

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'E' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 5639/Mum/2015 (A.Y. 2012-13)

Tata Industries Limited 24, Bombay House Homi Mody Street, Fort Mumbai-400 001. PAN : AA ACT4058L (Appellant)	Vs.	DCIT-2(3)(1) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Ms. Aarti Visanji
Department by	Shri Biswanath Das
Date of Hearing	23.03.2023
Date of Pronouncement	24.05.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 29-09-2015 passed by Ld CIT(A)-6, Mumbai and it relates to the assessment year 2012-13. The only issue agitated in this appeal relates to the disallowance made u/s 14A of the Act.

2. The facts relating to the above said issue are narrated in brief. During the year under consideration, the assessee has earned exempt income by way of dividend income of Rs.49.16 crores and Long term capital gains of Rs.7.35 crores. In the return of income, the assessee suo motu disallowed a sum of Rs.11.20 crores under Rule 8D(2)(iii) of I T Rules. During the course of assessment proceedings, the AO noticed there are four divisions in the Head office and he has tabulated the expenses incurred in each of the division as under:-

Particulars	Projects/ Investments Dept.	Central finance, tax and accounts	Corporate office (MD/ED/ Chairman/ Secretarial	General/ common	Total (Rs)
Payments to & provisions for employees	95,21,705	1,03,11,939	3,54,87,487	6,90,13,732	12,43,34,863
Establish- ment expenses	1,29,88,132	1,44,52,364	86,09,007	6,32,58,668	9,93,08,172
Other expenses	11,99,99,324	2,09,216	22,29,497	96,53,128	13,20,91,165
Depreciation		-	-	52,17,191	52,17,191
Total	14,25,09,161	2,49,73,519	4,63,25,991	14,71,42,719	36,09,51,390

The AO took the view that the entire expenses incurred in “Projects/Investments Department amounting to Rs.14.25 crores are direct expenses incurred in earning of exempt income and accordingly, the same requires to be disallowed u/r 8D(2)(i) of IT Rules r.w.s 14A of the Act. The AO noticed that the assessee himself has disallowed a sum of Rs.11.83 crores u/s 37(1) of the Act, out of the above said amount of Rs.14.25 crores. Accordingly, the AO disallowed the balance amount of Rs.2,41,63,034/- u/r 8D(2)(i) of I T Rules, which was in addition to the amount of Rs.11.20 crores voluntarily disallowed by the assessee.

3. Before Ld CIT(A), the assessee raised many contentions.

(a) The first contention was that the AO did not establish nexus between the amount of Rs.2,41,63,034/- disallowed by him and the tax free income and hence the said disallowance was not warranted. The Ld CIT(A) rejected this contention following his decision rendered in AY 2011-12.

(b) The second contention was that the total disallowance computed by the AO was Rs.25,45,15,913/- and the same exceeds the actual expenditure of Rs.14,25,09,161/- incurred in “Investment/Project department”. The Ld CIT(A) noticed that the aggregate amount of expenses incurred in the head office in all the four divisions amounted to Rs.36.09 crores. The above said aggregate expenditure included

corporate expenses of Rs.4.63 crores and common expenses of Rs.14.71 crores. Accordingly, the Ld CIT(A) took the view that the aggregate expenses has actually exceeded the amount of disallowance computed by the AO.

(c) The next submission of the assessee before Ld CIT(A) was that the investments made by it could generate both exempt income and taxable income. The investments that could generate exempt income was worked out to 40% of the total value of investments. Accordingly, it was contended that the AO should have considered proportionate expenses relatable to exempt income, i.e., 40% of expenses only for the purpose of making disallowance. The Ld CIT(A) noticed that he had restored this issue to the file of AO for working out proportionate expenses, i.e., in principle, the Ld CIT(A) had accepted the above said contentions of the assessee. Accordingly, the Ld CIT(A) restored this contention to the file of AO.

(d) The next contention of the assessee was that the investments which did not yield any exempt income should be excluded while computing average value of investments. The Ld CIT(A) rejected this claim following order passed by him in the earlier years.

Still aggrieved, the assessee has filed this appeal before the Tribunal.

4. The assessee has raised following grounds before us:-

1. Disallowance U/S.14A of the Income Tax Act, 1961 (the Act);

In the facts and circumstances of the case and in law, the Ld. C.I.T. (A) ought to have held that :

A. Disallowance Under Rule 8D(2)(i) of the Rules - Rs.14,25,09,161/-:

(i) The AO having not established direct nexus between income which does not form part of total income and the direct expenditure incurred in relation to such income, Rule 8D(2)(i) cannot be invoked and hence, the expenditure of Rs. 14,25,09,161/- quantified as disallowable should have been deleted.

Without prejudice to the above and in the alternate

(ii) Disallowance under Rule 8D(2)(i) of the Rules should be quantified in the proportion to the average value of investments in respect of which dividend/exempt income is received during the year bears to the average value of total investments and for the purpose the expenditure to be considered should be Rs. 2,41,63,034/- i.e. amount after reducing the expenditure already disallowed.

B. Disallowance under Rule 8D(2)(iii) of the Rules - Rs. 11,20,42,752/-:

(i) The AO having not established direct nexus between income which does not form part of the total income and expenditure incurred in relation thereto, sub-rule (2)(iii) cannot be invoked, disallowance made of Rs.11,20,42,752/- should be deleted.

(ii) Having confirmed the disallowance of entire expenditure incurred by Project/Investment Department under Rule 8D(2)(i), Rule 8D(2)(iii) cannot be invoked and the disallowance made of Rs.11,20,42,752/- should be deleted in its entirety.

Without prejudice to the above and in the alternate

(iii) In quantifying the average value of investment under sub-rule (2)(iii), the average value of investment on which dividend income is not earned during the year should be excluded.

2. It is humbly prayed that the reliefs as prayed for herein above and/or such other reliefs as may be justified by the facts and circumstances of the case and as may meet the ends of justice should be granted.”

5. We heard the parties and perused the record. The main contention in the first ground is that the AO has not established direct nexus between exempt income and expenses. We noticed that the investment activities are being managed by the Head office, which is having four divisions. One of the divisions is “Investment and Project” division, the name of which itself suggests that this division is in charge of investments and projects. Accordingly, we are of the view that the AO was justified in considering the expenses incurred under this division as “direct expenses”. Though the assessee has contended that there is no direct nexus between expenses and exempt income, yet no material was placed before us to substantiate the said contention. Accordingly, we reject this main contention.

5.1 In the alternative, it is prayed that the amount of Rs.2,41,63,034/- enhanced by the AO should be apportioned between the investments, which has earned exempt income and taxable income. We noticed that the Ld CIT(A) has accepted this plea of the assessee in principle and restored this issue to the file of AO for examining the computation made by the assessee in

this regard. Accordingly, we direct the AO to disallow only proportionate expenses, which are attributable to the investments, which yield exempt income.

6. The second contention of the assessee is that the voluntary disallowance of Rs.11.20 crores made by the assessee should be deleted, since the AO has disallowed the entire expenses of "Investment & Project division". In this regard, we noticed that the Ld CIT(A) has specifically observed that there are certain indirect expenses, viz., Corporate office expenses of Rs.4.63 crores and General/Common expenses of Rs.14.71 crores could also be linked with exempt income. Hence, the plea of the assessee that the expenses incurred in "Investment and Project division" alone should be considered for the purpose of disallowance is liable to be rejected. Accordingly, we uphold the order passed by Ld CIT(A) on this point.

6.1 The assessee has raised an alternative contention that, for the purpose of computing "average value of investments", the investment which did not yield exempt income should be excluded. The above said plea of the assessee finds support from the decision rendered by Delhi Special Bench of ITAT in the case of Vireet Investments P Ltd (2017)(165 ITD 37)(Delhi). Accordingly, we set aside the order passed by Ld CIT(A) on this point and direct the AO to re-compute the average value of investments as stated in the case of Vireet Investments P Ltd (supra) and accordingly re-compute the disallowance to be made u/s Rule 8D(2)(iii) of I T Rules.

7. The Ld A.R submitted that the contentions of the assessee, if accepted, may result in reduction of disallowance u/s 14A below the amount voluntarily disallowed by the assessee in its Return of income. Invited our attention to the decision rendered by the co-ordinate bench in the case of Sajjan India Ltd vs. Addl. CIT (2018)(89 taxmann.com 21)(Mum), the ld A.R submitted that the Tribunal has held in the above said case that such kind of reduction is permissible, since no tax can be collected without authority of law. We agree with the above said view expressed by the co-ordinate bench.

8. In view of the foregoing discussions, we restore the issue of computation of disallowance u/s 14A of the Act to the file of AO with the direction to re-compute the disallowance in accordance with the decision rendered by us in the preceding paragraphs. The assessee may be provided with adequate opportunity of being heard.

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

Pronounced in the open court on 24.5.2023

Sd/-
(KAVITHA RAJAGOPAL)
Judicial Member

Sd/-
(B.R. BASKARAN)
Accountant Member

Mumbai; Dated : 24/05/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS