income of ₹ 14,69,66,230/-. The return of income was picked up for the scrutiny. On scrutiny, the learned assessing officer noted that assessee company has earned dividend income of ₹ 135,534,426/- and SUO Moto disallowed 93,82,975/-. The working of the disallowance was given by the assessee wherein there are direct expenditure incurred by the assessee. Such further assessee considered all the expenditure incurred by the assessee and appropriated proportionately those expenditure compared to the total revenue and disallowed a sum of Rs. 93,81,627/-. Accordingly total disallowance u/s 14 A of the act was shown to be Rs. 93,82,975/-. The learned assessing officer straightway asked the assessee that why the disallowance of the expenditure in relation to the exempt dividend income should not be computed u/s 14 A read with rule 8D. Assessee contended before the learned assessing officer that no further disallowance is warranted as well as the already disallowed sum of Rs. 93,80,975 also requires to be deleted. The learned assessing officer was also shown the order of the ITA T for assessment year 2010 - 11 where the ITAT set aside the issue to the file of the learned assessing officer to consider the argument of the assessee. Whether on strategic investment, the disallowance u/s 14 A of the act can be made or not.

014. The learned assessing officer rejected the contentions of the assessee of no disallowance u/s 14 A on strategic investment and thereafter computed the disallowance Under rule 8D of ₹ 26,869,728/-. As assessee has only incurred the expenditure of ₹ 20,348,423/- and SUO Moto disallowance is also made by the assessee of Rs. 93,80,975 -, additional disallowance of ₹ 10,965,448 was made in the normal computation. Further, while computing the book profit u/s 115JB of the act. The learned assessing officer imputed the disallowance u/s 14 A of the income tax act of Rs 203,48,423/- (being the total expenditure incurred by the assessee debited to the profit and loss account. The assessment order u/s 143 (3) of the act was passed on 23/3/2016.
015. Against the above assessment order assessee preferred an appeal before the learned CIT – A, the appellate order was passed on 25/1/2019 wherein he relied upon the appellate order passed by him for assessment year 2000 – 11 in case of the assessee.. With respect to the disallowance made in the normal computation of the total income, he confirmed the same, whereas, disallowance in computation of the book profit was deleted. Assessee aggrieved with that appellate order is in appeal before us.
016. The learned authorized representative challenged the same on the issue of satisfaction as well as the amount of disallowance.
017. The learned departmental representative vehemently supported the orders of the lower authorities.



018. We have carefully considered the rival contention and perused the orders of the lower authorities. With respect to the satisfaction recorded by the learned assessing officer. We find that the learned assessing officer is carefully considered all the arguments of the assessee with respect to whether the disallowance could be made u/s 14 A. With respect to the investment made in subsidiary companies or not. The learned and assessing officer further considered why the expenditure disallowed by the assessee is not correct stating that assessee was making the investment decisions which are highly strategic in nature, is required to be made by highly qualified and experienced professional requiring adequate market research and analysis. The satisfactions recorded by the learned assessing officer are clearly demonstrated in paragraph number 3.2 – 3.6 of the assessment order. Therefore, we do not find any reason to hold that for this year the learned assessing officer has not recorded the satisfaction rejecting the SUO Moto disallowance offered by the assessee. Even the learned assessing officer has considered the argument of the assessee that even the original disallowance offered by the assessee should also not be made in the assessment order.

019. The learned authorized representative has vehemently supported the decision of coordinate bench in case of Bajaj Holdings and investment Ltd vs deputy Commissioner of income tax, reported in 62 CCH 125 (2021), wherein it has been held that it would be just and fair to identify the specific expenditure that had been attributed for the



purposes of earning exempt income by some rational basis. Total SUO Moto disallowance made by the assessee was Rs. 10 lakhs, but the assessee has left out certain common expenses which should be included for the purpose of working out the disallowance. Accordingly, he submitted that the total disallowance made by the learned assessing officer of all the expenditure debited to the profit and loss account is not justified. We agree with this contention and direct the learned assessing officer to include the average value of investment of only those investments which have yielded exempt income during the year. The above argument of the assessee is also supported by the decision of the Honourable Delhi High Court in case of ACB investments Ltd. However, when the language of law is clear and the computation mechanism is also provided which does not have any ambiguity, other than that, which has been corrected by us, we do not have any other authority to scale down the disallowance. Accordingly we dismiss ground number 1 of the appeal and allow ground number 2 of the appeal.

020. In the result, appeal for assessment year 2010 – 11 and appeal for assessment year 2013 – 14 is partly allowed.

Order pronounced in the open court on 15.12.2022.

Sd/-  
(RAHUL CHAUDHARY)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 15.12.2022



*Sudip Sarkar, Sr.PS*

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai