IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA Nos. 2801 & 2802/Mum/2023
(Assessment Years: 2016-17 & 2017-18)

Shah Coal Private Limited 5th Floor, Centre Point, Santacruz West Mumbai-400 054,	Vs.	Asst. Commissioner of Income tax, Circle fourteen (three)(two), Mumbai
(Appellant)		**(Respondent)**

PAN No. AADCS9231R

Assessee by	:	Shri Radheshyam Sharma, AR
Revenue by	:	Shri Manish Ajudiya, DR

Date of hearing: 05.12.2023
Date of pronouncement : 13.12.2023

O R D E R

PER PRASHANT MAHARISHI, AM:

01. These are the two appeals filed by Shah Coal Private Limited (assessee / appellant) in ITA No. 2802/Mum/2023 for A.Y. 2016-17 and ITA No.2801/Mum/2023 for A.Y. 2017-18 against the appellate order passed by the Commissioner of Income-tax (Appeals)-47, Mumbai [the learned CIT (A)] dated 20th June, 2023.

02. Assessee has raised following grounds in ITA No.2802/Mum/2023 for AY of appeal:-

> *"1. Ld. Commissioner of Income Tax (Appeals) has erred in not considering the fact that no expenses have been debited in the Profit & Loss Account in relation to*

such income which is not part of taxable income, just stating that assessing authority has to presume incurring of such expenditure as provided in subsection (2) of Section 14A read with Rule 8D prescribed therein, is not in line with the provisions of the said section, whereas section 14A(2) provides that if the Assessing Officer (A.O) 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 exempt income he shall determine the amount of expenditure incurred in relation to exempt income in accordance with the method prescribed in Rule 8D. this provision is also applicable where assessee contends that no expenditure has been incurred in relation to earning of exempt income. Hence incurring of the expenditure in relation to exe.

2. Ld. Commissioner of Income Tax (Appeals) has erred in just stating that validity of Rule 8D was upheld by Mumbai High Court as well as Supreme Court without considering the fact that the assessee did not challenge the validity of Rule 8D but Rule 8D can be applied only when provisions of Section 14A(2) is applicable.

3. Ld. Commissioner of Income Tax (Appeals) has also erred in not considering the fact that investment in shares also includes short term investments which is taxable, hence he has erred in disallowing 1% of average investments including short term investments.

4. Ld. Commissioner of Income Tax (Appeals) has erred in just stating that the Finance Act, 2002 has against amended and inserted as Explanation to section 14A of the Act, to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or

arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the previous year in relation to such exempt income claiming that the amendment has nullified several judgments as relied by the appellants wherein it was held that no disallowance u/s 14A of the Act could be made in respect of any expenditure incurred in earning any exempt income, in the absence of any exempt income without considering the fact that amendment of section 14A which is "for removal of doubts" cannot be presumed to be retrospective, even where such language is u.

5. Ld. Commissioner of Income Tax (Appeals) has erred in confirming disallowance of ₹ 29,20,689 made by AO without considering provisions of Section 14A(2) including amendment in Finance Act, 2022. "

03. Assessee has raised following grounds of appeal in ITA No.2801/Mum/2023:-

"1. Ld. Commissioner of Income Tax (Appeals) has erred in not considering the fact that no expenses have been debited in the Profit & Loss Account in relation to such income which is not part of the taxable income, just stating that Assessing Authority has to presume incurring of such expenditure as provided in subsection (2) of Section 14A read with Rule 8D prescribed therein, is not in line with the provisions of the said section, whereas section 14A(2) provides that if the Assessing Officer(A.O) 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 exempt income he shall determine the amount of expenditure incurred in relation to exempt income in accordance with the method prescribed in Rule 8D. This provision is also applicable where assessee contends that no expenditure

has been incurred in relation to earning of exempt income. Hence incurring of the expenditure in relation to exe

2 Ld. Commissioner of Income Tax (Appeals) has erred in just stating that validity of Rule 8D was upheld by Mumbai High Court as well as Supreme Court without considering the fact that assessee did not challenge the validity of Rule 8D but Rule 8D can be applied only when provisions of Section 14A(2) is applicable

3 Ld. Commissioner of Income Tax (Appeals) has also erred in not considering the fact that investment in shares also includes short term investments which is taxable, hence he has erred in disallowing 1% of average investments including short term investments

4. Ld. Commissioner of Income Tax (Appeals) has erred in just stating that the Finance Act, 2002 has again amended and inserted an Explanation to section 14A of the Act, to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income claiming that the amendment has nullified several judgments as relied by the appellant wherein it was held that no disallowance u/s 14A of the Act could be made in respect of any expenditure incurred in earning any exempt income, in the absence of any exempt income without considering the fact that amendment of Section 14A which is "for removal of doubts" cannot be presumed to be retrospective, even where such language is u

5 Ld. Commissioner of Income Tax (Appeals) has erred in confirming disallowances of Rs. 11,09,384 made by A.O without considering provisions of Section 14A(2) including amendment in Finance Act, 2022."

04. Brief facts as culled out from the assessment order for A.Y. 2016-17 shows that assessee is the company engaged in the business of trading in coal and providing services as coal handler. It filed its return of income on 13th September, 2015, at ₹7,96,76,920/-. Return of income was picked up for scrutiny by issuing notice under Section 143(2) of the Income-tax Act, 1961 (the Act). The assessment proceedings culminated into an assessment order passed under Section 143(3) of the Act on 26th December, 2018, wherein the disallowance of ₹29,20,689/- was made to the total income of the assessee under Section 14A read with Rule 8D of the Income Tax Rules, 1962 ('the Rules').

05. During the year assessee received dividend income of ₹53,873/-, as it has investment in mutual fund but assessee has not made any disallowance under Section 14A of the Act. Therefore, the learned Assessing Officer asked the assessee to explain as to why the disallowance under Section 14A of the Act should not be made. The claim of the assessee is that

i. There is no fresh investment.

ii. Net worth of the assessee is sufficient to provide such investment.

iii. As the dividend income received directly in the bank account, no expenditures are incurred.

06. The learned Assessing Officer rejected the explanation and held that some expenditure direct or indirect such as payments to accountants and bank services are always attributable for earning exempt income. Accordingly, he recorded his satisfaction that assessee has incurred expenditure for earning exempt income. He also referred to

Circular no.5 of 2014 dated 11th February, 2014, and therefore, computed the disallowance of indirect interest expenditure of ₹21,92,534/- under Rule 8D(2)(ii) and disallowance at the rate of 0.5% on an average investment of ₹ 7,28,155/- amounting to ₹29,20,689/- for administrative expenses u/r 8D (2)(iii).

07. The assessee aggrieved with that preferred the appeal before the learned CIT (A). The assessee contested that as assessee has not incurred any expenditure, no disallowance can be made and further, assessee have owned non-interest bearing funds more than investment earning exempt income and therefore, there cannot be any disallowance. The learned CIT (A) considered the explanation of the assessee and held that those investments, which have not yielded exempt income, are also to be considered for the purpose of disallowance. He further relied on the amendment made by the Finance Act, 2022 and confirmed the above disallowance.

08. For A.Y. 2017-18, assessee filed return of income on 28th October, 2017, declaring total income of ₹14,25,45,560/-, wherein the assessment order passed resulted into disallowance under Section 14A of the Act of ₹11,09,384/, in the assessment order passed under Section 143(3) of the Act dated 18th December, 2019. Assessee has earned long term capital gain of ₹7,59,043/- being exempt income. The similar reasons were given by the assessee and similar reasons were shown by the learned Assessing Officer for making the addition. On appeal before the learned CIT (A) for the reasons given above in A.Y. 2016-17, the disallowance was confirmed.

09. Therefore, the assessee is in appeal before us. Assessee contested that the assessee has enough non-interest bearing funds available than the amount of investment made in exempt income earning investments. It was further stated that assessee has not incurred any expenditure for earning exempt income. He otherwise submitted that the exempt income earned by the assessee for A.Y. 2016-17, is only ₹53,873/- and similarly, for A.Y. 2017-18, assessee has earned long

term capital gain of ₹7,59,043/-. Therefore, the disallowance cannot exceed the exempt income. He further referred to his paper book filed for both the years. He further stated that the assessee has already disallowed a Demat charges and securities transactions tax in its computation of total income for A.Y. 2017-18. He further stated that against the claim of the assessee that it has not incurred any expenditure; the satisfaction is not recorded by the learned Assessing Officer. He further stated that for A.Y. 2017-18, the exempt income earned by the assessee through long term capital gain is ₹7,59,043/- and assessee has already disallowed ₹1,13,490/- of Demat charges and securities transaction of ₹60,892/-. Therefore, disallowance made by the learned Assessing Officer of ₹11,09,384/- which exceeds the exempt income is not sustainable. He further stated that even otherwise, the Rule 8D is to be applied only with respect to the investment yielding exempt income. For A.Y. 2017-18, he further stated that there is an error in computation of the average monthly investment. Even otherwise, if correctly calculated the disallowance cannot be more than ₹7,32,198/- against ₹11,09,384/- made by the learned Assessing Officer. He further stated that the impugned assessment order is A.Y. 2016-17 and 2017-18, wherein the amendment made by the Finance Act, 2022, cannot be applied.

010. The learned Departmental Representative vehemently supported the orders of the lower authorities. He submitted that the learned Assessing Officer has correctly recorded satisfaction and further there is no error in the working of disallowance made by the learned Assessing Officer. He further submitted that the amendment made by section 14 is clarificatory in nature and it applies to A.Y. 2016-17 and 2017-18.

011. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that assessee has earned exempt income of ₹53,873/- for A.Y. 2016-17 and ₹7,59,043/- for A.Y. 2017-18. For A.Y. 2016-17, assessee received dividend income and for A.Y. 2017-18, assessee received long-term capital gain

exempt under Section 10(38) of the Act. For A.Y. 2016-17, by Assessee no disallowance was made under Section 14A of the Act. However, for A.Y. 2017-18, assessee disallowed the Demat charges and security transaction tax. The learned Assessing Officer categorically noted that as assessee has investment in mutual funds such investment cannot be made without incurring any expenditure. Merely, the dividend income is received in the bank account of the assessee but the disallowance of investment also requires expenditure. In view of this, we find that the learned Assessing Officer has recorded satisfaction before invoking the provisions of Rule 8D of the Rules about the correctness of claim of the assessee. However, we agree with the assessee that the disallowance cannot be exceeded the exempt income earned by the assessee. In the present case, it is also claimed by the assessee that it has interest free funds available with it in the form of share capital and free reserve, which are far in excess of the amount of investment made in Mutual Fund. For A.Y. 2016-17, assessee has fund of ₹81 crores as share capital and free reserves whereas the investment in Mutual Funds is only ₹15.60 crores. Therefore, there cannot be any disallowance of interest expenditure under Rule 8D (2)(ii) of the Rules. Accordingly, interest disallowance made by the learned Assessing Officer for A.Y. 2016-17 of ₹21,92,534/- is not sustainable. Further, the administrative expenditure disallowed of ₹7,28,155/- is far more excess than the amount of exempt income earned by the assessee of ₹53,873/-. Therefore, we direct the learned Assessing Officer to restrict the disallowance under Section 14A of the Act for A.Y. 2016-17 to only ₹53,873/-.

012. Coming to the A.Y. 2017-18, it apparent that assessee has earned exempt income of ₹7,59,432/-. Assessee has also issued suo moto disallowance of Demat charges and security transaction tax. However, the learned Assessing Officer computed annual average of monthly averages of the investment made at ₹11,09,38,464/- and therefore, disallowed at 1% thereof at ₹11,09,300/-.We direct the ld AO to compute the disallowance u/r 8 D considering only the on the

investment which yielded exempt income during the year. Further, the computational error stated by the Ld AR also needs to be verified. Further disallowances in total including demat charges and STT paid cannot exceed the exempt income. We direct the LD AO to recompute the disallowance accordingly.

013. Regarding applicability of Amendment made by the Finance Act 2022 , we respectfully following the decision of Honourable Delhi high court in Era Infrastructure limited **[**2022] 141 taxmann.com 289 (Delhi)hold that Amendment made by Finance Act, 2022 to section 14A by inserting a non-obstante clause and Explanation will take effect from 1-4-2022 and cannot be presumed to have retrospective effects.

014. In the result, we allow both the appeal s of the assessee and direct the ld AO to recompute disallowance as indicated above.

Order pronounced in the open court on 13.12. 2023.

Sd/-	Sd/-
(RAHUL CHAUDHARY)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 13.12.2023
Sudip Sarkar, Sr.PS
Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai