

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.3714/Mum/2023
(Assessment Year :2016-17)**

DSP Investment Pvt. Ltd 11 th Floor, Mafatlal Centre, Nariman Point Mumbai-400 021	Vs.	Asstt. CIT 2(1)(1), Mumbai	Circle
PAN/GIR No.AAACB1574H			
(Appellant)		..	(Respondent)

Assessee by	Shri Fenil Bhat
Revenue by	Smt. Mahita Nair
Date of Hearing	27/02/2024
Date of Pronouncement	06/03/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 22/08/2023 passed by NFAC Delhi for the quantum of assessment passed u/s. 143(3) for the A.Y.2016-17.

2. In the grounds of appeal, assessee has challenged the additional disallowance of Rs.2,29,72,864/- made u/s.14A over and above the suomoto disallowance offered by the assessee at Rs.47,89,076/-. Apart from that, assessee has also challenged

similar disallowance u/s.14A while computing the book profit u/s.115JB.

3. In short, the facts qua the issue are that Assessee Company is a NBFC engaged in business of investments. Assessee has earned exempt income at Rs.3,83,39,579/- from the following income:-

Dividend on Mutual Funds	-	Rs.2,37,86,288/-
Dividend on Shares	-	Rs.1,32,37,486/-
Dividend on Tax Free Bonds	-	Rs.13,15,805/-

4. The assessee in the computation of income has worked out the disallowance of Rs.47,89,076/- which was on account of direct expenditure of Rs.1,718/- and other indirect expenses of Rs.47,87,358/-. In response to the show-cause notice as to why disallowance should not be made under Rule 8D, assessee submitted that the assessee has already disallowed the direct expenditure related to exempt income as well as proportionate disallowance of the balance expenditure taking proportion of the exempt income to the total income. Further, the assessee has made reference to the decision of the ITAT, Mumbai in the assessee's own case for earlier assessment years wherein the disallowance was restricted to the disallowance voluntarily made by the assessee. The assessee on this issue has also relied upon the various judicial pronouncements. Further assessee also pleaded that that investment which have not generated exempt income cannot be considered. Accordingly, the assessee has stated that no further disallowance is called for.

5. However, the ld. AO rejected assessee's explanation stating that assessee has not maintained separate accounts for investments vis-à-vis their source and the working of the disallowance is not acceptable because the expenses are apportioned in the ratio of exempt income to total income. After referring to the CBDT Circular No.5/2014 dated 11/02/2014, he held that assessee is maintaining an average investment of Rs.555 Crores, which is more than 75% of the total assets and therefore, expenditure incurred on this will be more than the amount disallowed by the assessee u/s.14A. Accordingly, he made the disallowance under Rule 8D at Rs.2,77,61,940/- and after deducing suomoto disallowance of Rs.47,89,076/-, the balance amount of Rs. 2,29,72,864/- has been disallowed.

6. The ld. CIT (A) had confirmed the said disallowance made by the assessee and also similar disallowance made while computing book profit u/s.115JB.

7. Before us, ld. Counsel for the assessee submitted that the working of proportionate disallowance by the assessee has been upheld by the Tribunal in the earlier years wherein the assessee's working has been found to be justified. In any case, he submitted that if investments which have not yielded exempt income is to be removed from the working of Rule 8D(2)(iii), then it will work out to Rs.43,59,051/- which is less than suomoto disallowance offered by the assessee.

8. On the other hand, ld. DR relied upon the order of the ld. AO and ld. CIT (A).

9. After considering the relevant finding given in the impugned order as well as computation for disallowance by the assessee, it is seen that assessee has excluded those expenditure which has no relation with the earning of exempt income. The working of expenditure which had no co-relation with the exempt income was as under:-

Total Expenditure as per profit & loss a/c	130,711,587
Less Expenditure incurred in relation to income other than	10,890,055
Provision for Diminution in Value of Investments	72,675,000
Donation 80G	2,525,000
Donation CSR	1,344,405
Deprecation Audit Fees	551,901
Demat Charges	1,738
Professional Tax	2,500
Security Charges	83,226
Rates and Taxes	60,200
Total	42,577,582

Accordingly, assessee has taken the total income as per profit and loss account and in proportion of the dividend income has calculated the disallowance of indirect expenditure of

Rs.47,87,358/-. The said work of disallowance is based on the nature of expenditure debited to the profit and loss account and those, expenditure has been excluded which do not have any connection remotely with the earning of exempt income. This is evident from the details of expenditure noted above. If these expenditure are removed, then in proportion to the total exempt income, the indirect expenditure which has been offered takes into consideration of the other expenditure which can be said to be attributable for earning of exempt income. Precisely this working has been accepted in the case of the assessee by the Tribunal in the earlier years and therefore, such a working of given by the assessee is upheld. Even otherwise also now it is settled by various decisions that investment which has not yielded exempt income should be excluded from the working of disallowance under Rule 8D and if that exercise is carried out, then amount equal to 0.5% of annual average of investment whose income is or shall be exempt works out to Rs.43,59,051/- which is much more than what assessee has offered as suo moto disallowance. Accordingly, the additional disallowance made by the AO is directed to be disallowed.

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

Order pronounced on 6th March, 2024.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 06/03/2024
KARUNA, sr.ps

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai