

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 437/Kol/2023
Assessment Year: 2009-10

Baroda Agents & Trading Co. Pvt. Ltd. Birla Building 4 th Floor 9/1, R.N. Mukherjee Road Kolkata - 700001 [PAN : AAACB1472G]	Vs	The Deputy Commissioner of Income Tax, Circle-5(1), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Akkal Dudhwewala, FCA
Revenue by :	Shri Prabhakar Prakash Ranjan, JCIT, Sr. D/R

सुनवाई की तारीख /Date of Hearing : 20/06/2023
घोषणा की तारीख /Date of Pronouncement: 28/07/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "Id. CIT(A)") dt. 08/03/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2009-10.

2. Though the assessee has raised four grounds of appeal, but they all relate to the addition made under section 14A of the Act at Rs.23,46,339/-. Facts in brief are that the assessee is a private limited company engaged in agency business, trading, Finance and investment activities. Nil income declared in the return filed on 29/09/2009. Case selected for scrutiny through CASS followed by issuance of notice u/s 143(2) and 142(1) of the Act. So far as the issue under consideration before us is concerned, we notice that the assessee has earned exempt income of Rs.1,25,17,598/-. The assessee has

computed *suo moto* disallowance under section 14A of the Act at Rs. 2,05,661/-. However, the Id. Assessing Officer considering the fact that a major activity of the assessee is from dividend and capital gains, he calculated the disallowance u/s 14A of the Act @ 65% of the total expenditure claimed by the assessee at Rs. 39,26,155/-. Thereafter, the assessee challenged the addition before the Id. CIT(A) but failed to succeed.

3. Aggrieved, now the assessee is in appeal before this Tribunal.

4. The Id. Counsel for the assessee at the outset referring to the decision of this bench of the Tribunal in the case of *The Punjab Produce & Trading Co. Pvt. Ltd. vs. ACIT in ITA No. 518/Kol/2022; Assessment Year 2017-18; order dt. 31/03/2023*, submitted that the Id. Assessing Officer, ought to first recorded satisfaction for not accepting the calculation of disallowance offered *suo moto* by the assessee and, thereafter, determine the amount of expenditure incurred in relation to any of exempt income in accordance with prescribed method provided under Rule 8D of the Income Tax Rules, 1963 (hereinafter 'the Rules'). He, further submitted that the Id. Assessing Officer failed to calculate the disallowance u/s 14A of the Act as per Rule 8D of the Rules and, therefore, the alleged disallowance may be deleted.

On the other hand, the Id. D/R, vehemently argued supporting the orders of both the lower authorities.

5. We have heard rival contentions and perused the material placed before us. We notice that the assessee has earned income including dividend at Rs.1,25,17,598/-. In the profit and loss account expenditure has been claimed at Rs.39,26,155/-. The assessee has

calculated the disallowance u/s 14A of the Act at Rs.2,05,661/-. The ld. Assessing Officer on examining the financial statement and on observing that the dividend income comprised 65% of the gross total income, calculated the disallowance u/s 14A of the Act @ 65% of the total expenditure of Rs.39,26,155/- incurred during the year thereby disallowing Rs.23,46,339/- [Rs.25,52,000/- (-) Rs.2,05,661/-].

5.1. We notice that the assessee has provided a computation calculating the disallowance at Rs.2,05,661/- *suo moto* offered under section 14A of the Act. The ld. Assessing Officer has no were recorded a proper satisfaction as to why he was not satisfied with these details exhibiting *suo moto* disallowance of Rs.2,05,661/-. The ld. Assessing Officer once not satisfied with these details and proceeding ahead to calculate disallowance under section 14A of the Act, has to compute the same as per the method provided under Rule 8D of the Rules, which reads as follows:-

“8D. (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with –

*(a) the correctness of the claim of expenditure made by the assessee; or
 (b) the claim made by the assessee that no expenditure has been incurred, in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).*

51[(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely: –

(i) the amount of expenditure directly relating to income which does not form part of total income; and

(ii) an amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:

Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.]”

6. Now, the above Rule 8D provides the method which includes three elements and the Assessing Officer, if not satisfied with the

disallowance calculated by the assessee under Rule 8D of the Rules or in case no disallowance has been offered *suo moto* by the assessee, then the Assessing Officer is duty bound to proceed ahead to calculating the disallowance under section 14A of the Act r.w.r. 8D of the Rules.

6.1. However, in the instant case, the Id. Assessing Officer has ignored the provisions of Income Tax Act as well as the Rules, for the purpose of calculating disallowance under section 14A of the Act and has calculated the same by disallowing 65% of the total expenditure claimed by the assessee on the ground that dividend income is almost 65% of the gross total income. This action of the Id. Assessing Officer is outside the ambit of scope provided under the Income Tax Act and Rules and in absence of the Assessing Officer having calculated the disallowance in accordance with the method prescribed under the Rule 8D of the Rules, the alleged disallowance has no legs to stand on. Similar view was taken by this Tribunal in the case of *The Punjab Produce & Trading Co. Pvt. Ltd. vs. ACIT(supra)* wherein it was held as follows:-

“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."

7. In view of the above discussion and respectfully following the decision of this bench of the Tribunal (*supra*), the disallowance under section 14A of the Act at Rs. 23,46,339/-, is hereby deleted.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 28th July, 2023 at Kolkata.

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 28/07/2023

**SC S.P.*

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata