

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.765/Kol/2023
Assessment Year: 2014-15**

Saregama India Ltd. 33, Jessore Road, Dum Dum, Kolkata-700028. (PAN: AA ACT9815B)	Vs.	Deputy Commissioner of Income Tax, Circle-1(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri K. M. Gupta, AR
Respondent by : Shri P. P. Barman, Addl. CIT

Date of Hearing : 30.01.2024
Date of Pronouncement : 22.03.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Appeal No. ITBA/NFAC/S/250/2023-24/1053304215(1) dated 30.05.2023 passed against the assessment order by DCIT, Circle -3(1), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 09.09.2016 for AY 2014-15.

2. Grounds of appeal raised by the assessee are reproduced as under:

“1. On the facts and circumstances of the case & in law, the Learned Assessing Officer (Ld. AO) and National Faceless Appeal Centre (NFAC) grossly erred in invoking the provision of section 14A of the Income-tax Act, 1961 (the Act) read with Rule HD of the Income Tax Rules, 1962 (the Rules) and sustaining disallowance of INR 1,107,421 based on factually incorrect findings in the assessment order and without recording specific satisfaction

of Ld. AO regarding correctness of Claim made by the Appellant in respect of expenditure incurred in relation to-exempt income.

2. Without prejudice to above, on the facts and circumstances of the case & in law, the Ld. AO and NFAC grossly erred computing the disallowance under Rule 8D(2)(iii) of the Rules of INR 22,97,075 and in not excluding those investments which did not yield any exempt income during the year under consideration.

3. On the facts and circumstances of the case & in law the Ld. NFAC grossly erred in recording factually incorrect finding and restricting Appellant's claim towards TDS credit of (NR 10,03.95,894 as against INR 10,05,52,143 claimed as per Form 26AS thereby resulting in short TDS credit of INR 1,56,249.”

3. Brief facts of the case are that assessee is a listed company engaged, inter alia, in the business of manufacturing and sale of storage devices namely audio cassettes, CDs etc. and also in production of films/TV serials. Assessee filed its original return of income on 28.11.2014 which was revised on 22.03.2016 reporting a total income of Rs.25,56,92,463/-. In the course of assessment, Ld. AO noted that assessee had earned exempt income from its investments. He noted that assessee claimed no expenditure had been incurred for earning the exempt income. He in this respect also noted that an amount of Rs.2,78,38,000/- has been debited to the P&L Account towards interest. He thus recorded his dissatisfaction on the claim made by the assessee that no expenditure incurred in relation to income from dividend. He thereafter, determined the disallowance of Rs.76,37,540/- u/s. 14A applying rule 8D(2) (ii) & (iii). In rule 8D(2)(ii) Rs.53,40,465/- and in rule 8D(2)(iii) Rs.22,97,075/- were computed for the purpose of disallowance. Aggrieved, assessee went in appeal before the Ld. CIT(A).

4. In respect of the disallowance made under rule 8D(2)(ii) of Rs.53,40,465/- towards interest expenditure, Ld. CIT(A) held that no interest bearing fund was found to be diverted and, therefore, no disallowance of interest is called for. On a specific query by the Bench on this relief granted by Ld. CIT(A) as to whether department has come

up in appeal before the Tribunal challenging the relief so given, it was submitted by the ld. Sr. DR that there is no such appeal filed by the revenue. On the remaining disallowance of Rs.22,97,075/- under rule 8D(2)(iii), ld. CIT(A) confirmed the disallowance so computed and made by the Ld. AO. However, while confirming this disallowance, he gave a direction to the AO to ascertain whether assessee has disallowed an amount of Rs.11,89,654/- in its return of income suo moto. If such a claim is found to be credited then the amount of Rs.11,89,654/- be reduced from the disallowance confirmed by him. Aggrieved by this partial relief, assessee is in appeal before the Tribunal.

5. Ld. Counsel for the assessee submitted that assessee had suo moto disallowed an amount of Rs.11,89,654/- u/s. 14A for which he referred to the paper book page 16 of the return form and pointed at item no. 8 where this amount of expenses has been quantified and reported in the return. Further, he referred to the tax audit report wherein at clause 21(h), the amount of deduction inadmissible in terms of section 14A has been reported, as estimated by the assessee. He thus, evidently demonstrated that Ld. AO is grossly incorrect in holding that the assessee has not made any disallowance on its own u/s. 14A in respect of exempt income earned by it during the year. On the strength of this wrong finding of the AO, Ld counsel asserted that there is no satisfaction recorded by the AO for the purpose of rejection of suo moto disallowance made by the assessee by having regarded to the books of account of the assessee and resorted to apply Rule 8D for computing the disallowance.

5.1. On a specific query by the Bench on this aspect as to how assessee had arrived at this suo moto disallowance of Rs.11,89,654/-, it was submitted that it is an estimate made by the assessee by taking 11% ad hoc of the exempt income for the purpose of making

disallowance in computing the total taxable income. From this submission, we note that assessee has also made an estimation by adopting an ad hoc percentage of the exempt income. Thus, the contention raised by the assessee that resorting to rule 8D computation by the AO is on a wrong footing, falls apart. Computation of the disallowance u/s. 14A described in rule 8D is more specific and standardised and, therefore, AO has rightly applied the same.

6. However, vide ground no. 2, assessee has contested that even while computing disallowance under Rule 8D(2)(ii), investments which did not yield any exempt income are to be excluded which the AO has failed to do so. In this respect, we do find force in the submission made by the assessee. Hon'ble jurisdictional High Court of Calcutta in the case of REI Agro Ltd. Vs. DCIT in G.A. 3022 of 2013 ITAT 161 of 2013, dt. 23rd December, 2013 has dealt with this issue.

6.1. Respectfully following the said decision, we allow ground no. 2 raised by the assessee and direct the AO to exclude those investments which did not yield any exempt income for the purpose of computing disallowance under rule 8D(2)(iii). We also direct the AO to give credit for the suo moto disallowance made by the assessee and duly reported in its return of income as well as tax audit report of Rs.11,89,654/- from the correct amount of disallowance computed under Rule 8D(2)(iii).

7. Further, in ground no. 3 assessee has contested that there is a short credit of TDS amounting to Rs.1,56,249/- which the AO has not given. According to the assessee, total claim of TDS made by it is of Rs.10,03,95,894/- and the claim in Form 26AS is of Rs.10,05,52,143/-. In this respect, we direct the AO to verify the claim from the relevant documentary evidence and to ensure that

matching income in this respect has been reported in the return for the year under consideration. If such claim is found to be correct, necessary effect be given in accordance with law. Needless to say assessee be given reasonable opportunity of being heard. Accordingly, ground no. 3 is allowed for statistical purposes.

8. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 22nd March, 2024.

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 22nd March, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi.
 4. The Pr. CIT, Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata