

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.2994/Mum/2023
(A.Y. 2015-16)**

Godrej Properties Ltd. M/s Kalyaniwalla & Mistry LLP, Esplanade House, 2 nd Floor, 29, Hazarimal Somani Marg, For, Mumbai – 400001	Vs.	The DCIT, Circle 14(1)(2) Room No. 455, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACG3995M		
Appellant	..	Respondent

**ITA No.3002/Mum/2023
(A.Y.2015-16)**

ACIT-14(1)(2) Room No. 455, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400020	Vs.	Godrej Properties Ltd, 5 th Floor, Godrej One, Pirojshanagar, Eastern Express Highway, Vikroli (E) Mumbai – 400079
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAACG3995M		
Appellant	..	Respondent

Appellant by :	Yasmin Dastur
Respondent by :	Kishore Dhule

Date of Hearing	28.12.2023
Date of Pronouncement	15.01.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

Both these cross appeals are filed by the assessee and revenue for assessment year 2015-16 are directed against the common order of CIT(A)

NFAC. Since, common issue on identical facts are involved in these appeals filed by the assessee and revenue, therefore, for the sake of convenience both these appeals are adjudicated together by taking ITA No. 2994/Mum/2023 as lead case.

ITA No.2994/Mum/2023 (Assessee's Appeal)

- “1. *The learned Commissioner of Income-tax (Appeals) erred in confirming the disallowance of interest expenditure under Section 14A read with Rule 8D2(ii) as computed by the Appellant in the Return of Income at Rs.55,438/- when the Appellant's own interest free funds were far in excess of the total investment and in ignoring the contentions of the Appellant that there was no interest expenditure liable to disallowed under Rule 8D(2)(ii).*
2. *The learned Commissioner of Income-tax (Appeals) erred in not adjudicating the contention raised by the Appellant that the disallowance under Section 14A of the Act read with Rule 8D(2) is to be restricted to the amount of exempt dividend income earned during the year under consideration*
3. *The learned Commissioner of Income-tax (Appeals) erred in not adjudicating the contention raised by the Appellant that the share of profit in LLPs is to be excluded when computing the average value of investments for the purpose of Rule 8D(2)(ii) and (iii).*
4. *The learned Commissioner of Income-tax (Appeals) erred in not adjudicating the contention raised by the Appellant that the disallowance under Section 14A read with Rule 8D2(ii) and (iii) be recomputed by excluding those investments on which no dividend income was received during the year.*
5. *The learned Commissioner of Income-tax (Appeals) erred in not adjudicating the contention raised by the Appellant that the provisions of Section 14A and Rule 8D cannot be applied for computing the book profits under section 115JB of the Act.”*

2. Fact in brief is that return of income declaring total income at Rs.41,17,60,850/- was filed on 30.11.2015. The case was selected for limited scrutiny and notice u/s 143(2) of the Act was issued on 11.04.2016. The assessment u/s 143(3) of the Act was finalized on 05.12.2017 assessing the total income at Rs.57,01,37,603/-. During the course of assessment the assessing officer noticed that assessee has received dividend income of Rs.52,374/- during the financial year

relevant to assessment year 2015-16. The assessing officer further noticed that assessee has attributed Rs.5,16,156/- towards expenditure incurred for earning such dividend income. The assessing officer asked the assessee to explain as to why disallowance of expenditure should not be made u/s 14A of the Act in accordance with Rule 8D of the I.T Rules 1962. The assessee explained that it had received only dividend income of Rs.52,374/- during the year under consideration and assessee has suo moto disallowed an amount of Rs.5,16,156/- u/s 14A of the Act in accordance with Rule 8D of the I.T Rule. The assessing officer further submitted that assessee company was having its own fund aggregating to Rs.1918.52 crores as against investment of Rs.257.66 crores on which tax free income was earned. The assessee has also placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities and Power Ltd. 313 ITR 304 (Bombay) and various decision of the ITAT Mumbai. However, the AO has not agreed with the submission of the assessee after referring the CBDT Circular No. 5 of 2014 dated 11.02.2014 and disallowed an amount of Rs.15,76,38,855/- u/s 14A of the Act and added to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) held that the assessee was having sufficient interest free funds to meet the investment cost, therefore, the disallowance made by the AO over and above the suo moto disallowance of Rs.55,438/- was deleted.

4. During the course of appellate proceedings before us the ld. Counsel submitted that since assessee's own interest free funds were more than the total investment made on which exempt income earned, therefore, no interest expenditure should have been disallowed under Rule 8D(2)(ii) of the IT Rule 1962. The relevant part of the decision of CIT(A) is reproduced as under:

“I find from the submission of the appellant that the appellant was having aggregate Rs.1918.25 crores as its own funds whereas the investment held by the appellant at the end of the assessment year under consideration was Rs.881.05 crores therefore the appellant has claimed that the investments are covered by reserves of the appellant itself. In view of the above facts, the appellant requested to delete the addition made by the AO u/s 14A including the disallowance of Rs.55,438/- made by the appellant. I have considered the facts of the case and submission of the appellant. I find that the appellant was having sufficient interest free funds to meet the investment, therefore the disallowance made by the AO over and above the soumoto disallowance of Rs.55,438/- made by the appellant is deleted. Thus the grounds of appeal raised by the appellant are allowed.”

The Id. Counsel submitted that ITAT, Mumbai in the case of the assessee itself for assessment years 2011-12, 2013-14 and 2014-15 on similar issue has deleted the entire disallowance on account of interest expenditure u/s 14A r.w.Rule 8D(2) including suo moto disallowance made by the assessee as the funds available with the assessee were for more than the value of investment. Further the Id. Counsel submitted that Id. CIT(A) has not adjudicated the contention of the assessee that disallowance u/s 14A r.w.Rule 8D(2) is to be restricted to the extent of exempt income earned during the year under consideration and submitted that similar issue has been decided by the ITAT, Mumbai for assessment years 2014-15 and 2012-13 in the case of the assessee itself in assessee's favour.

5. Regarding the ground of appeal of the assessee to exclude the share of profit of LLP when computing the average value of investment for the purpose of Rule 8D(2)(iii) submitted that this ground has become academic since ITAT in the case of the assessee itself for assessment year 2012-14 to 2014-15 has deleted the entire disallowance and recomputed the disallowance under Rule 8D(2)(iii) to the extent of exempt income actually yielded by the assessee.

On the other hand, the Id. D.R supported the order of assessing officer. The Id. D.R referred the decision of Hon'ble High Court of Kolkata in the case of Dhanuka & Sons Vs. CIT(Central)-1 (2011) 12

taxmann.com 227 (Calcutta). The ld. D.R after referring the decision of Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities & Bombay Limited submitted that interest free funds and loan amount should have been availed at the same time. He contended that AO has correctly made the disallowance u/s 14A r.w.rule 8D of the I.T Rule 1962.

6. Heard both the sides and perused the material on record. In respect of disallowance made by the assessing officer under Rule 8D(2) of the I.T. Rule 1962 we find that assessee was having sufficient interest free funds to the amount of Rs.1918.25 crores as against investment made of Rs.881.05 crores on which exempt income was earned. In this regard, we have also considered the decision of ITAT, Mumbai in the case of the assessee itself for assessment year 2014-15 vide ITA No. 655/Mum/2023 dated 08.08.2023. The relevant operating part of the decision as referred by the ld. Counsel is as under:

"12. When we examine the computation made by the AO for the purpose of disallowance under section 14A it is apparent that the AO has made disallowance to the tune of Rs.2,10,42,002/- under rule 8D2(ii) of the rules. The Ld. A.R. for the assessee stated that Ld. CIT(A) has rightly deleted the disallowance made by the AO under rule 8D2(ii) because assessee has never consumed interest bearing funds to earn the dividend income and drew our attention towards balance sheet available at page 5 of the paper book, which shows that the assessee is having share capital and reserve and surplus to the tune of Rs.1790,15,44,047/- as against the total investment of Rs.911,84,47,535/-. So it is proved that since the assessee has not incurred any interested bearing funds to earn the dividend income and as such disallowance made by the AO to the tune of Rs.2,10,42,002/- is liable to be deleted which includes an amount of Rs.49,85,912/- suo-moto disallowed by the assessee. Eventually it will reduce the returned income of the assessee. So when the assessee was having sufficient own interest free funds in the form of share capital and reserves and surplus at the beginning and closing of the years. as against the total investment edition made under rule 8D2(ii) is not sustainable as has been held by Honourable Bombay High Court in case of HDFC Bank Limited vs. CIT (supra) and decision rendered by Honourable Supreme Court in case of South Indian Bank (supra) wherein it is held as under:

"Section 14A. read with section 263, of the Income-tax Act, 1961 Expenditure Incurred in relation to income not includible in total income (Computation of Assessment year 2010-11 In course of assessment, Assessing Officer made addition on account of apportionment of

expenses against exempted income under section 14A Commissioner passed a revisional order directing Assessing Officer to enhance amount of addition under section 14A-Tribunal set aside revisional order as well as consequent assessment order passed by Assessing Officer enhancing addition made under section 14A -High Court upheld order of Tribunal holding that amount of disallowance under section 14A could be restricted to amount of exempt income only and not a higher figure-Whether on facts, SLP filed against decision of High Court was to be dismissed-Held, yes [Para 1]in favour of Assessee]"

13. It is also undisputed fact on record that initially at the time of filing the return of income assessee has itself made suo-moto disallowance of Rs.83,82,742/- as per comparative table extracted in preceding para number 11. However now the assessee by filing the cross objections contended that the Ld. CIT(A) has erred in not restricting the disallowance under section 14A of the Act to the amount of exempt income earned during the year under consideration. It is settled principle of law that disallowance under section 14A cannot be more than the exact income earned by the assessee during the year under consideration as has been held by Honourable High Court of Punjab and Haryana in case of PCIT, Patiala vs. State Bank of Patiala (2018) 99 taxmann.com 285 which is confirmed by Honourable Supreme Court in case cited as PCIT vs. State Bank of Patiala PCIT vs. State Bank of Patiala (2018) 99 taxmann.com 286 (SC) (supra) by returning following findings:

"Section 14A, read with section 263, of the Income-tax Act, 1961 Expenditure Incurred in relation to income not includible in total income (Computation of Assessment year 2010-11 In course of assessment, Assessing Officer made addition on account of apportionment of expenses against exempted income under section 14A Commissioner passed a revisional order directing Assessing Officer to enhance amount of addition under section 14A-Tribunal set aside revisional order as well as consequent assessment order passed by Assessing Officer enhancing addition made under section 14A -High Court upheld order of Tribunal holding that amount of disallowance under section 14A could be restricted to amount of exempt income only and not a higher figure-Whether on facts, SLP filed against decision of High Court was to be dismissed-Held, yes [Para 1]in favour of Assessee]"

14. In the backdrop of the aforesaid discussion now the question arises for determination in this case is:

"As to whether assessee is entitled to relief sought for by way of filing cross objection that disallowance under section 14A cannot be more than the exempt income i.e. Rs.6,54,331/- in the face of the fact that the assessee itself has made suo-moto disallowance of Rs.83,82,742/-"?

15. The contention raised by the Ld. D.R for the Revenue that the income returned by the assessee itself cannot be reduced is not sustainable because under Article 265 of the constitution of India the revenue is entitled to collect the taxes in accordance with the law and not on the basis of consent or acceptance of the assessee. In other words there is no estoppel against the statute. So in view of the matter we direct the AO to delete the disallowance of the interest made under rule 8D2(ii) of the rules."

Following the decision of ITAT on similar fact and identical issue we consider that no disallowance of the interest under Rule 8D(2) of the IT Rule to be made since assessee was having sufficient own interest free funds which were far in excess of the value of investment. Therefore, ground no.1 of the appeal of the assessee is allowed.

7. Regarding ground no. 2 of the assessee that disallowance u/s 14A r.w.Rule 8D(2) is to be restricted to the amount of exempt income earned during the year under consideration. We find that in the above referred decision on similar fact and identical issue the ITAT in the case of the assessee itself for A.Y. 2014-14 held that disallowance under Rule 8D(2)(iii) is to be restricted to the extent of exempt income yielded on the investment made by the assessee.

“16. So far as disallowance made by the AO to the tune of Rs.30,80,642/- under rule 8D2(iii) of the rules is concerned, we are of the considered view that no doubt assessee has himself made similar disallowance of Rs. 3080642 under rule 8D2(iii) of the rules but by applying the same analogy as discussed in the preceding para that the Income Tax Department is empowered to collect the tax in accordance with the law contained under Article 265 of the constitution of India, the AO is directed to consider only those investments which had actually yielded exempt income for working out the disallowance thereon in view of the decision rendered by special bench of the Tribunal in case of Vireet Investment (P.) Ltd.(supra).

17. The assessee has given the detail of scrips/mutual fund on which it has earned the dividend income as detailed in preceding para No.10. So the AO is directed to re-compute the disallowance under rule 8D2(iii) of the rules qua the exempt income yielding investment which would further reduce the disallowance already made by the assessee under rule 8D2(iii) of the rules.”

Following the decision of the ITAT as referred above in the case of the assessee itself we direct the assessing officer to restrict the disallowance under Rule 8D(2)(iii) of the IT Rule to the extent of exempt income earned by the assessee on the investment made. Therefore, this ground of appeal of the assessee is allowed.

8. Regarding Ground No. 3 & 4 of the assessee for excluding the average value of investment for the purpose of disallowance, the Id. Counsel submitted that these grounds of appeal of the assessee have become academic after following the decisions of the ITAT in the case of the assessee itself as referred above in this order. Therefore, both these grounds of appeal of the assessee have become infructuous and stand dismissed.

Regarding ground No.5 on the issue that Id. CIT(A) has not adjudicated the contention of the assessee that provision of Sec.14A and Rule 8D cannot be applied for computing book profit u/s 115JB of the Act. We consider that disallowance made u/s 14A is not to be added for computing book profit u/s 115JB of the Act as held by the special bench of ITAT Delhi in the case of Vireet Investment Pvt. Ltd. 82 taxman.com 415 (Delhi Trib) (SB). Therefore, this ground of appeal of the assessee is allowed.

ITA No.3002/Mum/2023 (Revenue's appeal)

- “1. *Whether on the facts of the instant case and in law, the Ld CIT(A) was justified in deleting the disallowance amounting to Rs.15,71,22,699/- that is contrary to the provisions of Section 14A read with Rule 8D, as it stood for the relevant Assessment Year.*
2. *Whether on the facts of the instant case and in law, the Ld. CIT(A) was justified in deleting the addition of interest disallowed by the AO, in the absence of any evidence that indicated that borrowed funds were not used for the purpose of making investments that yielded exempt income especially as the assessee has not maintained separate bank account for investment and business purpose?*
3. *Whether on the facts of the instant case and in law, the Ld. CIT(A) was justified in placing reliance on the ratio laid down by the Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd. [2014] 49 taxmann.com 335 (Bom), which considered the law as it stood for A.Y. 2001-02 to A.Y.2005-06 before Section 14A was amended to incorporate a prescribed method for calculating the disallowance?*
4. *Whether on the facts and the circumstances of the case and in law, the Ld CIT(A) was justified in deletion of addition made on account of mismatch of income as per ITS/26AS and the total income declared in ROI, by placing reliance upon assessee's own case in A.Y. 2012-13,*

ignoring the fact that the said decision was challenged by the Revenue before the Hon'ble ITAT and the Hon'ble IT'AT had just dismissed the appeal of the Revenue due to low tax effect and not on the merits of the case?"

5. *The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*

Ground No.1 to 3:

10. This issue has been decided in favour of the assessee by the order of the ITAT Mumbai in the case of the assessee wherein the entire disallowance u/s 14A r.w.Rule 8D(2)(ii) has been deleted since the assessee company was having sufficient own interest free funds which were far in excess of the value of the investment. The ITAT in the case of the assessee itself for A.Y. 2014-15 as discussed supra also restricted the disallowance u/s 8D(2)(iii) to the extent of exempt income earned by the assessee. Further with reference to the decisions of the Hon'ble Bombay High Court in the case of the Reliance Utilities and Power Ltd. 313 ITR 340 (Bom) as held in the various decisions if there were funds available then presumption would arise that investment would be out of the interest free funds available with the assessee. Considering the above decisions of the ITAT in the assessee's own case we don't find any merit in the ground of appeal of the revenue and all these three grounds of appeal of the revenue are dismissed.

Ground No. 4: Addition on account of mismatch income as per ITS/Form 26AS in the total income declared in the return of income:

11. During the course of assessment the assessing officer has made addition of Rs.703,002/- on the ground that assessee has not accounted the income received from the following parties which appears in Form 26AS of the assessee.

<i>Name of the party</i>	<i>Amount (in Rs.)</i>
<i>State Bank of India</i>	<i>6,26,378/-</i>
<i>Orient Black Swan Pvt. Ltd</i>	<i>76,624/-</i>
<i>Total</i>	<i>70,30,002/-</i>

12. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee after referring the similar decision in the case of the assessee itself for assessment year 2012-13 that assessee has not carried out any transaction with the aforesaid parties and hence neither the income was included nor credit for TDS claimed.

13. Heard both the sides and perused the material on record. During the course of assessment the assessee has furnished reconciliation statement vide letter dated August 22, 2017 and November 28, 2017 explaining that interest income of Rs.6,26,378/- was pertained to the fixed deposit placed with State Bank of India on behalf of the Godrej Edenwood Thane & Godrej Plaza Panvel Housing Societies. In respect of maintenance charges of Rs.76,624/- paid by Orient Black Swan Pvt. Ltd. it was explained that same was paid to Godrej Woodsman State Apartment Industrial Association and same was accrued to the said society. Therefore, assessee submitted that all these aforesaid income was pertained to these society not to the assessee company. The assessee has also placed reliance on the decision of in the case of M/s A.F. Ferguson & Co. (ITA No. 5037/Mum/2012 & ITA No.437/Mum/2013) and in the case of Reliance Broadcasting Network (ITA No. 3531/Mum/2013). In the reconciliation assessee has categorically explained that the aforesaid transaction reported in the Form 26AS were not pertained to the assessee as the same was pertained to the respective societies. However, AO has not contrary disproved the facts and material placed on record by the assessee. In the aforesaid two decisions referred by the ld. Counsel it is held that addition cannot be made solely on the basis of AIR information

especially when the assessee denies any such receipts as the burden to prove such receipts is on the assessing officer as the assessee cannot be asked to prove the negative. Considering the facts and judicial findings as above we don't find any infirmity in the decision of Id. CIT(A). Therefore, this ground of appeal of the revenue is dismissed.

14. In the result, the appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

Order pronounced in the open court on 15.01.2024

Sd/-
(Rahul Chaudhary)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 15.01.2024

Rohit: 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 DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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