

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 2693/MUM/2023
Assessment Year: 2018-19**

Dy. CIT, CC-4(2), Central
Range-4,
Room No. 1921, 19th floor,
Air India Building Nariman
Point, Mumbai-400021.

Vs.

Birla Group Holdings Pvt. Ltd.,
1st floor Industry House, 159
Churchgate Reclamation,
Churchgate, Mumbai-400020.

Appellant

**PAN NO. AAACR 2250 C
Respondent**

Assessee by : Mr. Sunil Hirawat
Revenue by : Mr. Ashok Kumar Ambastha, DR

Date of Hearing : 18/03/2024
Date of pronouncement : 26/03/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 25.05.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – 52, Mumbai [in short ‘the Ld. CIT(A)’] for assessment year 2018-19, raising following grounds:

1. *"The Ld. CIT(A) has erred in restricting the disallowance u/s 14A to Rs. 17,49,706/- by ignoring the*



provisions of section 14A r.w.r. 8D(2) which prescribes a methodology for disallowance to be made u/s. 14A."

2. Briefly stated, facts of the case are that the assessee a non-banking financial company (NBFC) was engaged in loan financing and long term investment in shares and securities etc. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short the 'Act') were issued and complied with. During the assessment, the Assessing Officer noted that assessee had earned total dividend income of Rs.5,05,59,651/- from the investment of Rs.3,76,16,19,030/- in equity and preference shares. Out of total dividend earned, amount of Rs.3,83,23,044/- was claimed by the assessee as exempt from tax u/s 10(34/35) of the Act. The assessee computed *suo-motu* disallowance of Rs.3,13,59,987/- under Rule 8D of income-tax Rules, 1962(in short the 'Rules') . The said computation of the assessee is reproduced, for ready reference, as under:

Rule	Particulars	Rs.	Rs.	Rs. Restricted to
Rule 8D(2)(i)	Amount of expenditure directly relating to income exempted from tax already disallowed in 14A Interest Expenses (Net) Other Expenses	2,95,12,204 60,000	2,95,12,204	2,95,12,204
Rule 8D(2)(ii)	1% of annual average of the monthly	As per working	2,87,22,814	



	income average of the opening and closing As balances of the value investment, income from at which does not or shall not form part of total income.	attached As per working attached		17,87,783
	Restricted to salary and other expenses debited statement of P&L			
	Total disallowance u/s 14A r.w.s. 8D			3,13,59,987

2.1 The assessee restricted the disallowance under Rule 8D(2)(ii) up to the salary and other expenses debited into Profit and loss account amounting to Rs.17,87,783/- but the Assessing Officer rejected the claim of the assessee restricting the disallowance under Rule 8D(2)(ii) of the Rules to Rs.17,87,783/-.

3. On further appeal before the Ld. CIT(A), the assessee claimed that in the profit and loss account under the head other expenses assessee had claimed only expenditure of Rs.20,08,975/- and expenses of Rs.6,31,290/- under the head 'employee benefit expenses' thus totaling to Rs.26,40,265/- whereas out of this the assessee has already disallowed other expenses of Rs.60,000/- while working out disallowance under Rule 8D(2)(i) of the Rules and disallowance of Rs.2,14,718/- has been made while computing the profit and gains from the business which includes maintenance charges of Rs.1,87,243/-, provision for gratuity amounting to Rs.21,923/- and property tax amounting to Rs.5,552/- . According



to the assessee under Rule 8D(2)(ii), the disallowance cannot exceed Rs.17,49,706/-. [expenditure of Rs.26,40,265/- less Rs.9,12,482/- (Rs.60,000+2,14,718+6,37,764)]. The assessee also submitted that in earlier year also disallowance was restricted by the Assessing Officer as under:

S. No.	Assessment Year	Order	Disallowance computed as per order	Disallowance restricted as per order
01.	2013-14	u/s 143(3) dated 31.12.2015	1,01,01,915/-	4,39,084/-
02.	2014-15	u/s 143(3) dated 30.11.2016	1,01,00,653/-	5,60,170/-
03.	2015-16	u/s 143(3) dated 31.12.2017	1,06,51,065/-	9,04,302/-
04.	2016-17	u/s 143(3) dated 24.12.2018	1,13,93,453/-	9,55,516/-
05.	2017-18	u/s 143(3) dated 20.12.2019	2,47,26,872/-	11,72,394/-

3.1 The Ld. CIT(A) after considering the submission of the assessee deleted the addition observing as under:

“4.4. I have considered the facts of the case. The appellant has suo-moto disallowed interest expenditure of Rs.2,95,12,204/- as directly relatable interest expenditure. According to the appellant, the balance interest expenditure is directly relatable to interest earning activities, in its case. Besides Rs.60,000/- has been disallowed as directly relatable other expenses. In all, Rs.2,95,72,204/- has been identified by the appellant as directly relatable expenses in terms of Rule 8D(2)i) and has been disallowed in the Return of Income at Sr. No. 8 of Schedule BP. The AO has made further disallowance of Rs.2,87,22,814/- by applying Rule



8D(2)(ii), which according to the appellant should be restricted to Rs. 17,49,706/- being the other expenses debited in the P&L A/c. The appellant has made the submission before the AO vide letter dated 15.02.2021 and has also reiterated this position in its submission before the undersigned dated 01.03.2023. The appellant has given detailed working as to how the other expenses of Rs. 17,49,706/- has been arrived at. The appellant has also pointed out that its similar claim had been favourably considered by the AO in the immediately preceding year, i.e. A.Y. 2017-18. Hence, the disallowance u/s.14A r.w.r. 8D is restricted to Rs. 17,49,706/- as requested by the appellant. The balance disallowance stands deleted. These grounds are partly allowed.”

4. Before us, the Ld. Departmental Representative (DR) submitted that under Rule 8D(2) two types of disallowance have been specified **firstly**, the amount of expenditure directly related to the exempted income under Rule 8D(2)(i) of the Rules, **secondly**, an amount equal to 1% of the annual average of the monthly average of the opening and closing balance of the value of the investment in the exempted yielding investment. But in the proviso to said Rule it is specified that amount referred in clause 8D(2)(i) and 8D(2)(ii) shall not exceed total expenditure claimed by the assessee. The Ld. DR submitted that in the case of the assessee as per the profit and loss account, total expenses of Rs.16,88,26,645/- have been claimed and therefore, the disallowance, following Rule 8D made by the Assessing Officer which is only Rs.5,82,95,018/- ,being not exceeding the total expenditure of Rs.16,88,26,645/- claimed by the assessee ,therefore, the disallowance computed as per the provisions of Rule 8D(2) of the Rules should be upheld.



5. We have heard rival submission of the parties and perused the relevant material on record. In the case the assessee has earned exempted income of Rs.38,32,30,044/- from investment in equity and preference shares amounting to Rs.3,76,16,19,030/- which has been claimed as exempted from the income-tax. The assessee itself has computed disallowance u/s 14A invoking Rule 8D(2), firstly under 8D(2)(i), the assessee has computed disallowance amounting to Rs.2,95,72,204/-, secondly, under Rule 8D(2)(ii) the assessee computed disallowance amounting to Rs.2,87,22,814/- but restricted this disallowance to Rs.17,87,783/- invoking the proviso that disallowance cannot exceed the expenses claimed whereas according to the Assessing Officer total disallowance under Rule 8D(2)(i) and 8D(2)(ii) works out to Rs.5,82,95,018/- which is not exceeding the total expenses of Rs.16,88,26,645/- claimed by the assessee in profit and loss account. Therefore, the issue in dispute in the case is the amount under Rule 8D(2)(ii) which according to computation come to Rs.2,87,22,814/- however, the assessee has restricted the same to Rs.17,87,783/- invoking the proviso to Rule 8D. The assessee has considered other expenses of Rs.20,08,975/- and employee benefit expenses of Rs.6,31,290/-, totaling to Rs.26,40,265/- for the purpose of expenses claimed after reducing . three amounts, *firstly*, Rs.60,000/- already disallowed under Rule 8D(2)(i) of the Rules, *secondly* Rs.2,14,718/- which was already disallowed while computing the business profit which includes maintenance charges of Rs.1,87,243/- provision for gratuity of



Rs.21,923/- and property tax of Rs.5,552/-, *thirdly*, the amount of rent paid for sub-letting of the property amounting to Rs.6,26,764/- out of other expenses of Rs.20,08,975/-. The contention of the assessee is that those expenses have been excluded out of expenses being specifically not related to exempted income. In this manner, the assessee has restricted the disallowance to Rs.17,87,783/-. Since, the issue in dispute is regarding what is the amount to the extent of the disallowance should be restricted invoking to proviso to Rule 8D, it is relevant to reproduce the said Rule along with proviso as under:

8D. (1) *Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with*

- (a) *the correctness of the claim of expenditure made by the assessee; or*
- (b) *the claim made by the assessee that no expenditure has been incurred, in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).*

[(2) *The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:*

- (i) *the amount of expenditure directly relating to income which does not form part of total income; and*
- (ii) *an amount equal to one per cent of the annual average of the monthly average of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income :*

Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.]

5.1 On perusal of the above proviso below the Rule 8D, we find that it says that disallowance computed under Rule 8D(2)(i) and 8D(2)(ii) shall not exceed total expenditure claimed by the assessee.



In the case in hand, the assessee has filed the copy of the profit and loss account which is reproduced as under:

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BIRLA GROUP HOLDINGS PRIVATE LIMITED
CIN : U67120MH1980PTC023476
STATEMENT OF PROFIT AND LOSS FOR THE YEAR ENDED MARCH 31, 2018

Particulars	Note No.	Year ended 31-03-2018 ₹	Year ended 31-03-2017 ₹
I. INCOME			
Revenue from Operations	16	13,13,90,192	12,83,99,023
Other Income	17	5,54,47,231	4,56,41,320
Contingent Provision against Standard Assets Written Back		-	13,25,042
Total Revenue		18,68,37,423	17,53,65,385
II. EXPENSES			
Finance Cost	18	16,09,02,396	15,32,87,672
Employee Benefits Expense	19	6,31,390	7,27,327
Depreciation and Amortization Expense	20	1,75,683	1,84,611
Other Expenses	21	20,08,975	13,53,101
Contingent Provision against Standard Assets		51,08,101	-
Total Expenses		16,88,26,645	15,55,52,711
III. Profit/(Loss) before Tax			
		1,80,10,778	1,98,12,674
Less: Tax Expenses			
Current Tax		50,00,000	37,00,000
Tax adjustment for earlier year		-	55,500
Deferred Tax		(53,586)	372
		49,46,414	37,55,872
IV. Profit/(Loss) after Tax			
		1,30,64,364	1,60,56,802
V. Earnings per Equity Share			
Basic	25	5,393.50	6,635.04
Diluted		5,393.50	6,635.04

Significant Accounting Policies 1

The accompanying notes are an integral part of the financial statements

As per our report of even date attached

For and on behalf of
FOR KHIMJI KUNVERJI & CO.
Chartered Accountants
Firm Regn. No. 105146W

[Signature]
R.V. CHANIYARI
Partner
Membership No. F-31083

Place: Mumbai

Date: 13 AUG 2018

For and on behalf of the Board of Directors

[Signature] *[Signature]*
(Suresh Chandra Tapuriah) **(Pradeep Kumar Jajodia)**
Director Director
DIN : 00372526 DIN : 00376220



5.2 On perusal of the above, profit and loss account it is evident that assessee has claimed total expenses of Rs.16,88,26,645/- which is much higher than disallowance of Rs.2,93,72,204/- under Rule 8D(2)(i) and disallowance of Rs.2,87,22,814/- under Rule 8D(2)(ii) totaling to Rs.5,82,95,018/-. The provisions of the Rule are amply clear that for the purpose of restricting the disallowance total expenditure claimed by the assessee has to be seen whereas the assessee has taken into consideration only two heads of the expenses which are **firstly**, other expenses amounting to Rs.2,08,975/- and **secondly**, employee benefit expenses of Rs.6,26,290/- . The assessee has not considered the major expenses of the finance cost of Rs.16,09,02,396/- for the purpose of proviso to Rule 8D. The interpretation of the assessee of restricting disallowance only under Rule 8D(2)(ii) to the extent of expenses in the nature of the administrative cost is not emanating from the clear language of the proviso to Rule 8D which restrict the disallowance under Rule 8D(2)(i) and 8D(2)(ii) upto total expenditure claimed by the assessee. In view of the above discussion, we reject the contention of the Ld. counsel for the assessee and set aside the finding of the Ld. CIT(A) on the issue in dispute and restore the finding of the Assessing Officer on the issue in dispute. The grounds of appeal of the Revenue are accordingly allowed.



6. In the result, the appeal of the Revenue is allowed.

Order pronounced in the open Court on 26/03/2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 26/03/2024

Rahul Sharma, Sr. P.S.

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,

(Assistant Registrar)
ITAT, Mumbai