

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 1374/Mum/2022
(Assessment Year: 2017-18)

DCIT, Central Circle 7(1) Mumbai	Vs.	Shree Global Tradefin Ltd. 35, Ashok Chambers, Broach Street, Devji Ratansey Marg, Mumbai-400 009
PAN/GIR No. AAACB 2975 J		
(Revenue)	:	(Assessee)

Cross Objection No. 115/Mum/2022
(Arising out of ITA No. 1374/Mum2022)
(Assessment Year: 2017-18)

Shree Global Tradefin Ltd. 35, Ashok Chambers, Broach Street, Devji Ratansey Marg, Mumbai-400 009	Vs.	DCIT, Central Circle 7(1) Mumbai
PAN/GIR No. AAACB 2975 J		
(Assessee)	:	(Revenue)

Assessee by	:	Shri Vijay Mehta
Revenue by	:	Shri Vranda U. Matkarni

Date of Hearing	:	28.09.2022
Date of Pronouncement	:	22.12.2022

ORDER

Per Kavitha Rajagopal, J. M.:

This appeal has been filed by the Revenue and the cross objection by the assessee challenging the order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short)-49, Mumbai passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. There is a delay of 553 days in filing the appeal and the cross objection delay is 53 days. After hearing both the sides on the ground that there was sufficient cause for the delay, we hereby condone the delay in filing the said appeal and the cross objection.

3. The grounds of appeal raised by the Revenue are as under:

1. *"Whether, on the facts and in the circumstances of the case and in law, Ld. CIT(A) was justified in allowing the appeal of the assessee without appreciating the fact that a clarification has been inserted in section 14A which clearly says that the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income.*

2. *Whether, on the facts and in the circumstances of the case and in law, Ld. CIT(A) was justified in allowing the appeal of the assessee, even when Hon'ble Bombay High Court has upheld the constitutional validity of Rule 8D in case of Godrej Boyce & MGF. Co. vs. ACIT*

3. *Whether, on the facts and in the circumstances of the case and in law, Ld. CIT(A) was justified in allowing the appeal of the assessee and directing AO to recomputed the disallowance u/s 14A, even when such restriction is contrary to statutory provisions and CBDT's Circular No. 5 of 2014 dated 11.02.2014 which provides for disallowance of expenditure even where taxpayer in a particular year has not earned any exempt income"*

4. The brief facts of the case are that the assessee is a public limited company engaged in the business of trading in steel. The assessee filed its return of income dated 26.10.2017, declaring a loss of Rs.3,83,57,431/-. The assessee's case was selected for scrutiny and the assessment order u/s.143(3) was passed on 07.12.2019, declaring total loss at Rs.64,78,424/- by making disallowance of Rs.3,18,79,007/- u/s. 14A of the Act.

5. The assessee then challenged the assessment order by an appeal before the Id. CIT(A), who partly allowed the appeal of the assessee.

6. The Revenue is in appeal before us, challenging the order of the Id. CIT(A) in allowing the appeal of the assessee.

7. It is observed that the assessee has earned exempt income, amounting to Rs.25,89,959/- from sale of listed equity shares and the assessee has claimed exempt u/s. 10(38) of the Act for the same. Further, the assessee has not earned dividend income for the year under consideration and the assessee has *suo moto* disallowed the expenditure incurred to earn the exempt income, amounting to Rs.1,263/-, which the A.O. specifies it to be only with respect to demat charges and no further disallowance was made by the assessee. The A.O. after making a detailed satisfaction as to the disallowance made by the assessee, computed the disallowance under Rule 8D by taking 1% of the annual average of monthly averages of the investment and had determined an amount of Rs.3,18,79,007/-.

8. In an appeal before the Id. CIT(A), the Id. CIT(A) held that the assessee did not have any borrowed funds, thereby making no disallowance as per the provisions of Rule 8D(2)(i) of the Income Tax Rules. The Id. CIT(A) further held that though the assessee had made *suo moto* disallowance of Rs.1,263/- and had claimed that no other expenses should be considered for disallowance u/s. 14A, the Id. CIT(A) observed that the assessee has shown substantial commission expenses including expenses under the head 'other expenses', which has justified the applicability of the provisions of section 14A of the Act. The Id. CIT(A) relied on the decision of *India Bulls Financial Services vs. DCIT* [2016] 76 taxmann.com 26 (Del) that Hon'ble Delhi High Court even if the A.O. has not recorded any dissatisfaction about the assessee's calculation, the A.O.'s conclusion could not be rejected. The Id. CIT(A) stated that the primary onus lies on the assessee to provide the basis and the computation of the *suo moto* disallowance to show that the

disallowance was not arbitrary. The Id. CIT(A) held that the A.O. has clearly recorded his satisfaction in para 3 of the assessment order and that the A.O. has rightly invoked the provision of Rule 8D(2) by relying on the decision of *FLSmidh (P.) Ltd. vs. CIT, Corporate Circle-2(1), Chennai* [2020] 118 taxmann.com 272 (Madras). The Id. CIT(A) has considered the alternate claim of the assessee that the disallowance u/s. 14A read with Rule 8D(2)(iii) is to be calculated only on the investments on which exempt income was received by the assessee by placing reliance on the Special Bench decision in the case of *ACIT vs. Vireet Investments Pvt. Ltd.* 82 taxmann.com 415 (Del). The Id. CIT(A) by considering the catena of judgments held that only investment from which exempt income is received, has to be considered for calculation of disallowance u/s.14A read with Rule 8D(2)(iii) of the Act and directed the A.O. to recompute the disallowance accordingly.

9. The Id. Departmental Representative (Id. DR for short) for the assessee contended that the Id. CIT(A) has failed to considered the clarification that was inserted in the provision of section 14A and that the Id. CIT(A) has failed to consider the decision of the Hon'ble Bombay High Court in the case of *Godrej & Boyce Mfg. Co. Ltd. vs. ACIT* [2022] 140 taxmann.com 345 (Bom) which upheld consistently the validity of Rule 8D. The Id. DR further stated that the Id. CIT(A) has restricted the disallowance u/s. 14A contrary to the statutory provision of CBDT Circular No. 5 of 2014, which provides that expenses should be disallowed even when the assessee has not earned any exempt income. The Id. DR relied on the order of the A.O.

10. The ld. AR, on the other hand, contended that the assessee has *suo moto* disallowed Rs.1,263/-, pertaining to demat charges, which ought to have been considered by the ld. CIT(A). The ld. AR further stated that the expenditure for the purpose of section 14A should be restricted to the exempt income and relied on the decision of *Nirved Traders Pvt. Ltd. vs. DCIT* [2020] 421 ITR 142 (Bom). The ld. AR further stated that the amendment to the provision is prospective in nature and the same was held by the Hon'ble Delhi High Court in the case of *PCIT (Central) v. Era Infrastructure (India) Ltd.* [2022] 141 taxmann.com 289 (Delhi). The ld. AR relied on the decision of the Hon'ble Apex Court in the case of *Maxopp Investment Ltd. vs. CIT* [2018] 91 taxmann.com 154 (SC), which held that Rule 8D is prospective in nature and it is not applicable to assessment year prior to 2007. The assessee relied on the decision of the *Maxopp Investment Ltd.* (supra).

11. Having heard the rival submissions and perused the materials available on record. It is observed that the assessee has made a *suo moto* disallowance of Rs.1,263/- for which the assessee contends that the A.O. ought not to have applied Rule 8D on the ground that *suo moto* disallowance has been made by the assessee. The assessee further contends that without prejudice, the disallowance should be restricted only to the investments which have yielded an exempt income for the assessee during the impugned year. It is also pertinent to point out that since the assessee had not borrowed funds during the relevant year, no disallowance as per Rule 8D(2)(i) of the Income Tax Rules was warranted. It is also observed that the A.O. has recorded his satisfaction that the correctness of the assessee's claim of expenses of disallowance was not to the satisfaction of the A.O.,

thereby entitling the A.O. to invoke the provisions of Rule 8D and the decision of the Hon'ble Apex Court in the case of *Maxopp Investment Ltd.* (supra) holds good in the present case. We are also of the considered opinion that the Id. CIT(A) has rightly held that the assessee has not made bifurcation of the expenses claimed under 'other expenses' and in case of which the A.O. had to invoke Rule 8D of the Income Tax Rules. The *suo moto* disallowance of the assessee does not disentitle the A.O. from invoking the said provision. In this regard, we find justification in the order of the Id. CIT(A) in upholding the A.O.'s action in invoking the provision of Rule 8D(2)(ii) by rejecting the assessee's contention that *suo moto* disallowance by the assessee warrants no further disallowances. The assessee's alternate claim is that the disallowance u/s. 14A read with Rule 8D(2)(iii) should be restricted only to those investments on which exempt income was earned by the assessee during the impugned year, by placing reliance on the decision of *Vireet Investments Pvt. Ltd.* (supra). We also find justification in the order of the Id. CIT(A) in holding that the disallowance u/s. 14A read with Rule 8D(2)(iii) of the Act should be invoked for calculation of disallowance pertaining to only investment from which exempt income is earned by the assessee by placing reliance on the decision of the Special Bench of the Tribunal in the case of *Vireet Investments Pvt. Ltd.* (supra). We find no infirmity in the order of the Id. CIT(A).

12. By respectfully following the above mentioned decisions, we uphold the order of the Id. CIT(A) in directing the A.O. to recompute the disallowance only to the investments which have yielded exempt income during the impugned year.

13. In the result, the appeal filed by the Revenue is dismissed.

14. In light of the above observation, the cross objection filed by the assessee, challenging the order of the ld. CIT(A) is also dismissed.

Order pronounced in the open court on 22.12.2022

Sd/-

(Prashant Maharishi)
Accountant Member

Mumbai; Dated : 22.12.2022

Roshani, Sr. PS

Copy of the Order forwarded to :

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

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai