

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH, CHENNAI**

**माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ ITA No.567/Chny/2022  
(निर्धारण वर्ष / Assessment Year: 2017-18)

<b>Asianet Star Communications Pvt. Ltd.</b> Plot No.22, Kochar Jade, Thiru-vi-ka Industrial Estate, Guindy, Chennai – 600 032.	<b>बनाम/ Vs.</b>	<b>ACIT</b> Non Corporate Circle-10(1), Chennai.
<b>स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAACV-4918-P</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	Shri Vijayaraghavan (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Shri S. Venkatramani (CIT) – Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	22-03-2023
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	29-03-2023

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 13-05-2022 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 23-12-2019. The grounds raised by the assessee read as under:

1. The order of the learned Commissioner of Income-tax Appeals, National Faceless Appeal Centre ('CIT(A)) and the learned Assessing Officer ['AO'] is

erroneous, bad in law, prejudicial to the Appellant and contrary to the facts and circumstances of the case.

Disallowance under section 14A of Income-tax Act, 1961 (the Act')

2. The learned CIT(A) has erred in law and facts by making an addition to the total income to the extent of INR 10,94,38,500 under section 14A of the Act read with Rule 8D of the Rules.

3. The learned CIT(A) has erred in making disallowance under Section 14A of the Act of INR 10,94,38,500 without appreciating the fact that the Appellant has not incurred any expenses which has direct and immediate nexus in connection with earning exempt income.

4. The learned CIT(A) erred in assuming that the Appellant has conceded that the provisions of section 14A is applicable to the Appellant.

5. That the learned CIT(A) has failed to appreciate that the learned AO has failed to provide a reasoned satisfaction with regard to the claim of the Assessee, which is a pre-requisite for invoking the provisions of Rule 8D of the Act.

6. The learned CIT(A) has erred in the mechanical application of Rule 8D, given that the Appellant has incurred no direct expenditure.

7. Without prejudice to the above, the learned CIT(A) has failed to appreciate the fact that the Appellant had suo-motto computed the indirect expenditure and also erred in not considering the same for disallowance under section 14A of the Act.

8. That the learned CIT(A) erred in not considering that the Appellant followed the above basis in the earlier years, and the Department has accepted the same.

9. Without prejudice to the above, the learned CIT(A) has failed to appreciate that the dividends earned by the Appellant relate to investment in shares which have been made in earlier AY (investment in Asianet Communications held from FY 2008-09), and no new investment has been made in the subject AY.

10. The learned AO has also erred in initiating penalty proceedings under section 270A of the Act.

As is evident, the sole grievance of the assessee is disallowance u/s 14A for Rs.1094.38 Lacs.

2. The Ld. AR advanced arguments supporting the case of the assessee and relied on various judicial pronouncements. The copies of the same have been placed on record. The Ld. CIT-DR, on the other hand, justified the impugned disallowance for the reasons stated in the impugned order. Having heard rival submissions and after perusal of case records, our adjudication would be as under.

### **Proceedings before lower authorities**

3.1 From the facts it emerges that the assessee earned exempt income of Rs.581.66 Crores but it did not offer any disallowance u/s

14A in the return of income. During assessment proceedings, the assessee submitted that it did not incur any direct or indirect expenditure to earn the exempt income. At the same time, as computed in earlier years, the assessee offered suo-motu disallowance of Rs.5.52 Lacs which is extracted in para-5 of the assessment order. The assessee submitted that application of Rule 8D, in such a scenario, was not permissible. The Ld. AO was obliged to establish the actual expenditure as incurred by the assessee to earn exempt income before proceeding to apply Rule 8D.

3.2 However, the assessee's submissions were rejected by Ld. AO, inter-alia, on the ground that no disallowance was offered in the return of income. The activity of earning exempt income was separate and identifiable from other activities. The expenses incurred could be segregated on scientific and reasonable basis by maintenance of separate books of account or any other demonstrable evidences. The assessee failed to do so and therefore, invocation of Rule 8D was justified. The working made by the assessee had no rationale and scientific basis. The methodology was purely subjective and on ad-hoc basis. Therefore, applying Rule 8D, Ld. AO computed impugned indirect expense disallowance of Rs.1094.38 Lacs u/r 8D(2)(ii) as applicable from AY 2017-18. The same was based on annual average of monthly opening and closing balances of exempt income yielding investments.

3.3 The Ld. CIT(A), considering the ratio of various legal decisions, held that AO had rightly recorded in the assessment order and reasoned that he was not satisfied about the correctness of the expenditure offered by the assessee. The AO was also not satisfied

that no expenditure was incurred in relation to exempt income earned by the assessee and therefore, computation in terms of Rule 8D was justified. Aggrieved, the assessee is in further appeal before us.

### **Our findings and Adjudication**

4. We find that the assessee is engaged in the business of television broadcasting. Though the assessee earned exempt income of Rs.581.66 Crores, it did not offer any disallowance u/s 14A on the ground that no expenditure was incurred to earn the said income. During the course of assessment proceedings, the assessee maintained the same position and in the alternative, offered disallowance of Rs.5.52 Lacs which is extracted in para-5 of the assessment order. The assessee has disallowed 100% of de-mat charges and 2% of aggregate expenditure incurred on Company Secretarial fees, Salary Cost of the finance / legal team. This methodology is the same as adopted by the assessee in AY 2016-17. The Ld. AR has submitted that dividend income was received only once and that too, by direct credit by way of Real Time Gross Settlement (RTGS) and therefore, no expenditure could be said to have been incurred by the assessee.

5. We agree with the proposition that application of Rule 8D is not automatic or mechanical. As per the provisions of Se.14A, it is incumbent for A.O to record an objective satisfaction as to why the claim of the assessee is not acceptable having regards to the accounts of the assessee. It is only when such a satisfaction has been recorded, Rule 8D could be applied. In the present case, we find that that the assessee has maintained a position that no expenditure was incurred to earn the exempt income. The Ld. AO rejected the same but at the

same time, did not specify as to what could be the other expenditure that could be attributed to the activity of maintenance of investment portfolio by the assessee. No such fact has been demonstrated by the assessee either. The fact that the dividend was received by way of RTSG would not be of much relevance since a vital factor would be to see as to how much resource have been put in by the assessee to maintain the investment portfolios. Therefore, considering the entirety of facts and circumstances, we set-aside the impugned order and restore the issue of impugned disallowance back to the file of Ld. AO for de-novo adjudication in the light of our aforesaid observations. Needless to add that reasonable opportunity of hearing shall be granted to the assessee. The assessee is directed to provide requisite details and information as required by Ld. AO. The Ld. AO may re-adjudicate the issue considering the assessee's submissions as well as relevant material on record including financial statements of the assessee. No other ground has been urged in the appeal.

6. The appeal stand allowed for statistical purposes.

Order pronounced on 29<sup>th</sup> March, 2023.

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई / Chennai; दिनांक / Dated : 29-03-2023

EDN/-

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखक सदस्य / ACCOUNTANT MEMBER

**आदेश की प्रतिलिपि ञ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF