

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **813/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2018-19

Shriram Capital Private Limited
(Formerly known as Shriram
Financial Ventures (Chennai)
Private Limited)
Shriram House No. 4, Burkit Road,
T.Nagar, Chennai – 600 017.

Deputy Commissioner of
Income Tax,
Corporate Circle 3(1),
Chennai.

[PAN: AAPCS-5667-M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. R. Sivaraman, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 10.10.2023

घोषणा की तारीख/Date of Pronouncement : 18.10.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 26.05.2023 and pertains to assessment year 2018-19.

2. The assessee has raised the following grounds of appeal:

"1. The order of the CIT(A) in appeal No. NFAC / 2017-18 / 10007487 dated 26.05.23 is against law and facts of the case.

2. The CIT(A) erred in confirming the disallowance made u/s.14A r.w Rule 8D of Rs.5,57,189/- in computing the income under normal computation.

3. The CIT(A) erred in not appreciating the fact that the total expenditure claimed by the appellant was Rs.5,74,939/- which represented filing fees Rs.12,750/Rates and Taxes Rs.5,744/-, Remuneration to Auditors Rs.4,80,380/- Bank charges Rs.44,485- Demat Charges Rs.13,800/- Other charges Rs.30/- and out of which the appellant has disallowed Rs.17,750/- u/s.14A.

4. The CIT(A) erred in not appreciating the fact that the appellant had to incur the above expenditure to run the company and the expenses cannot be attributed to earning of exempt income.

5. The CIT(A) erred in not appreciating the fact that the entire dividend income was credited to the appellant's bank account under ECS and that the appellant had already disallowed Rs.17,750/- u/s.14A.

6. The CIT(A) erred in not appreciating the fact that the appellant is in the business of investment promotion and therefore disallowance u/s.14A is not attracted.

7. The CIT(A) erred in not appreciating the fact that the Assessing Officer has failed to record having regard to the accounts of the assessee as to why he was not satisfied about the amount disallowed by the appellant u/s.14A of Rs.17,750/- , as required u/s.14A(2). In this connection the appellant relies on the following decisions:

(i) CIT Vs Taikisha Engineering India Ltd (229 Taxman 143) Delhi HC

(ii) Marg Ltd Vs CIT, Chennai (120 Taxmann.com 84)(Madras HC)

(iii) In the appellant's own case, the Income Tax Appellate Tribunal, "D" Bench, Chennai, in their orders in I.TA No. 942 I Chny / 2020 dated 29.07.2022 for the assessment year 2017-18 & in I.TA No. 1768 / Chny / 2019 dated 16.12.2019 for the assessment year 2016-17 has deleted the addition made u/s.14A r.w rule 8D as the Assessing Officer has not recorded any findings as to the correctness or otherwise of the appellant's claim that

only expenditure of Rs.17,925/- & Rs.63,412 respectively was incurred to earn exempt income.

8. The CIT(A) erred in relying on the Supreme Court decision in the case of Distributors (Baroda) Pvt Ltd 155 ITR 120 SC and Maganlal chhaganlal Pvt Ltd 236 ITR 456 Bombay HC wherein the issue involved was deduction u/s.80M whereas in the appellant's case the issue involved is deduction u/s.14A r.w Rule 8D.

9. The CIT(A) erred in relying the ITAT Hyderabad's decision in the case of Chintalapatti Holdings Pvt Ltd 146 Taxmann.com 305 and stating that in that case it has been held "that discussion in the assessment order satisfies requirements u/s.14A(2) of recording of satisfaction of AO for invoking Rule 8D and nothing more is required."

10. For these and other grounds that may be adduced before or at the time of hearing, the Hon'ble ITAT may be pleased to delete the disallowance made u/s.14A of Rs.5,57,189/-"

3. The brief facts of the case are that, the appellant is a holding company of Shriram Capital Ltd., and involved in activity of investment and finances. The appellant has filed its return of income for the assessment year 2018-19 on 29.09.2018, admitting Nil total income. The case was selected for scrutiny to verify expenses incurred for earning exempt income. During the course of assessment proceedings, the Assessing Officer noticed that the appellant company has received dividend income of Rs. 107,70,82,888/- and also made sumoto disallowance of Rs. 17,750/- towards expenditure. The Assessing Officer, after considering relevant financial submissions, opined that the disallowance computed

by the appellant company is incorrect and accordingly called upon the assessee to explain as to why disallowance of expenses u/s. 14A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") shall not be computed by invoking Rule 8D of Income-tax Rules, 1962 (hereinafter referred to as "the I.T. Rules, 1962"). In response, the assessee submitted that all expenses incurred during the year are for running the business of the company like audit fees, ROC fees, rates and taxes etc. Further, no expenses was incurred for earning exempt income. However, appellant on its own disallowed a sum of Rs. 17,750/- u/s. 14A of the Act, which has resulted to earn exempt income. The Assessing Officer, however was not convinced with explanation furnished by the assessee and according to the Assessing Officer, disallowance contemplated u/s. 14A of the Act should be computed in accordance with prescribed procedure provided under Rule 8D of I.T. Rules, 1962 and thus, computed disallowance of Rs. 26,55,23,700/-. However, since the total expenditure incurred by the assessee for the year under consideration is only at Rs. 5,74,939/- and also the appellant has already disallowed a sum of Rs. 17,750/-, the Assessing Officer has restricted disallowance to the extent of balance expenditure of Rs. 5,57,189/-. The

appellant carried the matter in appeal before the first appellate authority, but could not succeed. The Id. CIT(A), NFAC, Delhi, for the reasons stated in their appellate order sustained additions made by the Assessing Officer towards disallowance u/s. 14A of the Act, however directed the Assessing Officer to delete additions made towards disallowance u/s. 14A of the Act to book profit computed u/s. 115JB of the Act. Aggrieved, by the CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, at the time of hearing submitted that the issue is covered by the decision of ITAT, Chennai Benches in assessee's own case for assessment year 2017-18 in ITA No. 942/Chny/2020, where under identical facts and circumstances, the Tribunal held that in absence of necessary satisfaction having regard to books of accounts of the assessee that disallowance computed by the assessee u/s. 14A of the Act is incorrect, the Assessing Officer cannot invoke Rule 8D of I.T. Rules, 1962 to compute disallowance.

5. The Id. Sr.AR, Shri. P. Sajit Kumar, JCIT, supporting the order of the CIT(A) submitted that the Assessing Officer has recorded satisfaction having regard to books of accounts of the

assessee, which is evident from the assessment order, where the Assessing Officer rejected disallowance computed by the assessee. Therefore, there is no merit in the arguments of the Ld. Counsel for the assessee that there is no satisfaction as required u/s. 14A of the Act.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that this issue is covered in favour of the assessee by the decision of ITAT, Chennai Benches in assessee's own case for assessment year 2017-18, where the Tribunal by following the decision of Hon'ble Jurisdictional High Court of Madras in the case of Marg Ltd vs CIT [2020] 120 taxmann.com 84 (Mad), held that in absence of necessary satisfaction as required u/s. 14A(2) of the Act, having regard to books of accounts of the assessee that sumoto disallowance computed by the assessee is incorrect, the Assessing Officer cannot invoke Rule 8D of I.T. Rules, 1962 to compute disallowance of expenses u/s. 14A of the Act. The relevant findings of the Tribunal are as under:

10. *We have heard rival contentions and gone through the facts and circumstances of the present case. We have also perused the case laws cited by both the sides and material*

placed before us including assessment order and the order of CIT(A). We noted that the AO in Para No.5.1 has simply issued show cause notice, as to why, the expenditure in relation to exempt income cannot be disallowed as per Sec.14A r.w.r.8D of the Rules and then he resorted to the disallowance of expenses relatable to exempt income by invoking formula prescribed u/r.8D of the Rules vide Para No.5.6 (both paras are re-produced hereinabove in this order at Para No.7) as pointed out by the Ld.Counsel for the assessee on a specific query whether the copy of show cause notice issued by the AO is available, he referred to his Paper Book consisting of Pages 1-166 and particularly, he drew our attention to Page No.34, where show cause notice issued is enclosed and the relevant queries raised by the AO in the show cause notice reads as under:

Government of India
Ministry of Finance
Income Tax Department
Office of the Assistant Commissioner of Income Tax
Corporate Circle-6(1), Chennai

To
Shriram Capital Ltd.,
4, Shriram House,
Burkit Road, T.Nagar,
Chennai-600 017,
Tamil Nadu, India

| | | | | |
|-------------------------|--------------------|---|----------------------|---|
| PAN: AABCS 2726 B | AY: 2017- 18 | DIN & Notice No. ITBA/AST/F/143(3)(SCN) /2019- 20/1023343877(1) | Dated: 28.12.2019 | Hearing Date & Time: 30.12.2019 10:00 AM |
|-------------------------|--------------------|---|----------------------|---|

SHOW CAUSE NOTICE

1. On perusal of your financials, it is seen that you have made payment to Shriram Ownership Trust for Artistic copy Right Fee of Rs.5,41,49,057/-. Hence, please explain the purpose of your payment and so as to why it should not be treated as capital in nature as per provision of section 32.

2. In light of above observations please furnish the following:

Q.1 Why recent judgement passed by the Hon'ble Supreme Court of India in the case of Maxopp Investment vs CIT [2018] 91 Taxmann.com154 (SC) should not be applied for calculating 14A disallowance in your case based on the Theory of apportionment as enumerated in the case law cited supra?

Chandan Kumar
Corp. Circle-6(1), Chennai

11. *The Ld.Counsel for the assessee produced copies of the assessee's reply vide letter dated 28.12.2019, whereby the assessee filed entire details of expenses before the AO along with investments made which are enclosed in assessee's Paper Book at Page Nos.37-41 and also filed computation of income at Pages Nos.1-33, he referred to particular Page No.3, where disallowance of expenditure u/s.37 and particularly relatable to exempt income disallowed u/s.14A is Rs.10,66,916/-. The Ld.Counsel for the assessee brought to our notice that all these details were before the AO and even the AO called for the books of accounts which were produced during the course of scrutiny assessment proceedings and this fact is noted by the AO in Para No.3 which reads as under:*

3. The submissions of the assessee company have been duly considered. On the basis of submissions of the assessee paid on verification of books of accounts and in view of the facts & circumstances of the case, the assessment is completed as under:

12. *We noted that the assessee has made disallowance of expenses relatable to exempt income suo moto at Rs.10,66,916/- and the AO simpliciter relying of Rule 8D issued show cause notice which does not carry out any analysis or exercise as noted by the Hon'ble Delhi High Court in the case of Indiabulls Financial Services Ltd. (supra) and even from the assessment order, we noted from Para Nos.5.1 & 5.6 that the AO simpliciter adopted the formula prescribed under Rule 8D of the Rules without recorded any finding as to correctness of claim made by the assessee qua the expenses relatable to exempt income.*

13. *Now as argued by both the sides, we have gone through the provisions of Sec.14A of the Act and the relevant provisions i.e. Sec.14A (1) to (3) reads as under:*

(1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred^{79a} by the assessee in relation to income which does not form part of the total income under this Act.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does

not form part of the total income under this Act in accordance with such method as may be prescribed⁸⁰, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:

14. Similarly, we have gone through the Rule 8D(1) which provides when the AO can exercise this power before invoking of formula, he has to record satisfaction as regards the correctness of claim expenditure made by the assessee. The relevant Rule 8D(1) reads as under:

".....(1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with -

(a) the correctness of the claim of expenditure made by the assessee; or

(b) the claim made by the assessee that no expenditure has been incurred, in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provision of sub-rule (2)....".

15. On perusal of the provisions of Sec.14A of the Act, more specifically sub-section 2 & 3 makes it clear that if the AO is not satisfied with the correctness of the claim of the assessee, then the AO shall determine the amount of expenditure incurred in relation to such income, which does not form part of total income under this Act. We noted that for the purpose of computation of disallowance a formal method is prescribed u/r.8D(2)(i) the direct expenses, (ii) the interest disallowance and (iii) the administrative expenses i.e.0.5% of average value of investments. The provisions of Sec.14A(3) specifies the applicability of the provisions of Sec.14A(2) of the Act, where the assessee makes a claim that there is no expenditure incurred, but the provisions of Sec.14A(2) makes it clear that where the assessee makes disallowance u/s.14A of the Act, in its computation of total income while filing return of income, then after satisfying the conditions mentioned the AO should be satisfied having regard to the Accounts of the assessee with

the correctness of the claim of the assessee in respect of such expenditure in relation to income, which does not form part of total income under this Act. In this situation, the AO can make disallowance u/s.14A of the Act. w. rule 8D of the Rules. Thus, according to the above provisions of Sec.14A where the assessee makes a claim that there is expenditure relatable to exempt income and he makes disallowance i.e. suo moto disallowance u/s.14A of the Act, if the AO proposed to invoke Sec.14A, he has to record satisfaction. That this satisfaction cannot be plain or simple satisfaction or simply invoking the formula prescribed u/r.8D(2), but it is to be done with regard to the analysis carried out on the accounts of the assessee.

16. *The Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra) has considered this issue and finally at Para No.41, held as under:*

41) Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.

17. *We also gone through the case law cited by the Id.CIT-DR, Dr.S.Palani Kumar, of Hon'ble Delhi High Court in the case of India Bulls Finance Ltd. (supra), wherein the Hon'ble High Court has discussed in Para No.8 that AO has carried out elaborate analysis in regard to the expenditure incurred by the assessee in relation to exempt income and the Hon'ble High Court has recorded this finding in Para No.8 as under:*

"...8. In this instance the elaborate analysis carried out by the AO - as indeed the three important steps indicated by him in the order, shows that all these elements were present in his mind, that he did not expressly record his dissatisfaction in these circumstances, would not per se justify this Court in concluding that he was not satisfied or did not record cogent reasons for his dissatisfaction to reject the AO's conclusion. To insist that the AO should pay such lip service regardless of the substantial compliance with the provisions would, in fact, destroy the mandate of Section 14A....".

18. Further, the reliance placed by Ld.Counsel for the assessee on the decision of the Hon'ble Bombay High Court in the case of *Godrej & Boyce Mfg. Co. Ltd. (supra)*, the Hon'ble Bombay High Court has considered the issue recording of satisfaction as under:

"...33. Under sub-section (2), the Assessing Officer is required to determine the amount of expenditure incurred by an assessee in relation to such income which does not form part of the total income under the Act in accordance with such method as may be prescribed. The method, having regard to the meaning of the expression 'prescribed' in Section 2(33), must be prescribed by rules made under the Act. What merits emphasis is that the jurisdiction of the Assessing Officer to determine the expenditure incurred in relation to such income which does not form part of the total income, in accordance with the prescribed method, arises if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of the expenditure which the assessee claims to have incurred in relation to income which does not part of the total income. Moreover, the satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the assessee. Hence, Sub section (2) does not ipso facto enable the Assessing Officer to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income is correct. The Assessing Officer must, in the first instance, determine whether the claim of the assessee in that regard is correct and the determination must be made having regard to the accounts of the assessee. The satisfaction of the Assessing Officer must be arrived at on an objective basis. It is only when the Assessing Officer is not satisfied with the claim of the assessee, that the legislature directs him to follow the method that may be prescribed. In a situation where the accounts of the assessee furnish an objective basis for the Assessing Officer to arrive at a satisfaction in regard to the correctness of the claim of the assessee of the expenditure which has been incurred in relation to income which does not form part of the total income, there would be no warrant for taking recourse to the method prescribed by the rules. For, it is only in the event of the Assessing Officer not being so satisfied that recourse to the prescribed method is mandated by law. Sub section (3) of Section 14A provides for the application of sub section (2) also to a situation where the assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under the Act. Under the proviso, it has been stipulated that nothing in the section will empower the

Assessing Officer, for an Assessment Year beginning on or before 1 April 2001 either to reassess under Section 147 or pass an order enhancing the assessment or reducing the refund already made or otherwise increasing the liability of the assessee under Section 154.

34. The circumstances in which the provisions of sub sections (2) and (3) were introduced by an amendment have been adverted to in a circular of the CBDT dated 28 December 2006.¹¹ The circular notes that in the existing provisions of Section 14A no method for computing the expenditure incurred in relation to income which does not form part of the total income had been provided. As a result, there was a considerable dispute between tax payers and the Revenue on the method of determining such expenditure. In this background, sub section (2) was inserted so as to make it mandatory for the Assessing Officer to determine the amount of expenditure incurred in relation to income which does not form part of the total income in accordance with the method that may be prescribed. The circular, however, reiterates that the Assessing Officer has to follow the prescribed method if he is not satisfied with the correctness of the claim of the assessee having regard to the accounts of the assessee...".

19. *Even, the Hon'ble jurisdictional High Court in the case of Marg Ltd. v. CIT reported in [2020] 120 taxmann.com 84 (Madras), had considered the issue on satisfaction and held that the disallowance u/r.8D of the Rules r.w.s.14A of the Act, can be computed only after recording satisfaction by the AO in terms of provisions of Sec.14A r.w.r.8D of the Rules. The Hon'ble jurisdictional High Court held in Para Nos.21 & 22 are as under:*

21. We cannot approve even the larger disallowance proposed by the Assessee himself in the computation of disallowance under Rule 8D made by him. These facts are akin to the case of Pragati Krishna Gramin Bank (supra) decided by Karnataka High Court. The legal position, as interpreted above by various judgments and, again reiterated by us in this judgment, remains that the disallowance of expenditure incurred to earn exempted income cannot exceed exempted income itself and neither the Assessee nor the Revenue are entitled to take a deviated view of the matter. Because as already noted by us, the negative figure of disallowance cannot amount to hypothetical taxable income in the hands of the Assessee. The disallowance of expenditure incurred to earn exempted income has to be a smaller part of such income and should have a reasonable proportion to the exempted income earned by the Assessee in that year, which can be computed as per

Rule 8D only after recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure under section 14A made by the Assessee or his claim that no expenditure was incurred is validly rejected by the Assessing Authority by recording reasonable and cogent reasons conveyed to Assessee and after giving opportunity of hearing to the Assessee in this regard.

22. We, therefore, dispose of the present appeal by answering question of law in favour of the Assessee and against the Revenue and by holding that the disallowance under rule 8D of the IT Rules read with Section 14A of the Act can never exceed the exempted income earned by the Assessee during the particular assessment year and further, without recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure made by the Assessee with respect to the exempted income is not acceptable for reasons to be assigned the Assessing Authority, he cannot resort to the computation method under Rule 8D of the Income-tax Rules, 1962.

20. *As in the present case before us, we noted from the assessment order and the order of the CIT(A) that there is no discussion about any expenditure which is relatable to exempt income and how the AO recorded the satisfaction and in our considered view, the AO has not carried out any analysis of the accounts or he has not gone into the accounts despite complete books of accounts were produced before him and has not rejected the disallowance suo moto offered by the assessee. Hence, according to us, the mandate given by the provisions of Sec.14A(2) and Rule 8D(2) of the Rules, as regards to recording of satisfaction by the AO qua correctness of the accounts of the assessee for the expenditure claimed qua exempt income is absent and hence, on this very issue, we reverse the order of the lower authorities and allow this jurisdictional issue in favour of the assessee.*

21. *The assessee has raised alternative ground in merits also. Since, we have adjudicated the issue on jurisdiction i.e. recording of satisfaction by the AO and allow the assessee's ground on jurisdiction, we need not go into the merits of the case.*

22. *In the result, the appeal filed by the assessee is allowed partly."*

7. In this view of the matter and by following the decision of ITAT, Chennai Benches in assessee's own case for earlier assessment year, we are of the considered view that the Assessing Officer has failed to record satisfaction as required u/s. 14A of the Act having regard to books of accounts of the assessee before invoking Rule 8D of I. T. Rules, 1962, and thus, we direct the Assessing Officer to delete additions made towards disallowance of expenditure u/s. 14A r.w.r. 8D of I. T. Rules, 1962.

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

Order pronounced in the court on 18th October, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /**Vice President**

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 18th October, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF