

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 1445 & 1446/Mum/2023
(Assessment Years: 2014-15 & 2013-14)

M/s. The Stock & Bond Trading Company 6, Premji Bhavan, 2 nd Floor, 275, Charni Road, Mumbai-400 004	Vs.	DCIT, Circle-4(2)(1) Mumbai
PAN/GIR No. AAAFT 1171 F		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Vartik Choksi
Revenue by	:	Shri P. D. Chogule
Date of Hearing	:	08.08.2023
Date of Pronouncement	:	22.08.2023

ORDER

Per Kavitha Rajagopal, J M:

The captioned appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘ld.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Years (‘A.Y.’ for short) 2013-14 & 2014-15.

2. As the facts are identical in both these appeals, we hereby pass a consolidated order, by taking ITA No. 1446/Mum/2023 as a lead case for the sake of convenience.

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3. The assessee has challenged the grounds of disallowance made u/s. 14A of the Act read with Rule 8D(ii) and 8D(iii) of the I. T. Rules, 1962. The assessee has also

challenged the addition made u/s. 68 of the Act towards unexplained credit. The brief facts are that the assessee company is engaged in the business of trading in shares and derivatives. The assessee filed its return of income dated 28.09.2013, declaring total income at Rs.Nil. The assessee's case was selected for scrutiny and the assessment order dated 26.02.2016 was passed u/s. 143(3) of the Act where the Assessing Officer ('A.O.' for short) made addition/disallowance u/s. 14A read with Rule 8D on account of disallowance of interest expenses, addition u/s. 68 of the Act pertaining to unsecured loans amounting to Rs.2,92,10,000/- along with the other disallowances. The assessee was in appeal before the first appellate authority who vide order dated 21.03.2023 upheld the addition/disallowance made by the A.O.

4. The assessee is in appeal before us, challenging the order of the first appellate authority.

5. Ground no. 1 pertains to the addition made u/s. 14A read with Rule 8D(ii) and 8D(iii) of the I. T. Rules. It is observed that the assessee firm has made investment in equity shares amounting to Rs.2,00,85,540/-. The A.O. during the assessment proceeding stated that the assessee has not disallowed expenses u/s. 14A of the Act, pertaining to income earned out of equity shares and mutual funds which are not includable in the total income and are exempt u/s. 10(34) of the Act. The A.O. has recorded his non satisfaction by not convinced with the submission of the assessee that no expense was directly incurred for earning of the exempt income. The A.O. by relying on the decision of *Asstt. CIT, Range 10(1), Mumbai vs. Citi Corp Finance (India) Ltd.* [2007] 12 SOT 248 (Mum) and the decision of the Tribunal in the case of *ITO v. Daga Capital Management Pvt. Ltd.*

[2009] 117 ITD 169 (Mum)(SB) disallowed expenses of R.4,42,732/- which is an aggregate of Rs.3,75,217/- under Rule 8D(ii) of the Rules towards interest expenses of Rs.67,55/- under Rule 8D(iii) towards admin expenses. The Id. CIT(A) upheld the addition made by the A.O.

6. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee had not earned any exempt dividend income and that the lower authorities have erred in disallowing the interest expenses and admin expenses u/s. 14A under Rule 8D. The Id. AR brought our attention to page no. 5 of the paper book where in the P & L account, the assessee has stated that the assessee has not earned any exempt income during the year under consideration and this substantiates the claim of the assessee. The Id. AR further contended that there was no nexus between borrowed fund and the investment made as the assessee had acquired shares out of own funds and not from borrowed funds.

7. The learned Departmental Representative ('Id.DR' for short), on the other hand, controverted the said fact and stated that since the assessee has not made any *suo moto* disallowance, the lower authorities was justified in invoking the provision of section 14A read with Rule 8D of the Rules. The Id. DR relied on the orders of the lower authorities.

8. We have heard the rival submissions and perused the materials available on record. It is observed from the assessee's submissions that the partners capital balance as on 31.03.2013 was Rs.2,80,26,152/- and the total investment in the shares was Rs.2,00,85,540/- where from it can be presumed that the assessee had sufficient owned funds which are non interest bearing funds. The assessee's contention that there are no

expenses attributable to the said investment which has yielded exempt income, was not considered by the lower authorities for the reason that though the assessee had not made any investment during the year under consideration, the assessee ought to have incurred certain expenditure to maintain the existing investment. On perusal of the financials of the assessee submitted by the Id. AR, we find that the assessee has not earned any exempt income during the year under consideration. It is also a settled proposition of law that the disallowance to be computed under Rule 8D should be confined to the exempt income earned and not beyond that. In the present case in hand, we do not find any justification in disallowing the expenditure on the ground that the assessee has not made *suo moto* disallowance for the fact that the assessee has not claimed any exempt income u/s. 10(34) of the Act. We would like to place our reliance on the decision of the Hon'ble High Court of Delhi in the case of *Cheminvest Limited vs. CIT* (in ITA 749/2014 vide order dated 02.09.2015), wherein it was held that no disallowance u/s. 14A is warranted when the assessee has not earned any exempt income during the relevant year. The relevant extract of the said decision is cited hereunder for ease of ready reference:

23. *In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression „does not form part of the total income“ in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year.*

9. By respectfully following the above said decision, we are of the considered view that no disallowance u/s. 14A read with Rule 8D of the I. T. Rules is warranted in assessee's case where the assessee has not earned any exempt income during the year under consideration. Thus, ground no. 1 raised by the assessee is allowed. Ground no. 1.1 is an alternate ground where the assessee has claimed that in case of disallowance u/s.

14A, the same should be restricted to the exempt income earned by the assessee. As from the submission made by the assessee, it is evident that the assessee has not earned any exempt income during the year under consideration and, therefore, this ground of appeal raised by the assessee becomes infructuous.

10. Ground no. 2 pertains to the addition made u/s. 68 of the Act on account of unsecured loan. The facts are that the assessee is said to have availed loans from around 10 parties aggregating to Rs.2,92,10,000/-, the details of which are tabulated as under :

<i>Sr. No.</i>	<i>Name of Lender</i>	<i>Rs.</i>
1	<i>Hinal Parikh</i>	<i>2,00,000</i>
2	<i>Aneel A & Co.</i>	<i>40,00,000</i>
3	<i>Chavda Brothers</i>	<i>15,00,000</i>
4	<i>Mihir Consultancy & Trading Co.</i>	<i>25,00,000</i>
5	<i>Manoj Mittal HUF</i>	<i>16,70,000</i>
6	<i>Rajeev Mittal HUF</i>	<i>16,70,000</i>
7	<i>Sanjeev R Mittal</i>	<i>16,70,000</i>
8	<i>Pragati Gems Pvt. Ltd.</i>	<i>50,00,000</i>
9	<i>Vinit Enterprises</i>	<i>55,00,000</i>
10	<i>Jay Shree Procon Pvt. Ltd.</i>	<i>55,00,000</i>
	<i>Total</i>	<i>2,92,10,000</i>

11. The assessee was asked to furnish the details to substantiate the identity and creditworthiness of the parties and genuinity of the transaction by providing confirmation letter from the parties concerned, ITRs, balance sheet, P & L account and other documentary evidences. The A.O. in the assessment order has specified that complete details of the bank statement, ITR and balance sheet were not furnished by the assessee and even confirmation letter of one party amongst the 10 was also not furnished. The A.O. made an addition on the entire loan amount aggregating to Rs.2,92,10,000/- on the ground that the assessee has failed to prove the identity and creditworthiness of the parties and also the genuinity of the said transaction. The Id. CIT(A) upheld the addition made by the A.O. u/s. 68 of the Act for the reason that the assessee has failed to

discharge the initial onus casted upon to prove the identity, genuineness and creditworthiness.

12. The Id. AR contended that the assessee has filed additional evidence before the Id. CIT(A) and the same has been specified at pg. no. 4 of the order of the Id. CIT(A). The Id. AR further stated that the Id. CIT(A) has failed to consider the additional evidences filed before the first appellate authority. The Id. AR prayed for remanding this issue back to the file of the Id. CIT(A). The learned Departmental Representative ('Id.DR' for short), on the other hand, controverted the said fact and stated that the assessee has failed to discharge its onus before the lower authorities. The Id. DR relied on the order of the lower authorities.

13. We have heard the rival submissions and perused the materials available on record. It is evident from the order of the Id. CIT(A) that the assessee has filed additional evidences before the first appellate authority but the same was not appreciated by the Id. CIT(A) in his order for the reason that there is no finding as to whether the Id. CIT(A) has admitted additional evidence under Rule 46A of the I T Rules 1962. Considering the submission of the Id. AR, we deem it fit to remand this issue back to the file of the Id. CIT(A) for the purpose of admitting the additional evidence proposed to be filed by the assessee, which was also filed before the Id. CIT(A) during the first appellate proceeding. The Id. CIT(A) is directed to give a finding on the additional evidence filed by the assessee and to decide the issue of addition made u/s. 68 of the Act on the merits of the case by giving sufficient opportunity to either side. Therefore, ground no. 2 raised by the assessee is allowed for statistical purposes.

14. Ground no. 3 being general in nature requires no separate adjudication.

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15. The above observation in ITA No. 1446/Mum/2023 applies mutatis mutandis to this appeal also.

16. In the result, both the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 22.08.2023.

Sd/-

(Om Prakash Kant)
Accountant Member

Mumbai; Dated : 22.08.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT – concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai