

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

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

ITA No. 1185/Mum/2023
(Assessment Year: 2020-21)

Gogri Finserv Pvt Ltd. 601 Antariksha Murar Road Mulund (W) Mumbai-400 080	Vs.	DCIT Central Circle-3(2) Mumbai
PAN/GIR No. AAFCG 2850 E		
(Appellant)	:	(Respondent)
Assessee by	:	None
Revenue by	:	Ms Indira Adakil
Date of Hearing	:	05.07.2023
Date of Pronouncement	:	26.09.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2020-21.

2. As there was no representation on behalf of the assessee, we hereby proceed to dispose of this appeal by hearing the learned Departmental Representative ('Id.DR' for short) and on perusal of the materials available on record.

3. The assessee has challenged the appeal on the following grounds:

1. *The learned CIT(A) erred in law and on facts in upholding the disallowance made by the learned A.O. under section 14A of the I. T. Act read with Rule 8D of the Income Tax Rules, 1962 of Rs.6,31,019/-.*
2. *The learned CIT(A) failed to appreciate the fact that there is no expenditure incurred by the appellant which are liable for disallowance under section 14A read with rule 8D(2).*

3. *The disallowance under section 14A of Rs.6,31,019/- is made by the learned A.O. without categorically recording dissatisfaction to the Appellant's claim that no expenditure was incurred for earning exempt income and hence the same may please be deleted.*

4. *The learned CIT(A) failed to appreciate that the working of disallowance provided by the Appellant vide submission dated 10.02.2022 was without prejudice to the claim that no additional disallowance u/s. 14A is required.*

5. *The learned CIT(A) erred in not appreciating the fact that the action of the learned A.O. in disallowing a sum of Rs.6,31,019/- under section 14A has resulted into disallowance of 98% of the total expenditure claimed as a deduction while computing income from Business.*

4. Brief facts are that the assessee is engaged in the business of providing financial services, financial operation by way of lending loans as an investment company and the main source of income is the interest received on lending capital gain from sale of investments and dividend income. The assessee had filed its return of income dated 14.10.2020 declaring total income at Rs.13,18,510/-, the same was processed u/s. 143(1) of the Act. There was a survey action u/s. 133A of the Act and the assessee's case was selected for scrutiny under compulsory selection and notices u/s. 143(2) and 142(1) of the Act were issued and served upon by the assessee.

5. The Id. Assessing Officer ('A.O.' for short) observed that the assessee has not made any *suo moto* disallowance on the expenditure incurred towards earning exempt income and passed the assessment order dated 10.02.2022 by making a disallowance of Rs.6,31,019/- and thereby determined the total income at Rs.19,49,529/-.

6. The assessee was in appeal before the Id. CIT(A), challenging the impugned disallowance made by the Id. A.O. The Id. CIT(A) upheld the order of the Id. A.O.

7. The assessee is in appeal before us, challenging the order of the Id. CIT(A).

8. We have heard the learned Departmental Representative ('Id.DR' for short) and perused the materials available on record. It is observed that the assessee has invested in

listed equity shares, unlisted equity shares and mutual funds aggregating to Rs.9,58,03,665/- as on 31.03.2020 which the assessee contends was out of interest free own funds in the form of share holders funds consisting of share capital and reserve and surplus of Rs.10,13,14,704/-. The assessee has received dividend income of Rs.57,27,176/- which was exempt u/s. 10(34) of the Act. The assessee has further stated that it has disallowed a sum of Rs.44,675/- towards securities transactions tax (STT) paid on account of purchase and transfer of shares. Beyond this, the assessee has not made any *suo moto* disallowance u/s. 14A of the Act for the reason that it had not incurred any expenditure for earning the exempt income as the investments made by the assessee were out of the own funds and, therefore, the provisions of section 14A read with Rule 8D would not be applicable in assessee's case. The assessee during the assessment proceeding has given the details of various expenses incurred pertaining to audit fees, professional fees, director's remuneration, STT and others which the assessee claims to be his business expenditure which has no nexus on earning of the exempt income. The Id. A.O. made a disallowance of 1% of the annual average value of the investment by applying Rule 8D(2)(ii) which would be applicable w.e.f. 02.06.2016. The Id. CIT(A) upheld the disallowance made by the Id. A.O. on the ground that the assessee has not apportioned its expenses claimed by it as per Rule 8D. The Id. CIT(A) further held that the expenses incurred by the assessee is also attributable to the exempt income earned and that the assessee has failed to make *suo moto* disallowance on the expenditure incurred to earn the exempt income by it.

9. From the factual aspect narrated above, it is pertinent to point out that the assessee in ground nos. 1 (3) has raised the ground that the Id. A.O. has failed to record

dissatisfaction to the assessee's claim that no expenditure incurred for earning the exempt income.

10. Upon perusal of the assessment order, it is evident that the Id. A.O. has failed to record the dissatisfaction as to the assessee's claim of deduction of the expenses amounting to Rs.6,90,110/-. The relevant extract of the assessment order is cited hereunder for ease of reference:

Disallowance u/s. 14A r.w.r. 8D

5. *The assessee company has been asked to furnish the working of disallowance eu/s. 14A r.w.r. 8D vide notice u/s. 142(1) of the Act dated 10.11.2021. In response to the same, the assessee company vide letter dated 04.02.2022 has stated that the provisions of the section 14A are not applicable in its case as the investments are out of its own funds and no expenditure has been claimed in relation to exempt income as deduction.*

5.1 *However, amended Rule 8D applicable w.e.f. 2nd June, 2016 provides for disallowance of 1% of the annual average value of the investments on income which does not form part of the total income. In view of the fact that the assessee company earned substantial dividend income from the investments and claimed deduction of expenses of Rs.6,90,110/-, the expenses incurred towards administrative activities necessary to earn the said income warrants disallowance under Rule 8D. Accordingly, the assessee company has been issued with a shown cause notice on 05.02.2022 and had been asked to explain as to why the disallowance under Rule 8D r.w.s. 14A should not be made.*

5.2 *In response to the same, the assessee vide letter dated 10.02.2022 has merely reiterated the submissions made earlier vide letter dated 04.02.2022 and had provided the working of disallowance u/s. 14A r.w.s 8D(ii) of the Act. Considering the submissions of the assessee, the disallowance u/s. 14A r.w.r 8D(ii) is being made at Rs.6,31,019/-.*

11. It is a settled proposition of law that the Id. A.O. has to mandatorily record his dissatisfaction with regard to the expenditure claimed by the assessee which is a precondition for computing the disallowance as per the provisions of section 14A read with Rule 8D of the Rules. The assessee has relied on the decision of the co-ordinate bench in the case of *Leena Kasbekar vs. ACIT* [2017] 85 taxmann.com 82 (Mum-Trib) wherein it was held that section 14A(2) of the Act makes it mandatory for the Id. A.O. to record his dissatisfaction with regard to the correctness of the claim of the assessee in respect of the expenditure relating to income which does not form part of the total

income. The ld. A.O. in the present case has failed to comply with the mandatory requirement of the provisions of law. We are of the considered view that the disallowance made u/s. 14A read with Rule 8D is to be deleted and allow ground no. 1(3) raised by the assessee. As we have deleted the addition on the legal ground, the other grounds of appeal required no adjudication.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 26.09.2023.

Sd/-

Sd/-

(O. P. Kant)

(Kavitha Rajagopal)

Accountant Member

Judicial Member

Mumbai; Dated : 26.09.2023

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai