

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)

ITA No. 2633/MUM/2022
Assessment Year: 2014-15

L & T Finance Holdings Ltd.,
Brindavan Plot No. 177 CST
Road, Kalina Santacruz
(East),
Mumbai-400098.
PAN NO. AABCL 5046 R
Appellant

DCIT-2(2)(1),
M.K. Road, New Marine
Lines
Mumbai-400020.
Vs.

Respondent

Assessee by : Mr. Jeet Kamdar
Revenue by : Ms. Sanyogita Nagpal, (CIT-DR)

Date of Hearing : 17/07/2023
Date of pronouncement : 24/07/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 04.02.2019 passed by the Ld. Commissioner of Income-tax (Appeals) – 5, Mumbai [in short ‘the Ld. CIT(A)’] for assessment year 2014-15, raising following grounds :

That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified and grossly erred in confirming the disallowance u/s 14A.



2. Briefly stated, facts of the case are that the assessee filed return of income declaring current year loss at Rs.(-)22,78,49,240/- on 30.11.2014. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. During the course of assessment proceedings, the Assessing Officer noted that the assessee earned dividend income of Rs.2,19,68,85,793/- from investment in equity shares and mutual funds and claimed the entire dividend income as exempt. However, the assessee did not make any suo moto disallowance out of expenses in profit and loss account related to exempted income. It was claimed by the assessee that investment in subsidiary or group companies was made with the object of controlling stake in the subsidiary company and not for earning dividend income. The Assessing Officer recorded the dissatisfaction on the claim of the assessee of incurring no expenses for earning exempted income and accordingly invoked Rule 8D of the Income-tax Rules, 1962 (the Rules) and made disallowance of Rs.14,58,76,907/- computing as under:

Rule 8D(2)(ii)	
2. Amount of the Interest expense indirectly attributable to such income, in accordance with the formula $A \times B / C$, where A. Total Interest Expenditure minus direct interest expenditure on such income. <div style="text-align: right;"><u>= Rs. Nil (A)</u></div> B. Average on such Investment on the first and last day of previous year $\frac{25410800910+329399619910}{2} =$	(B)



$\frac{\text{Rs.29175381410} + 55105652885 + 53334023479}{2} = \text{Rs.54219838182 (C)}$	Nil
<p>AxB/C=</p> <p>Rule 8D(2)(iii)</p> <p>3. 05.% of the average value of investment of ('B' above Rs.29175381410/- x 0.5% =</p>	14,58,76,907
Total disallowance u/s 14A	

3. On further appeal, the Ld. CIT(A) upheld the disallowance observing as under:

“6.4.3 The Hon'ble Third Member Bench, ITAT, Mumbai in the case of D.H. Securities P Ltd reported in 41 taxmann.com 352 has held that:

"There could be no quarrel with regard to the allocation of direct expenditure, which in fact states the obvious, and would in any case warrant a disallowance, i.e., even in the absence of the rule. Similarly, the part of the rule prescribing the ratio in respect of indirect expenditure (rule 8D(2) (ini)) cannot be altered on account of (say) hardship. This is as the rule prescribes the same as the ratio of indirect expenditure required to support an investment. In fact, the same, at 0.5%, is very nominal, recommending itself to an easy acceptance, eschewing the charge of being harsh.

In view of the above, no fault can be found with the action of the Ld. AO in making disallowance under Rule 8D(2) (i). Hence, disallowance made under Rule 8D(2) (i) at Rs. 14,58,76,907/-, being 0.5% of the average value of investment is CONFIRMED. Accordingly, the Ground No. I raised in appeal is DISMISSED.”

4. At the outset, we find that this appeal has been filed with a delay of substantial number of days. The the Ld. Counsel of the assessee submitted that though the order u/s 250 was passed by the Ld. CIT(A) on 04.02.2019, however the aforesaid order was neither received at the official address of the assessee not at the



official e-mail ID. It was further submitted that the assessee while checking the e-filing account on the website of income-tax department, noticed that order u/s 250 dated 04.02.2019 was already uploaded on the Income-tax e-filing account. In the application filed before us for condonation of the delay in filing appeal, the assessee has stated the date of knowing the order of ld CIT(A) on e-filing account as on 16/08/22. Thereafter, the assessee made a request for certified copy of the above but as per the submission of the assessee, same has not been provided so far. Thereafter, the appeal has been filed on 18.10.2022, so according to assessee the order of the Ld. CIT(A) was served through e-filing account only on 16.08.2022 and thereafter appeal has been filed within the period of 60 days and there was no deliberate attempt on the part of the assessee in delaying the filing of the appeal.

5. On the contrary, the Ld. Departmental Representative (DR) submitted that uploading the order on the e-filing account of the assessee is one of the prescribed mode of service provided under Rule 127 of the Income-tax Rules, 1962 (In short the Rules) and therefore, assessee cannot take the plea that it came to the knowledge of the assessee only on the 16.08.2022 while going through the e-filing account. He submitted that it is the duty of the assessee to verify its e-filing account. He submitted that the assessee is always intimated through SMS regarding uploading of the order on the e-filing account therefore the assessee cannot



argue that the order of Ld. CIT(A) came to the knowledge only on 16.08.2022. According to him, the delay in filing the appeal is due to carelessness or negligence on the part of the assessee.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the Ld. CIT(A) duly uploaded the order passed on 04.02.2019 on the Income-tax Portal as provided under Rule 127 of the Income-tax Rules, 1962 therefore, delay in noticing the said order is due to the carelessness or negligence on the part of the employees of the assessee company. However, this action of delay is not for any malafide purpose and delay is unintentional and assessee is not going to gain by way of delaying filing of appeal. Therefore, in the interest of the substantial justice and for the issue to be decided on merit, we condone the delay in filing the appeal.

7. Before us, the Ld. Counsel of the assessee filed a paperbook containing pages 1 to 35 and relied on the decisions of Mumbai bench of Tribunal in the case of Future Retails ltd Vs ACIT (ITA No. 5959/Mum/2016 dated 11/08/2020) and Tata Projects Ltd Vs ACIT (ITA No. 459/Mum/2016 dated 22/10/2020). He further referred to Paper Book page No. 22 and submitted that the assessee has worked out suo-moto disallowance towards earning of exempted income. The ld Counsel of the assessee has referred to page no. 34 and 35 of the paperbook, wherein he has provided a breakup of common administrative expenses of rupees 246.78



lakhs and other business expenses of ₹ 1893.21 lakhs aggregating to ₹ 2139.99 lakhs debited under the head administrative and other expenses. The learned counsel of the assessee submitted that the ratio of the exempt income to total income is 75.44% (dividend income of ₹ 21, 968.86 lakhs/total income of ₹ 29, 122.67 lakhs). Based on the above ratio, the learned counsel submitted that disallowance should be restricted to 75.44% of rupees 246.78 lakhs i.e. 186. 17 lakhs, being the administrative expenses for earning dividend income.

8. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the assessee earned dividend income of Rs. Rs.2,19,68,85,793/- from investment in equity shares and mutual funds and claimed the entire dividend income as exempt, but did not make any suo moto disallowance before the lower authorities. The Assessing Officer recorded dissatisfaction as to the claim of the assessee and invoked Rule 8D of the income tax Rules,1962 and determined the disallowance accordingly under the provisions of section 14A of the Act. In the case of Future Retail Ltd (supra) the disallowance worked out under rule 8D(2)(iii) being more than the actual administrative expenses incurred by the assessee and therefore the Tribunal has restored the matter back to the Assessing Officer. In the case of Tata projects Ltd(supra) it is held that disallowance under section 14A of the Act has to be computed on a fair ,



reasonable and scientific basis where expenses related to composite activities was allocated in the ratio of the exempt in taxable income.

8.1 We are of the opinion that once the Assessing Officer records the dissatisfaction as to the claim of the assessee made in books of accounts, there is no discretion with the Assessing Officer and he has to invoke Rule 8D for determining disallowance. However if the disallowance computed under rule 8D(2)(iii) exceeds the total expenses in the nature of administrative expenses claimed in the profit and loss account, then disallowance should be restricted to that amount only as disallowance cannot be made more than the expenditure claimed against composite activities of earning exempt and taxable income. In the case of the head administrative expenses administrative expenses, the assessee has claimed amount of rupees 2139.99 lakhs which being more than the disallowance under Rule 8d(2)(iii) of ₹14,58,76,907/- and therefore we do not find any absurdity in disallowance which has been computed invoking rule 8D of rules.

8.2 Before us, the Ld. Counsel of the assessee has now admitted to have incurred some expenses toward earning of the exempted income but no such disallowance has been computed by the assessee while filing return of income. In view of the fresh claim of disallowance under section 14A of the Act for earning exempted income, we feel it appropriate to restore the issue of disallowance under section 14A of the Act back to the file of the learned



Assessing Officer for examining the correctness of the claim of the assessee and deciding the issue in dispute in accordance with law. The ground of appeal of the assessee is accordingly allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 24/07/2023.

**Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 24/07/2023

Rahul Sharma, Sr. P.S.

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,

(Assistant Registrar)
ITAT, Mumbai