

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

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI AMARJIT SINGH, AM**

आयकरअपीलसं./ I.T.A. No.866, 868, 869, 870 &
871/Mum/2023

(निर्धारणवर्ष / Assessment Year 2013-14, 2014-15, 2016-17,
2017-18 & 2020-21)

IDBI CAPITAL MARKETS & SECURITIES LIMITED 6 th Floor, IDBI Tower, WTC Complex, Cuffe Parade, Mumbai-400 005	बनाम/ Vs.	DEPUTY COMMISSIONER OF INCOME TAX 4(1) (1) Room No. 640, 6 th Floor, Aayakar Bhavan, M. K. Road Mumbai- 400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACI1268F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. Madhur Agrawal, Adv.
प्रत्यर्थीकीओरसे/ Respondent by	:	Mr. Krishna Kumar, Sr. AR
सुनवाईकीतारीख/ Date of Hearing	:	31.05.2023
घोषणाकीतारीख / Date of Pronouncement	:	31.05.2023

आदेश / O R D E R

Per Bench:

The aforesaid appeals have been filed by the assessee against separate impugned order of even date, 21.01.2023, passed by National Faceless Appeal Centre, Delhi for the quantum of assessment passed u/s 143(3) of the Income Tax Act, 1961

(hereinafter referred to as “the Act”) for the assessment year 2013-14, 2014-15, 2016-17, 2017-18 and 2020-21.

2. Insofar as in the ground for AY 2013-14, 2014-15, 2016-17 and 2017-18, the common issue is raised with regard to disallowance u/s 14A of the Act.

3. Before us, the ld. Counsel for the assessee Mr. Madhur Agrawal submitted that assessee has earned dividend income in AY 2013-14, 2014-15, 2016-17 and 2017-18, which are as under:

	(Rs.)
▪ AY 2013-14	- 23,90,554/-
▪ AY 2014-15	- 15,88,588/-
▪ AY 2016-17	- 25,08,471/-
▪ AY 2017-18	- 23,44,331/-

4. He further submitted that insofar as AY 2013-14 is concerned, assessee had made suo-moto disallowance of Rs.37,55,200/-, when dividend income was Rs. 23,90,554/-. However, the Assessing Officer (AO) has mechanically proceeded to apply Rule 8D and made disallowance of Rs.52,41,500/-. Thus, he submitted that now in view of various decisions, disallowance u/s 14A/Rule 8D cannot exceed the exempt income. Similarly, he pointed out that in AY 2014-15, dividend income was Rs.15,88,588/-, but the assessee had offered it to tax and was not claimed as exempt and therefore,

there is no question of any disallowance u/s 14A of the Act. Further, in AY 2016-17, the dividend income was Rs.25,08,400/-. Again the assessee has not claimed any exemption u/s 10(38) of the Act and same has been offered to tax. Therefore, in this year also there is no question of disallowance u/s 14A of the Act. However, he submitted that in AY 2016-17, assessee had shown Long Term Capital Gain on sale of shares of Rs.12,30,147/-. However, no expenses have been incurred for incurring expenditure for Long Term Capital Gain on sale of shares. Hence again there is no question of making any disallowance u/s 14A of the Act. Insofar as AY 2017-18 is concerned, the exempt income is Rs.23,44,331/- and no suo-moto disallowance was made. However, the AO has proceeded to proceed to make disallowance of Rs. 88 lakhs. Thus, he submitted disallowance u/s 14A of the Act should be restricted to the extent of exempt income.

5. In AY 2014-15, additional issue which has been raised vide Ground no.5 is that there was certain discrepancy in ITR and 26AS statement to the extent of Rs.28,840/- despite, assessee has given reconciliation statement. Thus, he submitted that this matter

should be restored back to the file of AO to examine the reconciliation.

6. With regard to appeal for AY 2020-21, Ld. Counsel submitted that the only issue relates to disallowance of leave encashment and provision for gratuity aggregating to Rs.94,69,066/-. He submitted that in the computation of income, assessee already disallowed and offered the sum of Rs.94,69,067/- to taxation. Therefore, no further disallowance could have been made.

7. On the other hand, the ld. Departmental Representative (DR) relied upon the AO and the CIT (A).

8. After considering the aforesaid submissions and on perusal of the orders, we find that insofar as the disallowance u/s 14A is concerned in the AYs 2013-14 and 2014-15, the issue is, whether the disallowance u/s 14A of the Act can be made over and above the exempt income claimed by the assessee. Though, in AY 2013-14, assessee had made suo-moto disallowance of Rs.37,55,200/- but it has been stated that now there are various decisions of the High Courts that disallowance cannot exceed the exempt income and this has been held so by the Hon'ble Bombay High Court in the

case of **Nirved Traders (P) Limited vs. DCIT, Appeal No.149/2017** and also vide Hon'ble Gujarat High Court in the case of **PCIT vs. Jay Chemicals Industries, 422 ITR 449**. Thus, we hold that disallowance over and above the exempt income claimed by the assessee is directed to be deleted in view of the judgment of Hon'ble Jurisdictional High Court. One of the pleas raised by the ld. DR before us, that now there is an clarificatory amendment by the Finance Act, 2022 by insertion of an *Explanation* in section 14, wherein, the provision of section 14A has been made applicable even when there is no exempt income. However, Hon'ble Delhi High Court in the case of **PCIT vs. Era Infrastructure (India) Ltd., ITR 204/2022** held that the said *Explanation* is not retrospective. Accordingly, this plea of the ld. DR is rejected.

9. Insofar as disallowance u/s 14A of the Act made in AY 2014-15 and 2016-17. It is an undisputed fact that assessee has not claimed any divided income as exempt on which AO has proceeded to make disallowance u/s 14A of the Act. Once the assessee has not claimed any exemption and has offered income to tax, we do not find any reason as to why disallowance u/s 14A of the Act can be

made, which shows non-application of mind both by the AO and ld. CIT (A) while making the disallowance. Thus, in these two years disallowance made by the AO is deleted. However, in AY 2016-17, there is Long Term Capital Gain of Rs.12,30,147/-, but in respect of this exempt income, no expenditure has been debited by the assessee. Therefore, no disallowance u/s 14A of the Act can be made on this income of source.

10. The additional issue raised in AY 2014-15 with regard to addition of Rs. 25,08,400/-, the matter is restored back to the file of AO to examine the reconciliation statement explaining the discrepancy between the ITR and 26AS and decide the issue after giving opportunity to the assessee. Accordingly, this issue is set aside to the file of AO.

11. Lastly, coming to the appeal for AY 2020-21, the only issue is raised in respect of disallowance/addition of Rs.94,69,06/- which construed following:

Sr. No	Particulars	Amount Rs.
1	Provision for Leave Encashment	63,38,065
2	Provision for Gratuity	31,31,001
	Grand Total	94,69,066

The disallowance made by the AO and the Id. CIT(A) appears to be erroneous, because in the computation of income of assessee has already been added amount to Rs.94,69,067/- and has not been claimed at all and therefore, once an item was already been disallowed, same cannot be disallowed again. Thus, addition/disallowance made by the AO is deleted.

12. In the result, appeal for AY 2013-14 is allowed, appeal for AY 2014-15 is partly allowed for statistical purpose, appeal for AY 2016-17 is allowed, appeal for AY 2017-18 is allowed and appeal for AY 2020-21 is allowed.

Orders pronounced in the open court on 31st May, 2023.

Sd/-
(AMARJIT SINGH)
Accountant Member

Sd/-
(AMIT SHUKLA)
Judicial Member

मुंबई Mumbai;

दिनांक Dated : 31.05.2023

Mahesh

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to:

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT- concerned
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
5. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण,मुंबई/ITAT, Mumbai**