

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3634/Mum./2023

(Assessment Year : 2013-14)

Damani Shipping Pvt. Ltd.

215-216, Verma Chambers

11th Homji Street, Fort

Mumbai 400 001 PAN – AAACD5533A

..... Appellant

v/s

Asstt. Commissioner of Income Tax

Circle-2(1)(1), Mumbai

..... Respondent

Assessee by : Shri Pankaj Toprani

Revenue by : Smt. Mahita Nair

Date of Hearing – 21/02/2024

Date of Order – 22/03/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 09/08/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2013-14.

2. In this appeal, the assessee has raised the following grounds:-

"1) The Learned Commissioner of Income Tax (Appeals) National Faceless centre erred in confirming the action of the Assessing Officer in making addition of Rs. 18,21,211 u/s 14A.

2) The Learned Commissioner of Income Tax (Appeals) National Faceless centre failed to appreciate that The leaned DCIT has mechanically applied the provisions of section 14 A and that Rule of 8D and has ignored directions given by ITAT. The dividend income on shares earned by the Company is only Rs. 4,19,448 whereas the Rs. 18,21,811.

3) The appellant prays that:

3.1 Addition of Rs. 18,21,811 made u/s 14A be deleted

3.2 Interest charged u/s. 234B may be deleted/reduced;

3.3 Personal hearing may be granted,

3.4 Any other relief your honours may deem fit.

4) The above grounds of appeal are without prejudice to each other and the Appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”

3. The only dispute raised by the assessee is against the disallowance of expenditure computed by the Revenue under section 14A of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the business as a customs house agent. For the year under consideration, the assessee filed its return of income on 29/09/2013 declaring a total income of Rs. 5,15,46,140. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the first round of assessment proceedings, it was noticed that the assessee has earned a dividend income of Rs. 1,11,57,291, i.e. dividend on mutual funds of Rs.1,07,47,843 and dividend from Indian companies of Rs.4,90,448, and the same has been claimed as exempt by the assessee. It was further noticed that the assessee has made suo moto disallowance of Rs.2,03,999 under section 14A of the Act while computing its total income. Since the disallowance computed by the assessee is not as per

Rule 8D of the Income Tax Rules, 1962 (*"the Rules"*), the assessee was asked to justify the disallowance made under section 14A of the Act. In response thereto, the assessee submitted that it has no borrowings and has not incurred any interest cost. The assessee further submitted that it has utilised the Wealth Management services of various funds in investing the funds and they have taken full responsibility for opening the account and filling the forms, for which the assessee has paid Rs. 2,03,999 as management fees which have been suo moto disallowed under section 14A of the Act. The assessee further submitted that it has not incurred any direct expenses for earning the tax-free income and the dividend was received through the ECS system. It was also submitted that the assessee's staff is not involved in doing any formalities while opening account of investment and therefore no further disallowance is called for.

5. The Assessing Officer ("AO") vide order dated 25/02/2016 passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that the assessee has not submitted any document to establish that all the investments which yield exempt income were managed by the Wealth Management services and that no investments were managed by the assessee itself. The AO further held that some resources of the assessee must have been used for making the investments. Accordingly, the AO computed the disallowance of Rs.18,21,811 under section 14A read with Rule 8D after considering the suo moto disallowance offered by the assessee. In further appeal, the learned CIT(A) dismissed the ground raised by the assessee on this issue and upheld the disallowance made by the AO under section 14A read with Rule 8D. The coordinate bench of the Tribunal vide order dated

08/08/2018 restored the issue to the file of the AO for fresh adjudication after verification of the claim of the assessee.

6. Following the directions of the coordinate bench, the AO granted the opportunity of hearing to the assessee and issued notice under section 142(1) of the Act. In response thereto, the assessee submitted that the only expense incurred to earn tax-free income is the management fees paid of Rs.2,03,999, which has been disallowed in the computation of income. The AO vide order dated 17/12/2019 passed under section 143(3) read with section 254 of the Act did not agree with the submissions of the assessee and held that the assessee is having non-current investment of Rs.38,67,85,915 as on 31/03/2013 and Rs.37,84,48,458 as on 31/03/2012, however, the assessee has not produce any documentary evidence to prove that assessee's staffs, offices, and infrastructures are not at all used in any way for managing the investments. The AO further held that the assessee has incurred expenditures on electricity, legal and professional expenses, and office expenses which are common expenses and need to be apportioned for the purpose of managing investments, which could potentially yield exempt income. The AO further noted that the dividend income constitutes 3.49% of the total receipts of the assessee, while the expenses suo moto disallowed by the assessee under section 14A of the Act is only 0.08% of the total expenses in the Profit and Loss account. The AO held that it is satisfied that the disallowance under section 14A as per Rule 8D has to be made and disallowance made by the assessee is not as per Rule 8D of the Rules. Accordingly, the AO computed the disallowance of Rs.18,21,811 under section 14A read with Rule 8D(2)(iii) of the Rules.

7. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and upheld the disallowance made by the AO under section 14A read with Rule 8D. Being aggrieved, the assessee is in appeal before us.

8. We have considered the submissions of both sides and perused the material available on record. In the present case, it is undisputed that the assessee has earned dividend income on mutual funds of Rs.1,07,37,843 and dividend on shares from Indian companies of Rs.4,19,448, which has been claimed as exempt under section 10(34) of the Act. In this regard, the assessee suo moto computed the disallowance of Rs.2,03,999 under section 14A of the Act, while computing its total income. It is the claim of the assessee that it has availed the services of HDFC Asset Management Co Ltd in respect of investment in shares of various Indian companies and paid management fees, which has been offered for disallowance under section 14A of the Act. It is further the plea of the assessee that apart from the aforesaid expenditure no other expenditure has been incurred by the assessee for earning the dividend income. As per the assessee, the investment in mutual funds constitutes 92% of the total investment, for which no expenditure has been incurred by it which requires disallowance under section 14A of the Act.

9. From the record, it is evident that the only dispute, in the present case, pertains to the disallowance of Rs.18,21,811 computed by the AO under section 14A read with Rule 8D(2)(iii) of the Rules. Admittedly, while computing the aforesaid disallowance, the AO has only considered the exempt income-yielding investments. It is the plea of the assessee that the disallowance under

section 14A of the Act should be restricted to Rs.2,03,999 paid by the assessee for the Wealth Management services. However, it is pertinent to note that as per the assessee's admission, the Wealth Management services were availed only in respect of investment made in shares of Indian companies, which also as per assessee's admission constitutes only 3% of the total investment and apart from above the assessee has also invested in mutual funds from which it has earned dividend income of Rs.1,11,57,291, during the year under consideration. It is the plea of the assessee that it has not incurred any expenditure which needs to be disallowed under section 14A for earning dividend income from mutual funds. Further, it is claimed that the assessee's investments in the mutual funds are the same as compared to the preceding year. From the perusal of the audited annual accounts of the assessee, forming part of the paper book from pages 6-47, we find that the assessee has a non-current investment of Rs. 38,67,85,915 as on 31/03/2013 and Rs.37,84,48,458 as on 31/03/2012. Further, the investment in fully paid-up equity shares remained the same during the year under consideration as compared to the year ending 31/03/2012. However, we find that the same is not the case with respect to investments in mutual funds, and the assessee, in many cases, has made new investments or sold the previous investment in the year under consideration. Therefore, when the assessee is holding a big portfolio of investments out of which investments in mutual funds admittedly constitute 92%, it is difficult to accept the proposition of the assessee that it has not incurred any expenditure for earning the dividend income from mutual funds. Undisputedly, the assessee is engaged in the business as a customs house agent. Therefore, it is unacceptable that the purchase of new

investments and sale of old investments are without the involvement of any person in the assessee company, not even its directors, and such investments were made in the normal course of its business. Therefore, we find no merits in the submissions of the assessee that no expenditure was incurred by it for earning dividend income from the mutual funds.

10. In the present case, the disallowance computed by the AO under Rule 8D(2)(i) is the suo moto disallowance offered by the assessee, which is the management fees paid for Wealth Management services. Further, it is undisputed that the AO has not computed any disallowance under Rule 8D(2)(ii) of the Rules. Under Rule 8D(2)(iii) of the Rules, expenditure in relation to income which does not form part of the total income was computed by the AO in the present case. It is pertinent to note that Rule 8D(2)(iii) of the Rules provides a computation mechanism whereby 0.5% of the average value of investment, income from which does not form part of the total income, as appearing in the balance sheet on the first and last day of the previous year is considered as the expenditure for the purpose of section 14A of the Act. Accordingly, the AO computed disallowance of Rs.18,21,811, being 0.5% of Rs.36,43,62,204 under section 14A read with Rule 8D.

11. During the hearing, the learned Authorised Representative for the assessee placed reliance upon the decision of the coordinate bench of the Tribunal in DCIT v/s Reliance Capital Asset Management Ltd., ITA No.8625/Mum./2010, dated 17/10/2014. From the perusal of the aforesaid decision, we find that the taxpayer was making the investment mainly in various schemes of Reliance mutual fund and also in other group concerns.

Thus, the coordinate bench came to the conclusion that there is no necessity to apply the formula prescribed in Rule 8D(2)(iii) of the Rules, as the investments are usually made out of business policy. However, in the present case, the assessee has invested in mutual funds of other companies and there is no claim that the same are group concerns of the assessee. Accordingly, we are of the considered view that the aforesaid decision is rendered in a different set of facts and thus not applicable to the present case.

12. Therefore, in view of our aforesaid findings, we find no infirmity in the impugned order upholding the disallowance under section 14A read with Rule 8D(2)(iii) of the Rules. Accordingly, the impugned order is upheld. Further, the levy of interest under section 234B of the Act is consequential in nature. As a result, the grounds raised by the assessee are dismissed.

In the result, appeal by the assessee is dismissed.

Order pronounced in the open Court on 22/03/2024

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 22/03/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai