

**IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM**

आयकर अपील सं/ I.T (TP) A. No.1755/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

Unilever Industries Pvt. Ltd. Unilever House, B. D. Sawant Marg, Chakala, Andheri (E), Mumbai- 400099.	<b>बनाम /</b> Vs.	DCIT, Range-1(3)(2) Mumbai.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACU0791P</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Nishant Thakkar/Ms Jasmin Amalsadwala
Revenue by:	Shri Manoj Kumar (DR)

सुनवाई की तारीख / Date of Hearing: 21/12/2023

घोषणा की तारीख /Date of Pronouncement: 09/01/2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee company against the order of the Assessing Officer (AO) dated 10.01.2017 passed u/s 143(3) r.w.s 144C(13) of the Income Tax Act, 1961 (hereinafter “the Act”).

2. Ground no. 1 is general in nature so does not require any adjudication.

3. Ground nos. 2 to 6 are on a common issue and reads as under: -

**“Adjustment on account of allocation of Royalty earned by Unilever**

2. erred in holding that the Assessee has performed significant functions when providing scientific and technical services to



*IT(TP) A. No. 1755/Mum/2017  
A.Y. 2012-13  
Unilever Industries Pvt. Ltd.*

Unilever and accordingly, should be entitled to a share in the royalty earned by Unilever amounting to Rs.70,81,50,000/-

3. failed to appreciate that the Assesse is engaged into 'contract research services' and is bearing limited risk and therefore ought to have held the cost plus mark-up received by the Assessee is at Arm's length.

4. erred in holding that the Assessee ought to have earned royalty over and above the cost plus mark-up it has received for provision of scientific and technical services.

5. The Assessee prays that the book value of the said transactions be held to be the arm's length price of the transactions, and the adjustment on account of allocation of royalty be deleted.

6. Without prejudice to the above, erred in allocating gross royalty as against net royalty earned by Unilever Plc as was done in the previous year 09-10 relevant to AY 10-11."

**4.** Regarding the aforesaid grounds, the Ld. AR submits that pursuant to application filed in accordance with Rule 44G(6) of the Income Tax Rules, 1962 (hereinafter "the Rules"), before the Competent Authority (CA) of India and the UK, for resolution of the aforesaid TP issue as per Mutual Agreement Procedure (MAP), the assessee received letter from CBDT dated 11.10.2023, intimating resolution of dispute under MAP with U.K for FY 2009-10 to FY 2013-14, and consequently, prays for withdrawal of aforesaid grounds of appeal; and drew our attention to the ibid CBDT letter dated 11.10.2023, wherein CBDT has conveyed to the assessee that in



*IT(TP) A. No. 1755/Mum/2017  
A.Y. 2012-13  
Unilever Industries Pvt. Ltd.*

accordance to Rule 44G(6) of the Rules, the Competent Authorities of India and the UK have agreed to resolve the MAP application filed by assessee's UK AE i.e. M/s. Unilever Plc regarding Transfer Pricing Adjustment made in India pertaining to the international transaction of provision of R & D services by India to the UK. Pursuant to the communication from CBDT, the assessee seeks withdrawal of the TP ground nos. 2 to 6 (supra) i.e, *Adjustment on account of allocation of Royalty earned by Unilever.*

**5.** Per contra, the Ld. DR does not object to the withdrawal of TP ground, and, therefore, we allow the request of the assessee in the light of the MAP order dated 11.10.2023. Therefore, ground nos. 2 to 6 stands dismissed.

**6.** Coming to ground nos. 7 to 12 which is against the action of the AO making disallowance u/s 14A of the Income Tax Act, 1961 (hereinafter "the Act") read with Rule 8D of the Rules.

**7.** Brief facts are that the assessee in AY. 2012-13 has received tax free dividend income of only Rs.12,500/-. The AO applied Rule 8D of the Rules and computed disallowance at Rs.12,94,325/- [0.5% of Rs.25,88,65,000/-]. The limited plea of the assessee is that the disallowance be restricted to the extent of exempt income earned by assessee i.e. Rs.12,500/- and for making such a proposition has relied on the decision of the Hon'ble Bombay High Court in the case of M/s. Nirved Traders Pvt. Ltd. Vs. DCIT (ITA. No.149 of 2017) vide order dated 23.04.2019 wherein the question of law framed was as under: -



*IT(TP) A. No. 1755/Mum/2017  
A.Y. 2012-13  
Unilever Industries Pvt. Ltd.*

“Whether ITAT was right in law in confirming the disallowance under Section 14A of the Income Tax Act, 1961 in excess of exempt income earned by the Assessee during the assessment year in question ?”

8. And the Hon’ble High Court took note of the decision of the Hon’ble Delhi High Court in the case of Cheminvest Ltd. Vs. Commissioner of Income Tax (378 ITR 33) wherein it was held by Hon’ble Delhi High Court that the disallowance u/s 14A of the Act read with Rule 8D of the Rules would not be permissible when the assessee has not earned any income which was exempt from tax. And the Hon’ble High Court of Bombay, took note of the similar ratio/decision of the Hon’ble Karnataka High Court in the case of Pragati Krishna Gramin Bank Vs. Joint Commissioner of Income Tax (2018) 256 Taxman 349 (Karn) wherein the Hon’ble High Court held that expenditure in relation to income not includable in the total income cannot exceed such income. It was observed by the Hon’ble High Court of Karnataka as under: -

“14. We make it clear that the expenditure for earning exempted income has to have a reasonable proportion to the income, so earned, going by the common financial prudence. Therefore, even if the Assessing Authority has to make an estimate of such an expenditure incurred to earn exempted income, it has to have a rational nexus with the amount of income earned itself. Disallowance under Section 14A of Rs.2,48,85,000/- as expenses to earn exempted Dividend income of Rs.1,80,30,965/- is per se absurd and ypothetical. The disallowance under Section 8D cannot exceed the expenses claimed by assessee under the



*IT(TP) A. No. 1755/Mum/2017  
A.Y. 2012-13  
Unilever Industries Pvt. Ltd.*

Proviso to Rule 8D. Therefore, where the assessee claimed that assessee did not incur any such expenditure during the year in question to earn Dividends of Rs.1,80,30,965/-, the burden was upon the assessing authority to compute the interest on such borrowed funds which were dedicatedly used for investment in securities to earn such exempted Dividend income. The disallowance under Section 14A cannot be wild guesswork bereft of ground realities. It has to have a reasonable and close nexus with the factually incurred expenses. It is not deemed disallowance under Section 14A of the act but an enabling provision for assessing authority to compute the same on the given facts and figures in the regularly maintained Books of Accounts. The assessing authority also could not have called upon the Assessee himself to undertake the exercise of computing the disallowance under Section 8D of the Rules. Such abdication of duty is not permissible in law. Since no such exercise has been undertaken by the assessing authority, the case calls for a remand."

**9.** Similar view was held by the Hon'ble Gujarat High Court in the case of Commissioner of Income Tax-1 Vs. Corrttech Energy (P) Ltd. reported in (2015) 372 ITR 97 wherein Hon'ble High Court observed as under: -

"4. Counsel for the Revenue submitted that the Assessing Officer as well as CIT (Appeals) had applied formula of rule 8D of the Income Tax Rules, since this case arose after the assessment year 2009-2010. Since in the present case, we are concerned with the assessment year 2009-2010, such formula was correctly applied by the Revenue. We however, notice that



*IT(TP) A. No. 1755/Mum/2017  
A.Y. 2012-13  
Unilever Industries Pvt. Ltd.*

sub-section (1) of section 14A provides that for the purpose of computing total income under chapter IV of the Act, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. In the present case, the tribunal has recorded the finding of fact that the assessee did not make any claim for exemption of any income from payment of tax. It was on this basis that the tribunal held that disallowance under section 14A of the Act could not be made. In the process tribunal relied on the decision of Division Bench of Punjab and Haryana High Court in case of CIT v Winsome Textile Industries Ltd. [2009] 319 ITR 204 in which also the Court had observed as under :

"7. We do not find any merit in this submission. The judgement of this court in Abhishek Industries Ltd. (2006) 286 ITR 1 was on the issue of allowability of interest paid on loans given to sister concerns, without interest. It was held that deduction for interest was permissible when loan was taken for business purpose and not for diverting the same to sister concern without having nexus with the business. The observations made therein have to be read in that context. In the present case, admittedly the assessee did not make any claim for exemption. In such a situation section 14A could have no application."

5. We do not find any question of law arising. Appeal is therefore dismissed."



*IT(TP) A. No. 1755/Mum/2017*  
*A.Y. 2012-13*  
*Unilever Industries Pvt. Ltd.*

**10.** Similar view was taken by the Hon'ble Bombay High Court in the case of PCIT-10 Vs. HSBC Invest Direct (India) Ltd wherein it was observed as under: -

"4. Having heard learned Counsel for the parties and perused documents on record, we notice that in Cheminvest Ltd. (supra) Delhi High Court had referred to and relied upon its earlier decision in the case of CIT Vs. Holcim India (P) Ltd. (I.T.A. No.486 of 2014, decided on 5<sup>th</sup> September 2014). we further notice that this Court in Income Tax Appeal No.693 of 2015 by an order dated 21st November, 2017 while dismissing the Revenue's appeal on similar issue had noted that the decision of Delhi High Court in case of Holcim India (P) Ltd. (supra) had adopted the same principles. In the present case, Counsel for the Revenue however, points out that this is not a case where the assessee had earned no income which was exempt from tax. However, in our opinion, the ratio of the above noted decisions in the cases of Cheminvest Ltd. and Holcim India (P) Ltd. (supra) would include a facet where the assessee's income exempt from tax is not NIL but has earned exempt income which is larger than the expenditure incurred by the assessee in order to earn such income. In such a situation that disallowance cannot exceed the exempt income so earned by the assessee during the year under consideration. We do not find any error in the view of the Tribunal. We record that the assessee had offered voluntary disallowance of expenditure of Rs.1.30 crores, which is not been disturbed by the Tribunal.

5. The tax appeal is dismissed."



IT(TP) A. No. 1755/Mum/2017  
A.Y. 2012-13  
Unilever Industries Pvt. Ltd.

**11.** In view of the consistent view taken by the Hon'ble High Courts as noted (supra), the Hon'ble Bombay High Court in the case of M/s. Nirved Traders Pvt. Ltd. (supra) held that the disallowance u/s 14A of the Act read with Rule 8D of the Rules need not exceed assessee's exempt income. In the light of the aforesaid discussion, we direct the AO to restrict the disallowance to Rs.12,500/- u/s 14A of the Act read with Rules 8D of the Rules. Thus, the assessee's grounds of appeal is partly allowed.

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

Order pronounced in the open court on this 09/01/2024.

Sd/-  
(S RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Sd/-  
(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 09/01/2024.  
Vijay Pal Singh, (Sr. PS)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai