

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'K' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.4220/Mum/2015
(Assessment Year :2010-11)**

M/s. Aditya Birla Nuvo Limited A-4, Aditya Birla Centre S.K. Ahire Marg Worli, Mumbai – 400 030	Vs.	Addl. Commissioner of Income Tax-LTU Mumbai
PAN/GIR No.AAACI1747H		
(Appellant)	..	(Respondent)

Assessee by	Shri Jahengir D Mistry / Ms.Manshi Padhiar / Ms. Ayushi Modani
Revenue by	Shri Zain Vayal Parambath
Date of Hearing	25/05/2023
Date of Pronouncement	22/08/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

In this case the Tribunal had already passed the order vide order dated 24/12/2020. Later on Miscellaneous Application was filed against the said order in ITA No.4220/Mum/2015 and the order was recalled for adjudication of additional ground of appeal. The relevant observation of the Tribunal reads as under:-

"4. Both sides heard. The assessee is seeking rectification of the Tribunal order dated 24/02/2020 in ITA No.4220/Mum/2015 with respect to the additional ground of appeal. In the additional ground of appeal, the assessee has assailed disallowance of interest cost Rs.91.33 crores under section 14A of the Act. A bare perusal of the additional ground of appeal would show that there was no break-up of suo-motu disallowance of interest u/r.8D(2)(i) and/or / 80(2)(ii). The Tribunal adjudicated the ground on the presumption that the entire suo-motu disallowance of interest cost Rs.91.33 crores is u/s. 80(2)(ii), however, from the pleadings it is apparent that suo-motu disallowance of Rs.91.33 crores is towards direct interest expenditure as well as interest expenditure out of borrowings for general purpose. Hence, due to ambiguity in formulating additional ground of appeal, suo-motu disallowance of interest expenditure towards loan taken for acquisition of shares of Idea Cellular Limited remain to be adjudicated. Hence, the findings on additional ground of appeal in order dated 24/02/2020 are recalled. The additional ground of appeal reproduced herein below requires re-adjudication:

"1. On the facts and in the circumstances of the case and in law, the learned AO has erred in disallowing the Interest cost of Rs. 91.33 Crs u/s 14A, treating the same as Interest attributable towards expenditure incurred in relation to the Investment. The AO may be directed to reduce the disallowance u/s 14A accordingly,"

5. In the result, Miscellaneous Application by the assessee is allowed in the terms aforesaid.

2. The brief facts are that assessee had received an amount of Rs.8,00,92,335/- and had earned dividend during the year which was claimed as exempt. According to the ld. AO, assessee has not apportioned any expenses incurred for earning exempt income. However, he noted that assessee itself has disallowed interest to the tune of Rs.91.33 Crores and he further disallowed a sum of Rs.24,55,38,835/- after detailed discussion. The ld.

CIT(A) decided this issue following the order for A.Y.2009-10 and gave part relief of Rs.7,50,69,541/- holding that after disallowance u/s.14A r.w.r. 8D(2)(iii) restricted to 17,04,69,294/- which includes Rs.1,48,32,243/- already disallowed by the assessee instead of Rs.24,55,38,835/- made by the Id. AO. The Tribunal has decided this issue after observing as under:-

“5. We have heard the submissions made by rival sides and have perused the order of authorities below. The assessee, as well as the Revenue in their respective appeals have assailed the findings of CIT(A) in confirming/restricting disallowance under section 14A r.w.r. 8D. Undisputedly, assessee has earned tax free dividend income of Rs.8,00,92,335/-. The assessee made suo-motu disallowance under section 14A r.w.r. 8D(2) (iii) of Rs.1.48 crores. We further observe that the assessee has also made suo-motu disallowance in respect of interest expenditure u/r 8D(2)(ii) Rs.91.32 crores. The Assessing Officer accepted assessee's suo-motu disallowance made u/r. 8D(2)(ii). As regards u/r. 8D(2)(iii), the Assessing Officer enhanced the disallowance by Rs.24.55 crores. The assessee carried the issue in appeal before CIT(A). The CIT(A) restricted the disallowance u/r. 8D(2)(iii) to Rs.17,04,69,294/- (including suo-motu disallowance of Rs.1.48 crores).

5.1 The first contention of the assessee is that before rejecting assessee's computation of disallowance u/r. 8D, the Assessing Officer has not recorded satisfaction. We have examined the assessment order. The Assessing Officer after reproducing the extracts of the assessee's submission has negated the contention of the assessee by expressing his view in para 3.5 of the assessment order. Thereafter, in para 3.7 the Assessing Officer has computed the disallowance u/r. 8D(2). The Assessing Officer after examining books of the assessee accepted disallowance made by assessee in respect of interest expenditure. The manner of recording satisfaction under section. 14A r.w.r.8D(2) is subjective. There is no specified method or performatum for recording of satisfaction by the Assessing Officer. If the Assessing Officer

has recorded his express satisfaction in whatsoever manner in rejecting assessee's suo motu disallowance, the condition as envisaged in Section 14A(2) is complied with. We do not concur with the contention of the ld. Authorized Representative for the assessee that the Assessing Officer has not recorded satisfaction before rejecting assessee's method of computation of suo-motu disallowance. Hence, the first contention of the assessee fails.

5.2 The second contention of the assessee is that no disallowance u/r.8D(2)(ii) is warranted as the assessee is having own interest free funds in the shape of share capital, reserves & surplus and profits more than the investments made. Hence, there is no interest expenditure. The assessee by way of additional ground of appeal is seeking relief in respect of disallowance of interest expenditure under Rule 8D(2)(ii). The assessee suo motu disallowed Rs.91.32 crores under Rule 8D(2)(ii). The same was ITA NO.4220/MUM/2015(A.Y. 2010-11) ITA NO.4704/MUM/2015(A.Y. 2010-11) accepted by the Assessing Officer. The Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd.(supra) has held that where the assessee is having borrowed funds and own interest free funds, presumption is that the investments are made by utilizing own interest free funds. The same view has been reiterated by the Hon'ble High Court in the case of HDFC vs. DCIT(supra) and PCIT vs. Shreno Ltd.(supra). Thus, in principle we hold that no disallowance under section 14A r.w.r. 8D(2)(ii) is warranted if, the assessee is having sufficient own interest free funds to cover the investments made. However, for the purpose of verification of this fact, we deem it appropriate to restore this issue back to the file of Assessing Officer. The Assessing Officer after examining the financial statements of the assessee, if satisfied, that own interest free funds of the assessee are more than the investments made, shall make no disallowance u/r.8D(2)(ii).

5.3 The third contention of the assessee is that for the purpose of computing disallowance u/r.8D(2)(iii) only those investments are to be considered which have yielded exempt income. This contention of the assessee is supported by the decision rendered in the case of ACIT vs. Vireet Investments Pvt. Ltd.(supra). The assessee has filed fact sheet listing the investments where the assessee has earned dividend income. We deem it appropriate to restore this

issue to the file of Assessing Officer for recomputation of disallowance u/r.8D(2)(iii) in line with the decision of Special Bench in the case of DCIT vs. Vireet Investments Pvt. Ltd.(supra). Thus in view of our above finding, ground No.1 and additional ground No.1 of the appeal by the assessee are partly allowed for statistical purpose.

3. Now, we have to only intricate the additional ground as noted above for which the order has been recalled for that limited issue.

4. Before us the ld. Senior Counsel submitted that this disallowance interest of Rs.91.33 Crores which was suomoto disallowed by the assessee had two components i.e.-

Interest cost towards loan taken for acquisition of Idea Cellular Limited	Rs.46.52 crores
Allocation of interest cost out of borrowings taken for general purpose	Rs.44.81 Crores
	Rs.91.33 Crores

5. He further clarified that the interest cost towards loan taken for acquisition of Idea Cellular Ltd. was with respect to disallowance under Rule 8D(2)(i), i.e., the amount of expenditure directly relating to income which does not form part of the total income. This precisely the Tribunal in the order passed in Miscellaneous Application had categorically specified after verifying the records. In so far as disallowance under Rule

8D(2)(ii) is concerned, already Tribunal has given a finding and given a direction to the ld. AO that if the assessee had surplus funds, then no disallowance should be made. The Assessing Officer was giving effect to its ITAT order has already decided this issue in favour of the assessee. However, with respect to interest of Rs 46.52 Crores, the ld. AO has not given relief on the ground that this interest cost was towards disallowance under Rule 8D(2)(i). This fact has been found to be correct that interest on borrowings for acquisition of shares of Idea Cellular Limited of Rs.46.52 Crores was subject matter of disallowance under Rule 8D(2)(i) and not Rule 8D(2)(ii) and it is for the precise reason the order has been recalled to adjudicate the order.

6. Before us, ld. Sr. Counsel submitted that one very important fact is that no exempt income has been earned from the shares of Idea Cellular Limited and once no exempt income has been earned, then there is no question of any disallowance under Rule 8D(2)(i) r.w.s. 14A(1). He submitted that it is now a settled proposition that for claiming the disallowance under Rule 14A(1) r.w.r. 8D there has to be income which do not form part of the total income. Thus, no disallowance is warranted of interest under rule 8D(2)(i).

7. On the other hand ld. DR submitted that once assessee itself has suomoto disallowed under Rule 8D(2)(i) which has been accepted by the ld. AO then, assessee cannot change its stand and plead that no disallowance should be made. In any case an

explanation has been brought u/s.14A by the Finance Act 2022 w.e.f. 01/04/2022 which is a clarificatory in the nature and therefore, in view of the explanation u/s.14A shall be deemed to be applied even when exempt income has been earned during the year.

8. In so far as disallowance of interest of Rs.46.52 Crores which was offered under Rule 8D(2)(i), which is interest cost towards loan which was taken for acquisition of shares of Idea Cellular Limited, but assessee has not earned any exempt income qua these shares, then even if assessee might have offered for disallowance however, if assessee makes claim before the appellate authorities that no disallowance is called for in accordance with the provisions of law, then there cannot be a bar on the assessee to raise such claim. Hence we hold that assessee can raise such claim before the appellate authorities.

9. Now coming to the issue that whether interest cost of Rs.46.52 Crores can be disallowed u/s.14A r.w.r. 8D(2)(i), it has not been disputed before us that in so far as investment in the acquisition of Idea Cellular Limited is concerned, no income has been earned by way of dividend or any exempt income from the shares of Idea Cellular Limited during the year. Thus, there is no exempt income which has been claimed by the assessee. Once there is no exempt income, then provision of Section 14A(1) cannot be invoked. Rule 8D(2)(i) specifically says the disallowance of amount of expenditure which is directly relating

to income which does not form part of the total income. This has been interpreted by various Courts that for invoking disallowance u/s.14A r.w.r. 8D it is *sine qua non* that there has to be some income which has been claimed as exempt by the assessee. Thus, we agree with the contention of the ld. Senior Counsel that no disallowance of interest can be made under Rule 8D(2)(1) and accordingly, disallowance of interest of Rs.46.52 Crores is directed to be deleted. Accordingly, this issue is allowed in favour of the assessee.

10. Since, department appeal has not been recalled as the same stands adjudicated, therefore, no adjudication is required in department's appeal.

11. In the result, additional grounds raised by the assessee are allowed.

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

Order pronounced on 22nd August, 2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 22/08/2023
KARUNA, sr.ps

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, Mumbai