

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.518/Kol/2022
Assessment Year: 2017-18**

The Punjab Produce & Trading Co. Pvt. Ltd. Birla Building, 4 th Floor, 9/1, R. N. Mukherjee Road, Kolkata-700001. (PAN: AABCT1705D)	Vs.	Assistant Commissioner of Income-tax, Circle-4(2), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Ms. Vidhi Ladia, CA
Respondent by : Shri P. P. Barman, Addl. CIT

Date of Hearing : 15.03.2023
Date of Pronouncement : 31.03.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order No. ITBA/NFAC/S/250/20-22-23/1043878070(1) dated 15.07.2022 against the order of Ld. ACIT, Circle-4(2), Kolkata passed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 23.07.2019.

1. Assessee has taken following four grounds of appeal :

“1. That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred in not holding that only a sum of Rs.1 0,87,405/- can be subject matter of the disallowance u/s.14(A) as against Rs.22,63,384/- computed by the learned AO.

2. That on the facts and in the circumstances of the case, the learned CIT (Appeal) erred in holding that the learned AO has invoked provisions of Rule 8D after recording its objective satisfaction with disallowance of Rs.10,87,405/- made by the appellant was not reasonable.

3. That on the facts and in the circumstances of the case, the learned CIT (Appeal) erred in holding that the basis of allocation of expenses for computing disallowance u/s. 14(A) read with Rule 8D(2)(ii) is correct instead holding that only a sum of Rs.10,87,405/- can be disallowed u/s. 14(A).

4. That on the facts and in the circumstances of the case, the learned CIT (Appeal) erred in confirming the disallowance of Rs.67,323/- made 36(1) (va) of the Income Tax Act which is contrary to certain judgment including Hon'ble Apex Court.”

2. Ground nos. 1, 2 and 3 relate to disallowance of Rs.22,63,384/- made u/s. 14A of the Act by invoking provisions of Rule 8D. Ground no. 4 is in respect of disallowance of Rs.67,323/- in respect of delay in payment of contribution of employees towards PF and ESI.

3. Brief facts of the case are that assessee is a Non-banking Finance Company registered under the Reserve Bank of India Act, 1934. It filed its return of income on 27.10.2017 reporting total income at Rs.3,88,60,600/-. In the course of assessment, Ld. AO noted that assessee had made *suo moto* disallowance of Rs.10,87,405/- u/s. 14A of the Act for which it has submitted the basis for arriving at the disallowance. From the submissions of the assessee, Ld. AO noted that assessee had apportioned salary of its employees engaged in investment related work of the company and also identified certain direct expenses. However, Ld. AO did not accept the submission made by the assessee by holding that employees must have also utilized infrastructure of the company of the assessee for earning the exempt income. Accordingly, Ld. AO applied Rule 8D of the Income Tax Rules, 1962 by taking 1% of monthly average of opening and closing balance of investment. He thus, computed an amount of Rs.33,50,789/- and after reducing it by the *suo moto* disallowance made by the assessee, further disallowed a sum of Rs.22,63,384/- and added to the income of the assessee. Ld. AO also made a disallowance of Rs.67,323/- in re-

spect of employees' contribution to PF. Aggrieved, assessee went in appeal before the Ld. CIT(A), who sustained the disallowance made by the Ld. AO.

4. In the course of first appellate proceeding, the assessee had made a detailed and exhaustive submission to demonstrate how it has arrived at the amount of *suo moto* disallowance made by it u/s. 14A of the Act. The submission made by the assessee are reproduced in the order of Ld. CIT(A). Ld. CIT(A) has summarized the submissions made by the assessee which are reproduced as under:

6. I have considered the findings of the AO in the assessment order and the submission of the appellant vide reply dated 06.06.2022. The appellant has also filed the judgment of the Hon'ble Calcutta High Court on 23.06.2022 which will also be discussed subsequently.

The contentions of the appellant in its reply may be summarized as under-

1. There are seven categories of investments in its case. Out of these seven categories, they are certain categories wherein investment is not yielding any exempt income. There are some other categories wherein annual income in form of dividend as well as the amount on sale of investment are exempt income. The third category of investment is that kind of

investment wherein dividend is tax free but sale amount on disposal of asset is taxable. There is one more sub-category in the third type of investment category, wherein the disposal amount is taxable when the asset is held for short term but it is non-taxable when the asset is held for long term.

2. The appellant has submitted that it has suo-moto disallowed a sum of Rs.10,87,405/- u/s 14A of the Act. The Rule 8D cannot be applied in this case as it would result in disallowance of the entire expenditure incurred by the appellant. It has further submitted that even if the AO is not satisfied with the disallowance made by the appellant on suo-moto basis, in that case also application of Rule 8D is not mandatory and the AO can follow any reasonable method. It has referred to the unreported judgment of the Hon'ble Calcutta High Court in the case of PCIT vs. Britannia Industries Ltd. wherein the Hon'ble High Court approved the observation of the Hon'ble Tribunal that even a case where the AO rejects the claim of the assessee that no expenses were incurred to earn the exempt income, it is not mandatory for him to invoke the method of calculation prescribed by Rule 8D(2) of the Rules and he is free to make the disallowance on any reasonable basis. By applying the Rule 8D of the Rules blindly sometimes absurd disallowances would result.

The appellant has further contended that it has correctly computed the suo-moto disallowance on the ground that infrastructure/indirect cost have not been included particularly and they have in fact being included. It has further submitted that the investment during the year which may give rise to dividend income was only Rs.3.47 cr. whereas investment of Rs.109.67 cr. was made in debt schemes of mutual funds (funds growth options) which will not result in any exempt income at all.

1. The appellant has given the job description of various employees and has contended that it has rightly not attributed any part of the expenditure in respect of the six employees at the employees deployed at the assessee's house properties and the peon at the office. Regarding remaining six employees it has been submitted that they perform multiple functions and therefore, expenditure incurred was required to be apportioned in a reasonable manner.

Regarding other expenses of Rs.87,89,654/- it has been submitted that expenses on building repair and maintenance, legal fee and donation are not concerned with the exempt income. The balance expenses have been apportioned on a reasonable basis. The appellate has given the basis of calculation of amount of Rs.10,87,405/- Annexure-B of the submission which is reproduced hereunder-

THE PUNJAB PRODUCE & TRADING CO.PVT.LTD.

Statement showing expenses for maintaining Investment Portfolio during the Year 2016-2017

(Assessment Year 2017-18)

Salaries,Waques,Bonus etc.	AKD	UV	DSM	PKR	K RAVI	M MISHR
Salary	1680000	1080000	156000	219000	211200	162600
Adhoc Allowance	0	660000	0	45600	38400	12000
House Rent Allowance	504000	324000	31200	43800	42240	0
Conveyance Allowance	0	0	37200	43200	43200	37200
Leave Encashment / Provision	0	90000	0	18250	17600	13550
Ex- gratia / bonus			7000	7000	7000	7000
Total :	2184000	2154000	231400	376850	359640	232350
Contribution to Superannuation Fund	252000	162000	0	32850	31680	24390
Contribution to Provident Fund	201600	129600	18720	26280	25344	19512
Employees Welfare Expenses	30000	285000	31405	60750	58800	27100
Other Expenses(Motor Car Exp.& Club Exp.Phone others)	0	114289	0	0		

	483600	690889	50125	119880	115824	71002
	2667600	2844889	281525	496730	475464	303352
Proportionate Share @	5%	25%	10%	10%	10%	10%
Proportionate Amount	133380	711222	28153	49673	47546	30335

Payment to and Provision for Employees

Adm. & Estb. Expenses Allocable Expenses

<i>Postage & Telephone Expenses</i>	119713	5%	5986
<i>Service Renderd</i>	124200	10%	12420
<i>Other Repairs & Maintenance</i>	115045	5%	5752
<i>Rent</i>	133308	%	6665
<i>Printing & Stationary</i>	12293	5%	615
<i>Bank Charges Demat</i>	1271	10%	127
<i>Charges</i>	0	100%	0
<i>Other General Charges (Xerox charges books periodicals)</i>	20406	10%	2041
<i>SEBI filing fees Ecnveyance & Misc. Expenses</i>	534895	10%	53490
	1061132		87096

TOTAL: 1087405

Income debited in P&L Account is Rs.10,87,405/- out of which Rs.10,00,309/- was on account of employee benefit expenses and Rs.87,096/- was on account of other expenses.

5. From the above summarization, it is noted that assessee has given detailed working and the basis of arriving at the suo moto disallowance u/s. 14A of the Act which includes salaries and wages for the staff as well as administrative and establishment expenses allocated in this respect.

5.1. Further, Ld. CIT(A) referred to the amendment brought in by Finance Act, 2022 by way of explanation inserted in section 14A of the Act which deals with an event where even when no exempt income is earned during the year then also disallowance u/s. 14A of the Act is to be made. Ld. CIT(A) referred to the decision of Coordinate Bench of ITAT, Gauhati in the case of ACIT Vs. Williamson Finance Services Ltd. in ITA No. 154 to 156/Gau/2019 dated 06.07.2022. In the conclusion, Ld. CIT(A) observed that disallowance made by the assessee *suo moto* is not reasonable since no scientific basis of taking various ratios against the expenses incurred by the assessee has been submitted. He thus, held that the AO has rightly applied Rule 8D and sustained the disallowance of Rs.22,63,384/- made by the Ld. AO.

6. Before us, Ld. Counsel for the assessee reiterated the submissions made before the authorities below. Ld. Counsel categorically submitted that out of the total of "other expenses" of Rs.87,89,654/- listed under Note No. 19 of the Accounts, the following major expenditure incurred had no relation with the earning of exempt income which are –

(a) Building repairs and maintenance	Rs. 5,68,076/-
(b) Legal fees incurred for reservation/ Protection of assets of the assessee.	Rs.42,50,841/-
(c) Donation	Rs.19,00,000/-

7. Thus, the balance of Rs.20,70,737/- had to be allocated in respect of earning of exempt income for which detailed exercise was done and was furnished before the authorities below. Ld. Counsel reiterated that it is only those expenditure alone which have been incurred in relation to the exempt income which can be disallowed u/s.14A of the Act. If an expenditure incurred has no connection with the exempt income then such expenditure could obviously be treated as not related to the income which is exempt from tax and such expenditure will be allowed as business expenditure. Thus, in the present set of facts, assessee's relevant employees, which are six in numbers, performed multiple functions and the common administrative and establishment expenses were incurred for multifarious activities, the assessee resorted to apportionment in order to arrive at the aggregate expenditure of Rs.10,87,405/- incurred in relation to exempt income. In this connection, assessee has included a portion of its establishment and administrative expenses also.

8. He further submitted that Ld. AO has not complied with the provisions of section 14A to record satisfaction on the claim of the assessee to hold it as not correct by having regard to the accounts of the assessee. He has merely quoted a general statement that disallowance made by the company cannot be accepted and thus, resorting to compute a disallowance under Rule 8D is uncalled for. He asserted that the amount of *suo moto* disallowance offered by the assessee is correct having regard to the principles laid down by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT (2018) 402 ITR 640 (SC) and CIT Vs. Walfort Share & Stock Brokers Pvt. Ltd. (2008) 326 ITR 1 (SC). The computation by assessee cannot be rejected on the ground that infrastructure or indirect costs have

not been included, more particularly when they in fact have been included. Investment made during the year which may give rise to dividend income was only Rs.3.47 Cr. whereas investment of Rs.109.67 Cr. was made in debt scheme of mutual fund (Growth Option) which will not result in any non-taxable or exempt income at all. According to the Ld. Counsel, AO was grossly incorrect in not considering the *suo moto* disallowance made by the assessee by applying Rule 8D(2)(ii) of the Rules, which ought to be deleted.

9. Per contra, Ld. Sr. DR placed reliance on the orders of authorities below.

10. We have heard the rival contentions and perused the material available on record. We have gone through the detailed submissions made before the Ld. CIT(A) as reproduced in the impugned order. On careful perusal of the working and the assertions made by the Ld. Counsel before the First Appellate Authority, we do find force in the submission so made based on which we are of considered view that assessee has adequately demonstrated of arriving at the *suo moto* disallowance made u/s. 14A of the Act by objectively taking into consideration not only the staff cost but also expenses relating to administrative and establishment.

10.1. We also note that section 14A provides that the AO has to determine the amount of expenditure incurred in relation to earning of exempt income in accordance with the prescribed method i.e. Rule 8D if the AO is not satisfied with the correctness of the claim of the assessee, by having regard to the accounts of the assessee. In the present case before us, we do not find any satisfaction which has been

recorded by the Ld. AO, by having regard to the accounts of the assessee, to compute the amount of disallowance by resorting to Rule 8D.

10.2. Further, Ld. CIT(A) while sustaining the disallowance referred to the amendment brought in by Finance Act, 2022 and relied upon the decision of Coordinate Bench of ITAT, Gauhati (supra). In this respect, we note that Hon'ble High Court of Delhi in the case of PCIT Vs. Era Infrastructure (India) Ltd. in ITA No. 204/2022 & C. M. Application No. 31445/2022 which has been followed by the coordinate bench of ITAT, Kolkata in the case of *Babul Fiscal Services (P) Ltd v. ACIT in ITA No. 318/Kol/2022 dated 02.08.2022* holding that no disallowance is required to be made in the case of the assessee because it has not earned any tax-free income and allowed the appeal of the assessee by deleting the addition so made. Thus, considering the factual matrix, submissions made by the Ld. Counsel, detailed working in respect of *suo moto* disallowance made by the assessee, judicial precedence referred above, we are of considered view to delete the disallowance of Rs.22,63,384/- and restricting the disallowance u/s.14A to the amount of Rs.10,87,405/- made by the assessee itself. Accordingly, ground taken in this respect is allowed.

11. On the second issue relating to disallowance in respect of delay in deposit of employees' contribution to PF, the issue is squarely covered against the assessee by the decision *Hon'ble Supreme Court in Chekmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC) dated 12.10.2022* wherein it has been held that "*deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees' contribution to PF cannot be claimed when deposited within*

the due date of filing of return even when read with Section 43B of the Income-tax Act,1961. Therefore, the same is dismissed.

12. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 31st March, 2023.

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31st March, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:
 3. CIT(A, NFAC, Delhi
 4. ACIT, Circle-4(2), Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata