

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

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER &  
MS KAVITHA RAJAGOPAL, HON'BLE JUDICIAL MEMBER**

**ITA NO. 2790/MUM/2022 (A.Y: 2018-2019)**

M/s. Vishal Diamonds Pvt. Ltd., 11 <sup>th</sup> Floor, The Plaza Hughes Road, 55 Gamdevi, Mumbai - 400007  <b>PAN: AAACV2799Q</b>	<i>vs.</i>	Income Tax Officer – 5(3)(1) Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Hariom Tulsian</b>
<b>Department Represented by</b>	<b>:</b>	<b>Vranda U. Matkari</b>
<b>Date of Conclusion of Hearing</b>	<b>:</b>	<b>18.04.2023</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>12.07.2023</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

**1.** This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 19.10.2022 for the A.Y.2018-19.

**2.** Brief facts of the case are, assessee filed its return of income and the case of the assessee was selected for complete scrutiny for the A.Y.2018-19 for the purpose that assessee has shown low income in comparison to very high investments and business loss appearing in the balance sheet. Notices u/s. 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. In response assessee filed relevant information as called for.

**3.** During assessment proceedings, assessee company reveals in its balance sheet that it has made investment in equity shares and partnership firm amounting to ₹.127.25 crores as on 31.03.2018 and ₹.98.38 crores as on 31.03.2017. During the current year, assessee has shown exempt income of ₹.91,39,137/- received as share of profit from partnership firm. The Assessing Officer observed that assessee has not made any disallowance u/s. 14A of the Act. As per the Assessing Officer, Rule 8D of I.T.Rules is applicable for the purpose of computing the disallowance u/s. 14A of the Act.

**4.** In support of the stand of the assessee, assessee has submitted that the assessee has earned any exempt income which is not includable in the total income under Income-tax Act and the income earned from

firm is exempt u/s. 10(2A) of the Act, considering the fact that assessee has earned the share of profit which is already suffered tax.

**5.** After considering the submissions of the assessee, Assessing Officer justified the applicability of section 14A and Rule 8D of I.T.Rules to the present case in his order. Accordingly, he applied the Rule 8D(2) of I.T.Rules and determined the total disallowance adopting the average investments made by the assessee and applied 1% as per Rule 8D(2) and accordingly, he determined the amount of ₹. 1,12,81,778/-. Assessing Officer by referring to total expenses claimed by the assessee during the year is ₹.73,54,549/-. Accordingly, he restricted the same to the extent of ₹.73,54,549/- and accordingly, he disallowed carryforward of business loss claimed by the assessee.

**6.** Aggrieved, assessee preferred an appeal before the Ld.CIT(A) and before the Ld.CIT(A) assessee has raised the grounds and made a detailed submission. Ld.CIT(A) has reproduced the same in his order at Page No. 4 of the appellate order, for the sake of clarity it is reproduced below:-

*"1. The appellant is a private limited company and had filed original return of income on 30.10.2018 declaring total income at NIL. The Ld AO has passed an order u/s. 143(3) r.w.s 143(3A) & 143(3B) of the Income Tax Act, 1961 (hereinafter referred to as the Act') dated*

*05.03.2021 after making an addition of Rs. 73,54,549/- on account of disallowance u/s 14A r.w.s 8D of the Act.*

*2. The facts of the case are that appellant is engaged in business of investment in equity shares and earns income as partner in the firms. The appellant had made investments in equity shares and partnership firm amounting to Rs. 127,25,47,388/- as on 31.03.2018 out of which investment made in the partnership firm amounts to Rs. 88,58,11,327/-*

*3. The appellant company has shown an exempt income of Rs.91,39,137/- received as profit from the partnership firm in view of the provision of section 10(2A) of the Act. The appellant company had incurred expenses of Rs. 73,54,549/- during the year under consideration in relation to income earned and the Ld AO disallowed the same amount on account of Section 14 of the Act r.w.s. Rule 8D of the Income Tax Rules, 1962.*

*4. The appellant would like to state that income earned in the year under consideration does not fall under the purview of "income not includable in total income under the Act" and therefore disallowance u/s 14A read with Rule 8D is not applicable in the appellant's case. Appellant would like to state that section 14A is applicable only when income does not form part of total income that is taxable income under the entire income tax Act.*

*5. Accordingly, where share of profit of a partner though exempt in his hands by virtue of section 10(2A) of the Act, it is taxed at the level of partnership firm and is accordingly charged to tax under the Act and is not exempt from taxation. Since the primary requirement of section 14A is that income should be exempt not charged to tax under the Act profit received by a partner from the firm is clearly out of purview of section 14A of the Act.*

6. *Disregarding the submissions and evidences provided, the Ld AO has made an addition of Rs.73,54,549/-*

7. *Aggrieved against the said addition the appellant is in appeal before Your Honour. In such circumstances the addition made is wholly unjust and bad in law and deserve to be deleted.....”*

7. After considering the submissions of the assessee, Ld.CIT(A) sustained the additions made by the Assessing Officer by relying on the decision of the Hon'ble Supreme Court in the case of Godrej & Boyce manufacturing Company Ltd. v. DCIT [2017] 81 taxmann.com 111 (SC) and Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154 (SC).

8. Aggrieved with the above order assessee is in appeal before us and raised following grounds in its appeal: -

"1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming an addition of Rs. 73,54,549/- u/s 14A r.w.s Rule 8D of the Income-Tax Act.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A), erred in not considering the submission made by the assessee while passing an order.*

3. *The appellant craves leave to add, alter or delete all or modify any or all the above grounds of appeal.”*

9. At the time of hearing, Ld. AR of the assessee submitted that during the year assessee has earned share of income from partnership firm and submitted that assessee is engaged in business of investment in equity

shares and earned income as partner in the firms. The assessee has made investment in equity shares and partnership firm amounting to ₹.127.25 crores out of which investments made in the partnership firm is ₹.88.58 crores during the year and assessee has shown exempt income of ₹.91,39,137/- received during the year from partnership firm in view of the provisions of section 10(2A) of the Act. He submitted that assessee has incurred expenses of ₹.73,54,549/- during the year under consideration in relation to income earned and Assessing Officer has disallowed the same u/s. 14A of the Act. In this regard he submitted that the income earned during the year does not fall under the purview of income not includable in total income under the Act. Therefore, section 14A has no application in this case. He submitted that section 14A is applicable only when income does not form part of total income that is taxable income under the entire Income-tax Act. Further, he submitted that share of profit of partner though exempt in his hands by virtue of section 10(2A) of the Act, however, it is taxable at the level of partnership firm and accordingly, charged to tax under the Act and is not an exempt from taxation. In this regard he relied on the decision of the Mumbai Tribunal in the case of Hitesh D. Gajaria in ITA.No. 993/Mum/2007 dated 14.11.2008.

**10.** On the other hand, Ld.DR objected to the submissions made by the Ld. AR of the assessee and relied on the case of M/s. Minal Industries Lintied v. DCIT in ITA.No. 7419/Mum/2017 dated 31.07.2019 and decision in the case of Vishnu Anant Mahajan v. ACIT [2012] 22 taxman.com 88 (Ahd) (Special Bench).

**11.** Considered the rival submissions and material placed on record, we observe from the record that assessee has made huge investments in shares and in the partnership firm to the extent of ₹.127.25 crores as on 31.03.2018 and we also observed that assessee has huge shareholders fund to the extent of ₹.148.53 crores. The assessee has filed only the balance sheet before us in the Paper Book, however, did not file any schedules to the balance sheet and also not filed any Profit and Loss Account. From the balance sheet we observe that assessee also have long term borrowings of ₹.58.12 crores and assessee also made long term loans and advances to the extent of ₹.80.88 crores. From the records we observe that assessee has earned exempt income from partnership firm to the extent of ₹.91,39,137/- as share of profit and it has not declared any dividend income during the year. We also observe that during the year assessee has incurred expenses to the extent of ₹.73,54,549/-. From the records we observe that assessee has only source of income out of

share of profit from partnership firm during the year and if at all assessee may earn dividend income from shares. During the current Assessment Year, assessee has not earned any dividend income, from the information submitted before us it clearly shows that the only source of income for the assessee is share of profit from the firms and dividend income from the shares. It clearly shows that the source of income for the assessee is only the exempt income and there is no taxable income earned by the assessee. Therefore all the expenditures incurred by the assessee are relating to earning of only exempt income. The provisions of section 14A is applicable only when the assessee has both taxable as well as non-taxable income. The provisions of section 14A is invoked only when there is a mixed income and a mixed set of expenditure and the expenditure relating to exempt income are disallowed by invoking provisions of section 14A of the Act.

**12.** Since the income earned by the assessee is wholly exempt from tax and the nature of investment made by the assessee also clearly shows that assessee will earn only exempt income. Therefore, whatever expenditure incurred by the assessee are relating to only exempt income. Therefore, all the expenditures incurred by the assessee are only relating to earning of exempt income. Hence, assessee cannot claim any

expenditure considering the fact that the type of investment made by the assessee are only to earn exempt income. Therefore, all the expenses are directly relating to earning the above said income. The provisions of section 14A is not applicable as well as the expenditures claimed by the assessee also relating to only earning of exempt income.

**13.** Therefore, one way we are in agreement with the findings of the Assessing Officer that the expenditure incurred by the assessee are not allowable to claim and also assessee has not declared any taxable income. Accordingly, the expenditure claimed by the assessee has to be disallowed and if at all it can be allowed to carryforward to be adjusted only against the future exempt income in the business. As far as the income tax is concerned the whole expenditure is incurred for earning exempt income, accordingly, assessee cannot be allowed to carryforward the above expenditure. Therefore, the argument of the assessee is that the profit declared by the firm is already suffered tax, therefore the same income cannot be charged to tax in the hands of the recipient. In fact, it is not chargeable to tax as per section 10(2A) of the Act. The same arguments hold good for dividend income earned from the company. Even the dividend income received from the company is also the income which was already charged to tax. What is relevant is the set of business and its

object. Assessee's business model is only to earn exempt income. Therefore, any expenses will be considered as incurred for earning such income. It is important to note that the ITAT Ahmadabad in the Special Bench in the case of Vishnu Anant Mahajan v. ACIT (supra) has held that the proviso contained in section 14A will come into operation and any expenditure incurred in earning said share income has to be disallowed. Therefore, we are not inclined to accept the submissions of the assessee in this regard and accordingly, the grounds raised by the assessee are dismissed.

**14.** In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 12<sup>th</sup> July, 2023.

Sd/-  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

Mumbai / Dated 12.07.2023  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**