

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "B" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.1730/Del/2018
[Assessment Year : 2014-15]**

UFO Moviez India Limited, Office No.12, 3 rd Floor, Valuable Techno Park, Plot No.53/1, Road No.07, Marol MIDC, Andheri (East), Mumbai-4000093. PAN-AABCV8900E	vs	Addl.CIT-27, C. R. Building, New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Vishal Kalra, Adv. & Shri Ankit Sahni, Adv.	
Respondent by	Shri Vivek Kumar Upadhyay, Sr. DR	
Date of Hearing	17.01.2024	
Date of Pronouncement	20.02.2024	

ORDER

PER KUL BHARAT, JM

By way of this present appeal, the assessee has challenged the correctness of the order passed by Ld. CIT(A)-9, New Delhi dated 11.12.2017 for the Assessment Year ("AY") 2014-15. The assessee has raised following grounds of appeal:-

General Ground

1. *"On the facts and circumstances of the case, the Hon'ble CIT(A) and the learned AO have erred in assessing the total income of the Appellant at Rs 24,69,92,054 as against the returned income of Rs 19,09,86,020 under normal provisions of the Act, and at Rs 36,98,26,537 as against the returned income of Rs 31,24,41,003 under Section 115JB of the Act.*

Disallowance under section 14A of the Act read with Rule 8D of Income-tax Rules, 1962 ('Rules')

2. *On the facts and circumstances of the case, the Hon'ble CIT(A) has erred in upholding the additional disallowance under section 14A of the Act made by the learned AO by directly invoking Rule 8D of the Rules, and without recording his satisfaction as to why the suo moto disallowance of Rs. 8,67,500 made by the Appellant was unreasonable and unsatisfactory.*
3. *On the facts and circumstances of the case, the Hon'ble CIT(A) has erred in disregarding the fact that the investments were made by the Appellant out of its own funds and not out of borrowed funds.*
4. *On the facts and circumstances of the case, the Hon'ble CIT(A) has erred in disallowing the expenditure to the extent of the exempt dividend income earned without appreciating the fact that expenditure incurred towards earning exempt income was suo moto disallowed by the Appellant and no further expenditure has been incurred in earning the aforesaid exempt income.*
5. *Without prejudice to the above grounds, on the facts and circumstances of the case, the Hon'ble CIT(A) has erred in affirming the learned AO's action of invoking Rule 8D of the Rules and mechanically computing the disallowance under section 14A of the Act read with Rule 8D of the Rules, without appreciating that:*
 - 5.1. *the learned AO had erred in not appreciating the fact that most of the Appellant's investments were in its subsidiaries/ group companies (strategic investments) and the said investments were made with a view to enhance its business and not to earn exempt dividend income;*
 - 5.2. *the learned AO had erred in considering the interest expenditure on term loans and vehicle loans, bank charges and other borrowing costs (loan processing fees) for the purpose of computing disallowance under the provisions of Rule 8D(2)(ii) of the Rules;*

5.3. *the learned AO had erred in not considering the fact that the investments were made by the Appellant out of its own funds and not out of borrowed funds.*

The Appellant respectfully submits that each of the above grounds/sub-grounds of appeal are without prejudice to and independent of one another.

The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever all or any of the above grounds/sub-grounds of appeal at any time before or at the time of the appeal.”

2. The only effective ground raised by the assessee in this appeal is against the sustaining of disallowance made u/s 14A of the Income tax Act, 1961 (“the Act”) to the extent of dividend income.

3. Facts in brief of the case are that the assessee is engaged in the business of digital cinema for AY 2014-15 under consideration. The case of the assessee was selected for scrutiny assessment and the Assessing Officer (“AO”) vide order dated 16.12.2016 passed assessment order u/s 143(2) of the Act, disallowed the expenditure by invoking the provision of section 14A of the Act r.w. Rule 8D of the Income Tax Rules, 1962 (“the Rules”). Thereby, the AO made disallowance of INR 5,82,53,034/-. However, he assessed the income of the assessee at book profit of INR 36,98,26,537/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee. Thereby, he restricted the disallowance u/s 14A of the Act to the extent of INR 27,61,157/-, being the dividend income earned by the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before the Tribunal.

6. Ld. Authorized Representatives of the parties categorically submitted that against the order of Ld.CIT(A), no appeal has been filed by the Revenue. In the light of the submissions, we proceed to adjudicate the present appeal, presuming that no cross appeal has been filed by the Revenue.

7. Apropos to grounds of appeal, Ld. Counsel for the assessee submitted that Ld.CIT(A) was not justified in restricting the disallowance to the extent of dividend income. He submitted that authorities below failed to appreciate the fact that no disallowance u/s 14A of the Act was called for. On account of the fact that the AO failed to record his satisfaction as to why *suo moto* disallowances made by the assessee are not correct having regard to the accounts of the assessee. Ld. Counsel for the assessee submitted that the lower authorities while computing the disallowance, grossly erred in taking the gross investments instead of restricting to the extent of investments which has earned dividend or exempt income. He further submitted that Ld.CIT(A) although accepting the contention of the assessee that only dividend yielding investments to be considered for computation of disallowance u/s 14A of the Act, in terms of the decision of Special Bench of the ITAT, Delhi Tribunal in the case of **ACIT vs Vireet Investment Pvt.Ltd.** where he restricted the disallowance to the extent of exempt income. He took us through the financial statement to demonstrate that the investments made on non-yielding exempt income and the investment in foreign entities which attracted taxation than the *suo motto* disallowance made

by the assessee would be sufficient. He submitted that Ld.CIT(A) did not advert to the submissions of the assessee.

8. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below.

9. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Ld.CIT(A) after considering the various submissions made by the assessee, decided the issue partly in favour of the assessee. The relevant contents of the findings of Ld.CIT(A) are reproduced as under:-

5.1.5. "It is undisputed fact that the appellant has received dividend income amounting to Rs.2761157/- being claimed exempt in computation of total income for the previous year relevant to the AY 2014-15. The contention of the appellant that only dividend yielding investment be considered for computation of disallowance u/s 14A is quite logical and therefore requires to be accepted as has been held in the case of ACIT vs. Vireet Investment Pvt. Ltd. (ITAT Delhi) (Special Bench), supra. So far claim with respect to borrowing of the fund and its investment is concerned, the appellant has not controverted the finding of fact of the Ld. AO that it had a systematic investment over the period of time and therefore, the appellant contention that it has surplus find in the form of share capital and reserve and surplus being used for investment does not hold conclusive. It is also not the case of the appellant that investments made over the period of time has been through an exclusively independent investment account maintained separately for the purpose.

5.1.6. Since, the computation of disallowance u/s 14A made by Ld. AO has not factored in the above principle, it is optimum that disallowance be limited to the maximum of exempt income claimed by the appellant in

its return of income for the previous year relevant to the AY 2014-15. This issue has been dealt with by the Hon'ble jurisdictional High Court in judgment cited as *Joint Investments Pvt. Ltd. vs. CIT - (2015) 372 ITR 694 (Del.)* as under:

".....Disallowance under Section 14A read with Rule 80 volunteered Rs.2,97,440/- as attributable under Section 14A for the purpose of disallowance - AO on the basis of his own understanding of Rule 8D of the Income Tax Rules disallowed the sum of Rs. 52,56, 197/- Held that:- In the present case, the AO has not firstly disclosed why the appellant/assessee's claim for attributing Rs.2,97,440/- as a disallowance under Section 14A had to be rejected. In Taikisha [2014 (12) TMI 482-DELHI HIGH COURT) says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assessee's claim or explanation. The second aspect is there appears to have been no scrutiny of the accounts by the AO - an aspect which is completely unnoticed by the CIT (A) and the ITAT. The third, and in the opinion of this court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is Rs.48,90,000/-, the disallowance ultimately directed works out to nearly 110% of that sum, i.e., Rs. 52,56, 197/-. By no stretch of imagination can Section 14A or Rule 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in Section 14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case....."

10. The contention of the assessee is that had the AO excluded the non-dividend bearing investments and investment made out of non-interest bearing

fund, no disallowance would have been called for. The Ld.CIT(A) has sustained the additions to the extent of exempt income without adverting to the contentions of the assessee regarding exclusion of investments that did not earn dividend income, investments that earned taxable income and investments that were made out of interest free own funds. There is no ambiguity under the law that Section 14A of the Act casts statutory obligation on the Assessing Authority to verify and satisfy itself about the correctness of claim of the assessee regarding *suo-motto* disallowance or no disallowance at all in relation to expenditure incurred for earning of exempt income. If the AO fails to give clear finding, he would be failing into statutory obligation. In the present case, the AO had not adverted to the objections of the assessee and did not accept the *suo-motto* disallowance made by the assessee. Looking to the facts of the present case, the AO failed to take into account that the assessee was having interest free fund. Certain investment did not earn exempt income and some investment in foreign entities were amendable to tax in India. Further, AO did not give any cogent reason for rejecting the *suo-motto* disallowance. We therefore, are considered view in the absence of such finding under the facts of the present case, disallowance made by AO and restricted by Ld.CIT(A) to the extent of exempt income, is not justified. We therefore, direct the AO to delete the impugned addition. The ground raised by the assessee is accordingly, allowed.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 20th February, 2024.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI