

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI**

**SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1509/MUM/2021
(Assessment Year: 2016-17)**

&

**ITA No. 1510/MUM/2021
(Assessment Year: 2017-18)**

M/s Aachman Vanijya Pvt. Ltd.,

Main Building, 2nd Floor,

Kolkata - 700001

[PAN: AACCA5165H]

..... **Appellant**

Deputy Commissioner of Income Tax,

Central Circle – 8(4), Mumbai,

6th Floor, Aayakar Bhavan, M K Road,

Mumbai - 400020

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Ms. Ridhisha Jain

For the Respondent/Department : Shri Ajay Chandra

Date

Conclusion of hearing : 08.02.2024

Pronouncement of order : 27.02.2024

ORDER

Per Bench:

1. These are 2 appeals pertaining to Assessment Years 2016-17 and 2017-18 preferred by the Assessee against the two separate orders, each dated 13/08/2021, passed by the Ld. Commissioner of Income Tax (Appeals)-50, Mumbai [hereinafter referred to as 'the CIT(A)']. Since the appeals involve identical issues the same were heard together and are being disposed by way of a common order.

ITA No. 1509/MUM/2021 (Assessment Year: 2016-17)

2. We would first take up appeal for the Assessment Year 2016-17 which has been preferred by the Appellant challenging the order, dated 13/08/2021, passed by the CIT(A), whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 28/12/2019, passed under Section 153A read with Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
3. The Assessee has raised following grounds of appeal in ITA No. 1509/Mum/2021:
 - "1. *On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding addition of Rs. 4,37,130/- made by the Ld. AO by wrongly concluding that actual interest has been received on refund without appreciating the fact that assessee never received any intimation nor any communication from the department in respect of credit of refund and its corresponding interest and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.*
 2. *On the facts and in the circumstances of the case and in the law the Hon'ble CIT(A) erred in upholding addition of Rs. 14,51,111/- made by the Ld. AO by wrongly invoking provisions of Section 14A r.w.r. 8D of the Act and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under."*
4. The relevant facts in brief are that the Appellant filed return of income for the Assessment Year 2016-17 on 06/10/2016. A search and seizure action under Section 132 of the Act was conducted on 22/03/2018. Consequent to the aforesaid search action, notice dated 03/07/2019 was issued to the Appellant under Section 153A of the Act. In response to the same, the Appellant filed return of income on 11/09/2019 declaring total income of INR 2,81,21,040/-. Subsequently, assessment was framed on the Appellant vide order,

dated 28/12/2019, passed under Section 153A read with Section 143(3) of the Act after making, inter alia, disallowance of INR 14,51,111/- under Section 14A of the Act and addition of INR 4,37,130/- in respect of interest received on refund under Section 244A of the Act.

5. Being aggrieved, the Appellant carried the issue in appeal before CIT(A). The CIT(A) decline to grant any relief and dismissed the appeal preferred by the Appellant, vide order dated 28/12/2019.
6. The Appellant is now in appeal before us on the grounds reproduced in paragraph 3 above.

Ground No. 1

7. Ground No. 1 raised by the Appellant pertains to addition of INR 4,37,130/- pertaining to interest on refund. On perusal of record, we find that the Assessing Officer had made addition of INR 4,37,130/- holding the same to be interest received on income tax refund not offered to tax by the Appellant in the return of income.
8. Before the CIT(A), it was contended that no information relating to interest on income tax refund was received by the Appellant. While the Assessing Officer had recorded that the interest on income tax refund was adjusted against the outstanding demand, no notice/initiation under Section 245 of the Act was received by the Appellant. Interest on refund was also not credited to the bank account of the Appellant. Even Form 26AS, at the time of filing return of income, did not reflect any interest on refund. Therefore, the Appellant could not have offered to tax interest on income tax refund in the return of income. However, the CIT(A) decline to grant any relief to the Appellant on this issue. On perusal of order

passed by the CIT(A), we observed that the CIT(A) has recorded that the Appellant had admitted the fact that the interest on income tax refund had been adjusted against the outstanding demand and therefore, no fault could be found with the action of the Assessing Officer making addition on account of interest on refund.

9. During the course of the hearing before us, the Ld. Authorised Representative for the Appellant had placed reliance upon the decision of the Tribunal in the case of the Appellant for the Assessment Year 2018-19 [ITA No. 1511/Mum/2021, dated 22/11/2022], wherein the identical issue had been decided by the Tribunal as under:

"12. Considered the submissions of the Ld.DR and material placed on record, with regard to interest received by the assessee on income tax refund u/s. 244A of the Act, the Assessing Officer during the assessment proceedings observed that assessee has received interest on refund to the extent of ₹. 9,64,816/-. However, it is brought to our notice assessee is not aware of the fact that it has received any interest on refund and also it is not clear in which assessment year the refund was made or the interest is credited. Since the refund is not credited to the account of the assessee it is not possible for the assessee to declare the above said income as its income. The Assessing Officer adjusted the refund as well as interest in the subsequent assessment year without there being any intimation to the assessee. Ld.CIT(A) sustained the addition with the fact that assessee has not informed about the receipt of the above interest on refund and this fact cannot be denied that assessee has received the above interest. Therefore, the said interest has to be declared as income of the assessee. After careful consideration we observe that the adjustment of refund as well as interest was never communicated to the assessee and it is only a surprise to the assessee that the Assessing Officer has adjusted the refund as well as interest to that extent against the demand of the subsequent Assessment Years.

13. We observe that as per section 245 of the Act a refund is found to be due to the assessee, the Assessing Officer, setoff the

amount to be refunded or any part of that amount, against the sum, if any, remain payable under this Act to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under section 245 of the Act.

14. Therefore, in the given case no such intimation was communicated to the assessee. Therefore, assessee has not offered the same to its income and further, we observe that the Assessing Officer has adjusted the refund as well as interest in the demand of the subsequent assessment year without clearly explaining or intimating for which assessment year the demand was adjusted. As and when the intimation is communicated to the assessee the assessee comes to know of the adjustment then only the Assessing Officer can enforce the demand. Therefore, in the interest of justice, we remit this issue back to the file of the Assessing Officer to communicate all the details to the assessee and if the refund is given to the assessee in this assessment year the relevant tax may be adjusted first for the above stated demand i.e. tax on interest on refund and balance may be adjusted for the other Assessment Years. Accordingly, ground raised by the assessee is partly allowed for statistical purpose."

10. Since the facts and circumstances for the Assessment Year 2016-17 before us are the identical to the Assessment Year 2018-19, addition of INR 4,37,130/- on account of interest on income tax return is set aside and the issue is remanded back to the file of the Assessing Officer in terms of direction issued by the Tribunal in paragraph 14 of the above order dated 22/11/2022, passed in the case of the Appellant for the Assessment Year 2018-19 [ITA No. 1511/Mum/2021, dated 22/11/2022]. Accordingly, Ground No. 1 raised by the Assessee is allowed for statistical purpose.

Ground No. 2

11. Ground No. 2 raised by the Appellant pertains to disallowance of INR 14,51,111/- made by the Assessing Officer under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962

(hereinafter referred to as 'the Rules') which was confirmed by the CIT(A).

12. The primary contention raised by the Ld. Authorised Representative for the Appellant was that the Appellant had made suo moto disallowance of INR 95,535/- under Section 14A of the Act. The Assessing Officer had rejected the suo moto disallowance without recording the proper dissatisfaction and invoked provision contained in Rule 8D of the Rules in mechanical manner.
13. Per contra, the Ld. Departmental Representative supported the disallowance made by the Assessing Officer under Section 14A of the Act by placing reliance upon the order passed by the Assessing Officer and the CIT(A).
14. We have heard the rival contention and perused the material on record. On perusal of the Assessment Order, we find that the Assessing Officer has made disallowance of INR 14,51,111/- under Section 14A of the Act recording as under:

"6.2 Disallowance u/s 14A

On perusal of the details filed, it is observed that the assessee has earned Dividend income of Rs. 29,42,875/- and has been claimed exempt. Vide order sheet entry, the assessee was requested working of disallowance u/s 14A r.w.r. 8D. The assessee company has vide letter dated 19.12.2019 furnished its submissions on the disallowance u/s 14A r.w.r. 8D of the I.T. Act, 1961.

Based on the submission made by the assessee, the working of disallowance u/s 14A read with rule 8D is calculated as under:

8D(2)(i)	Direct Expenses		50,772/-
8D(2)(ii)	0.5% of Average investments : 0.5% of Rs. 29,91,74,757/-	:	Rs. 14,95,874
	Total Disallowance u/s 14A r.w.r. 8D	:	Rs. 15,46,646/-

The assessee has made suo-moto disallowance u/s 14A to the extent of Rs. 95,535/- in the computation of total income, therefore, the balance amount of Rs. 14,51,111/- is disallowed u/s 14A read with Rule 8D and added to the total income of the assessee.”

15. On perusal of above, we find that the Assessing Officer has failed to record dissatisfaction regarding suo moto disallowance of INR 95,535/- made by the Appellant under Section 14A of the Act. The Hon'ble Supreme Court had, in the case of Godrej & Boyce Mfg. Co. Ltd. v. Dy. CIT: 394 ITR 449, observed that it was only after the Assessing Officer had recorded his dissatisfaction as regards the correctness of the claim of the Assessee that the provisions of Section 14A of the Act read with Rule 8D could be invoked. We note that identical facts and circumstances disallowance made by the Assessing Officer under Section 14A of the Act for the Assessment Year 2018-19 was deleted by the Tribunal in appeal for the Assessment Year 2018-19 [ITA No. 1511/Mum/2021, dated 22/11/2022]. In view of the aforesaid disallowance of INR 14,51,111/- made by the Assessing Officer under Section 14A of the Act read with Rule 8D of the Rules is deleted. Ground No. 2 raised by the Appellant is allowed.

ITA No. 1510/MUM/2021 (Assessment Year: 2017-18)

16. We would now take up appeal for the Assessment Year 2017-18 which has been preferred by the Appellant challenging the order, dated 13/08/2021, passed by the CIT(A), whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 28/12/2019, passed under Section 153A read with Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

17. The Assessee has raised following ground of appeal in ITA No. 1510/Mum/2021:

"1. On the facts and in the circumstances of the case and in the law the Hon'ble CIT(A) erred in upholding addition of Rs. 25,21,476/- made by the Ld. AO by wrongly invoking provisions of Section 14A r.w.r. 8D of the Act and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under."

18. During the course of hearing, both the sides agreed that for the Assessment Year 2017-18, in facts and circumstances identical to Assessment Year 2016-17, the Assessing Officer had made disallowance under Section 14A of the Act read with Rule 8D of the Rules recording as under:

"6.1 Disallowance u/s 14A:

On perusal of the details filed, it is observed that the assessee has earned Dividend income of Rs. 24,83,606/- and has been claimed exempt. Vide order sheet entry, the assessee was requested working of disallowance u/s 14A r.w.r. 8D. The assessee company has its submissions on the disallowance u/s 14A r.w.r. 8D of the I.T. Act, 1961.

Based on the submission made by the assessee, the working of disallowance u/s 14A read with rule 8D is calculated as under:

8D(2)(i)	Direct Expenses		62,403/-
8D(2)(ii)	1% of Average investments : Rs.	:	Rs. 25,54,078
	25,54,078/-		
	Total Disallowance u/s 14A r.w.r.	:	Rs. 26,16,481/-
	8D		

The assessee has made suo-moto disallowance u/s 14A to the extent of Rs. 95,005/- in the computation of total income, therefore, the balance amount of Rs. 25,21,476/- is disallowed u/s 14A read with Rule 8D and added to the total income of the assessee. Penalty proceedings u/s 270A(2) of the Act is separately initiated for under-reporting of income."

19. On perusal of above, we find that the Assessing Officer has failed to

record dissatisfaction regarding suo moto disallowance of INR 95,005/- made by the Appellant under Section 14A of the Act. Therefore, our findings/adjudication in relation to Ground No. 2 raised in appeal for the Assessment Year 2016-17 shall apply mutatis mutandis. Accordingly, in view of the judgment of the Hon'ble Supreme Court in the case of Godrej & Boyce Mfg. Co. Ltd. v. Dy. CIT: 394 ITR 449, and the decision of the Tribunal in the case of the Assessee in appeal for the Assessment Year 2018-19 [ITA No. 1511/Mum/2021, dated 22/11/2022], the disallowance of INR 25,21,476/- made by the Assessing Officer under Section 14A of the Act read with Rule 8D of the Rules is deleted. Ground No. 1 raised by the Appellant is allowed.

20. In result, both the appeals preferred by the Assessee are treated as allowed for statistical purposes.

Order pronounced on 27.02.2024.

Sd/-
(S Rifaur Rahman)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 27.02.2024
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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