

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2585/Mum/2022
(A.Y: 2017-18)

ITO, Ward 2(1), Thane Room No. 25, B-Wing 6 th Floor, Ashar IT Park Wagle Industrial Estt Thane(W)-400604 Maharashtra	Vs.	M/s Kumudini Engineering Pvt Ltd 601/602 D Wing Shreepati Road, Poonam Sagar Complex, Mira Road (E), Thane – 401107 Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCO1260G		
Appellant	..	Respondent

Assessee by :	Shri Dharmesh Shah.AR
Revenue by :	ShriTejinder Pal Singh Anand.DR

Date of Hearing	13.12.2022
Date of Pronouncement	20.12.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order passed by the National Faceless Appeal Centre (NFAC) – Delhi / CIT(A) u/s 250 of the Act. The revenue has raised the following grounds of appeal:

- 1. Whether the CIT(A) erred on the facts and in circumstances of the case and in law, in giving relief to*

the assessee without giving any opportunity to the AO as the stand taken by the assessee that it has not earned any exempt income and has not made any expenditure to earn the said exempt income, is totally contradictory with the submission made by the assessee during the assessment proceedings.

2. Whether the CIT(A) erred on the facts and in circumstances of the case and in law, in deciding the case accepting the submission of the assessee 'contradictory' in nature without providing any opportunity to the AO.

3. Whether the CIT(A) erred on the facts and in circumstances of the case and in law, in non-adjudication on the issue of the method adopted by the AO to make addition u/s. 14A of the I. T. Act while giving relief to the assessee of Rs. 2,91,26,739/-.

4. The appellant craves leave to add, amend or alter any ground/grounds, which may be necessary.

2. The brief facts of the case are that the assessee company is engaged in the business of trading in iron & steel, poultry feed supplements and shares and securities. The assessee has filed the return of income for the A.Y 2017-18 on 31.10.2017 disclosing a total income of Rs.3,08,410/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance, the

assessee has filed the various details and explanations on 24.01.2019. On perusal of financial statements, the Assessing Officer (A.O) found that the assessee has investments of Rs.12,62,92,000/- and it was mentioned that the assessee has earned exempt income of Rs.7,71,106/- and filed the explanations referred at Para 3 of the assessment order. Whereas the A.O. was not satisfied with the explanations and the details and observed that the assessee has not made proper disallowance u/s 14A r.w.r 8D of the Act as the assessee has incurred expenses directly relating to the earning exempt income. Finally the A.O. has applied the provisions of Sec.14A r.w.r 8D of the Act and computed the disallowance after giving effect to the set off of amount disallowed earlier and worked out further disallowance of Rs.2,97,72,625/- and assessed the total income of Rs. 3,00,81,035/- and passed the order u/s 143(3) of the Act dated 28.12.2019.

3. Aggrieved by the order the assessee has filed an appeal before the CIT(A).Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and the findings of the scrutiny assessment

and facts with respect to exempted income earned and expenditure incurred for earning certain exempt income. The CIT(A) after considering the facts, submissions and judicial decisions has restricted the disallowance to the extent of Rs.6,99,842/- and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed appeal with the Hon'ble Tribunal.

4. At the time of hearing, the Ld.DR submitted that the Ld.CIT(A) has erred in restricting the disallowance u/s 14A of the Act to the extent of dividend income earned. Whereas the AO has considered all the facts and made disallowance, but the CIT(A) has overlooked the various provisions and has restricted the addition and supported the order of the A.O. Contra, the Ld. AR supported the order of CIT(A) and relied on the judicial decisions.

5. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue envisaged by the Ld.DR that the CIT(A) has erred in restricting the addition to the extent of dividend income earned and the methodology adopted

by the CIT(A) is not acceptable. The Ld. AR submitted that the assessee has cooperated in assessment proceedings and filed the details of expenditure incurred, dividend income received, information on su motto disallowance, and judicial decisions. We considered it appropriate to consider the findings of the CIT(A) at Page 3 Para 4.1 to 4.3 of the order read as under:

4.1 I have gone through the submissions of the appellant and the assessment order. The Assessing Officer has disallowed total expenses claimed in the Profit & Loss Account while making disallowance u/s. 14A classifying as directly related to earning of exempt income. There seems to be problem in the representation by the appellant before the Assessing Officer where in the submission filed before the Assessing Officer, the appellant put a heading over the expenses as "in respect of expenses debited to P&L a/c for earning exempt income" (page 31 of paper book) and then appellant gave full expenses details which were claimed in the P&L account and the Assessing Officer considered the same as directly related to earning of exempt income which is not correct as summarized by the appellant on page No. 9 of its submission as under:-

"22. In order to appreciate the facts of the case and the nature of expenses disallowed, the summary of the expenses debited to the profit and loss account is given below:

<i>Sr No</i>	<i>Particulars</i>	<i>Amount debited to</i>	<i>Amount</i>
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		P&L account	disallowed u/s 14A
1	Purchase of stock in trade	3,04,56,755	7,72,231
2	Employee benefit expenses	10,85,313	10,85,313
3	Finance Cost	2,69,01,803	2,69,01,803
4	Other expenses	11,39,623	11,39,623
	Total	5,95,83,494	2,97,72,625

4.2 The appellant has further argued that it had not earned any exempt income because all the interest received by it was taxable. The details were given in the Statement of Facts which are reproduced above in the appeal order and accordingly it was contended that Section 14A should not be invoked in its case.

4.3 I notice that there was no dispute on the point whether Section 14A is to be invoked or not because in the Return of Income filed, the appellant had suo moto disallowed a sum of Rs. 1,90,402/- at the time of filing return. Once Section 14A is to be invoked, then, the disallowance cannot be as an arbitrary figure by disallowance is to be as per the prescribed procedure as amended in Section 14A(2) which states disallowance is to be made as per Rule 8D. This was also so held by Hon'ble Bombay High Court in the case of Godrej Boyce Mfg. Co. Ltd. Vs. DCIT [394 ITR 449] where it held that Rule 8D is applicable from AY 2008-09, and it provides uniform basis for making the disallowance.

Accordingly, the disallowance as per Rule 8D is computed as under and the same considered by the Assessing Officer needs to be revised because it was noticed that the Assessing Officer has made calculation mistake in the same:

An amount equal to one percent of the annual average of the monthly average of the opening and closing balances of the value of investment income from which does not or shall not form part of total income.

	Opening Balance	Closing Balance	Average of monthly opening and closing Balance
Apr 16	71635244	71635244	71635244
May 16	71635244	71635244	71635244
Jun 16	71635244	71635244	71635244
Jul 16	71635244	90127244	80881244
Aug 16	90127244	90127244	90127244
Sep 16	90127244	90127244	90127244
Aug 16	90127244	90127244	90127244
Sep 16	90127244	90127244	90127244
Oct 16	90127244	90127244	90127244
Nov 16	90127244	90127244	90127244
Dec 16	90127244	90127244	90127244
Jan 17	90127244	90127244	90127244
Feb 17	90127244	90127244	90127244
Mar 17	90127244	193102244	141614744
		Average of average Monthly	89024369
		1%	890244
Disallowance made suo-moto			-190402
Addition to be confirmed			699842

Accordingly, the disallowance as computed above at Rs. 6,99,842/- is confirmed and balance disallowance is deleted. The ground is partly allowed.

6. Whereas, the Ld. DR could not controvert the findings of the CIT(A) with new cogent evidence or information to take a different view. We find the CIT(A) has considered the facts of earning of exempt income and has worked out the disallowance and passed a reasonable order. Accordingly we do not find

any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 20.12.2022.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 20.12.2022

KRK, PS

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//

1.

(Asst. Registrar)
ITAT, Mumbai