

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

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

**ITA No.2525/Mum/2014  
(Assessment Year :2009-10)**

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
<b>PAN/GIR No.AAACI1747H</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

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

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal was heard by this Tribunal and order was passed vide order dated 20/12/2019. Thereafter on Miscellaneous Application filed by the assessee the order was recalled only for deciding one issue raised in additional ground after observing as under:-

*“By virtue of this Miscellaneous Application, the assessee seeks to recall the order passed by this Tribunal on two counts:-*

*(a) Non adjudication of additional ground of appeal with regard to disallowance of interest u/s 14A of the Act rw second limb of Rule 8D(2) of the Rules*

*(b) Non adjudication of original ground raised by the assessee with regard allowability of provision made for leave salary.*

*2. We have heard the rival submissions and perused the relevant materials available on record. With regard to the issue of disallowance u/s 14A of the Act, we find that the assessee had raised original ground before us with regard to disallowance of administrative expenses made under third limb of Rule 80(2) of the Rules. This Tribunal had adjudicated this original ground alone, while disposing off the appeal. We also find that assessee had raised an additional ground praying for directions to Ld. AO to delete the interest disallowance made voluntarily by the assessee in the return of income, on the ground that assessee was having sufficient interest free funds in its kitty for the purpose of making investments. We find that this Tribunal had admitted the said additional ground while disposing off the appeal, but had omitted inadvertently to adjudicate the said additional ground. This constitute mistake parent from record in the order of this Tribunal within the meaning of section 254(2) of the Act. When this was put to Ld. DR, the Ld.DR fairly agreed for recalling of this order for this limited extent. Accordingly, we deem it fit to recall the order passed by this Tribunal for the limited purpose of adjudication of additional ground Nos.1 and 2 raised by the assessee with regard to deletion of suo-moto disallowance of interest made under second limb of Rule 8D(2) of the Rules.*

*3. With regard to another ground raised by the assessee for allowability of provision for leave salary /compensated absence as per actuarial valuation of Rs.3,49,36,683 u/s 438(f) of the Act, we find that this Tribunal had adjudicated the alternative contention raised by the assessee that the issue needs to be decided based on the final outcome of Hon'ble Supreme Court in the case of Exide Industries Limited, But, the Ld. AR pointed out that this Tribunal had not adjudicated the original contention of the assessee raised in the original ground that this provision for leave salary is allowable as deduction, on the premise that "any sum payable mentioned in section Clause (f) of section 43B is*

*independent of any sum payable" as defined for the purpose of Clause (a) of section 438 in accordance with the provisions of Explanation (2) of section 438. The Ld. AR pointed out that this issue is already decided in favour of assessee in earlier year in assessee's own case, which order was also cited by the Ld.AR at the time of hearing of the original appeal, but had apparently missed the attention of the Bench by inadvertence, while disposing off the appeal. When this was put to Ld. DR, the Ld. DR fairly agreed for recalling of the order for the limited extent of adjudication of original contention raised by the assessee in ground No.3.*

*4. We find lot of force in the argument advanced by the Ld. AR and hold that non adjudication of the original contention of original ELLATE ground No.3 and not considering the order of this Tribunal in assessee's own case for earlier year constitute mistake apparent from record within the meaning of section 254(2) of the Act. Hence, the order passed in this regard requires to be recalled. However, we had already adjudicated the issue on the alternative contention raised by the Ld. AR, while disposing off the appeal, which also would be required to be recalled in order to have a single uniform decision on the impugned issue. Hence, we deem it fit and appropriate to recall the order passed by this Tribunal in entirety with regard to ground No.3 of original grounds of appeal.*

*5. In the result, the Miscellaneous Application Assessee is allowed in the aforesaid terms.*

2. We find that in so far as the issue relating to Section 14A has been dealt by the Tribunal vide its order dated 20/12/2019, wherein the Tribunal has adjudicated this issue after observing as under:-

*2.7. From the above, it could be seen that the dispute which went to the ld. CIT(A) was only with regard to disallowance of indirect expenses vis-à-vis Rule 8D(2) (iii) of the rules. Out of the total disallowances, worked out by the ld. AO at 22.46 Crores towards administrative expenses, the ld. CIT(A) restricted the same to 11.93 Crores as detailed supra. The issue which has to be*

decided by us also is only with regard to disallowance made under Rule 8D(2)(iii) of the rules for which purpose, the availability of own funds with the assessee company has got no relevance, hence, the argument made by the ld. AR in that regard and reliance placed by him on certain decisions need not be adjudicated at all. We find that a Special Bench of Delhi Tribunal in the case of Vireet Investments reported in 165 ITD 27 had held that only those investments which had yielded exempt income should be considered for the purpose of working out the disallowance under rule 8D(2) of the rules. Accordingly, we direct the ld. AO to recompute the disallowance under rule 8D(2)(iii) of the rules by considering only those investments which had actually yielded exempt income and reduce a sum of Rs.3.02 Crores which had already been disallowed by the assessee in the return of income towards administrative expenses. Accordingly, the ground No.1 of original grounds and additional grounds 1 & 2 raised by the assessee and ground No.1 of revenue are partly allowed.

3. Now, the order has been recalled for adjudicating additional ground of appeal with regard to disallowance of interest u/s.14A r.w. Rule 8D(2)(ii). Originally assessee has received dividend income of Rs.16,81,44,106/- and has made suomoto disallowance u/s.14A of Rs.83,04,00,000/- which constitute the following:-

Interest on specific borrowings	Rs.59.66 Crores
Interest on general borrowings	Rs.20.36 Crores
Direct/Indirect expenses	Rs. 3.02 Crores
<b>Total</b>	<b><u>Rs.83.04 Crores</u></b>

4. The ld. AO had made further disallowance under Rule 8D(2)(iii) of Rs.22.46 Crores and after giving benefit of the disallowance of Rs.3.02 Crores offered by the assessee under

Rule 8D(2)(iii), had finally disallowed of Rs.19.44 Crores under Rule 8D(2) (iii). The Tribunal had only adjudicated the disallowance of indirect expenses under Rule 8D(2)(iii) and not 8D(2)(ii). This order has been recalled for the limited purpose of deciding this issue.

5. Before us, it has been stated that assessee had sufficient interest free funds for the purpose of making investment and therefore, no disallowance should be made. We find that this precise issue was taken in A.Y.2010-11 wherein the Tribunal has remanded back this issue to examine if assessee had surplus interest free funds far exceeding the investment made which has yielded exempt income, then no disallowance under Rule 8D(2) should be made. Accordingly, this issue of disallowance of interest under Rule 8D (2) is remanded back to the file of Id. AO to decide this issue afresh even though assessee might have suo-moto offered disallowance which now has been claimed that no disallowance should be made in view of the decision of the **Hon'ble Supreme Court in the case of South Indian Bank Ltd reported in 438 ITR 1 (SC)**, wherein Hon'ble Supreme Court has held that assessee has surplus funds and no disallowance of interest can be made.

5. Since similar issue in the order of ITA No.4220/Mum/2015 has been recalled for adjudicating the disallowance of interest cost of Rs.59.66 Crores u/s.14A0., therefore, our finding given in the appeal of ITA No.4220/Mum/2015 shall apply mutatis

mutandis in this appeal also. Accordingly, this issue is allowed in favour of the assessee.

**6. In the result, appeal of the assessee is allowed.**

Order pronounced on 22<sup>nd</sup> August, 2023.

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

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

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL 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, Mumbai**