

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

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.2853/Mum/2023  
(Assessment Year:2018-19)**

**&  
ITA No.2854/Mum/2023  
(Assessment Year:2020-21)**

**Asst. Commissioner of Income Tax**

Circle-2(1)(1)  
Room No.575, 5<sup>th</sup> Floor  
Aayakar Bhavan, M.K.Road  
Maharashtra- 400020

..... **Appellant**

**M/s. Bajaj Consultants Pvt. Ltd**

24-B, Bajabahadur Compound  
Haman Street  
Fort, Mumbai – 400 023

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri Ravi Ganatra  
For the Respondent/Department : Shri Ashok Kumar Ambastha

**Date**

Conclusion of hearing : 19.03.2024  
Pronouncement of order : 27.03.2024

---

**आदेश / O R D E R**

**Per Rahul Chaudhary, Judicial Member:**

1. These are two appeal pertaining to Assessment Year 2018–19 and 2020–2021 filed by the Revenue against two separate orders passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)']. Since similar grounds of appeal were raised in both the appeals, the same were heard together and are

being disposed by way of a common order.

**Assessment Year 2018-19 (ITA No. 2853/MUM/2023)**

2. We would first take up appeal for the Assessment Year 2018-19 filed by the Revenue challenging the order, dated 28/06/2023 passed by the CIT(A) whereby the Ld. CIT(A) had allowed the appeal of the Assessee against the Assessment Order, dated 09/04/2021 passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
3. The Revenue has raised the following grounds in A.Y.2018-19:
  1. *On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of expenses related to exempt income u/s 14A by ignoring the fact that the disallowance is warranted if the investments were likely to result in exempt income even though no exempt income has been earned during the year.*
  2. *The appellant craves to amend, alter and delete any of the aforesaid grounds and add any additional grounds either before or at the time of hearing.*
4. The relevant facts in brief are that Assessee is a private limited company engaged in the business of financial services. The Assessee filed return of income for the Assessment Year 2018-19 on 19/10/2018 declaring total income of INR 49,21,70,290/-. The case of the Assessee was selected for scrutiny. The Assessing Officer completed the assessment under Section 143(3) read with Section 143(3A) and 143(3B) of the Act vide order, dated 09/04/2021, after making, *inter alia*, disallowance of INR 1,55,84,933/- under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (for short 'IT Rules') in addition to the so Moto disallowance of INR 4,13,683/- made by the Assessee in the return of income.

5. Being aggrieved the Assessee carried the issue in appeal before the CIT(A). It was contended before the CIT(A) that the Assessing Officer failed to appreciate that the Assessee had made suo moto disallowance of INR 4,13,683/- under Section 14A of the Act which was worked out by taking into account the salary expenses of employees involved in earning exempt income and charges paid for the demat account; the expenses incurred for earning exempt income were debited separately to the Profit & Loss Account; none of the expenses debited to the Profit & Loss Account pertain to the activity of earning exempt income; no interest cost was debited to the Profit and Loss account; and the investments yielding exempt income were made out of interest free own funds. It was contended on behalf of the Assessee, that in view of the aforesaid facts no further disallowance (in addition to the suo moto disallowance of INR 4,13,683/-) made by the Assessee under Section 14A of the Act was warranted. On a without prejudice basis, it was submitted on behalf of the Assessee, that even otherwise the Assessing Officer has erred in computing the quantum of disallowance in terms of Rule 8D of the IT Rules by taking into consideration all the investments as opposed to only the investments yielding exempt income during the relevant previous year. The aforesaid submissions, found favour with the CIT(A) and vide order, dated 28/06/2023, the CIT(A) deleted the disallowance of INR 1,55,84,933/- made by the Assessing Officer by invoking provisions contained in Rule 8D of IT Rules. The CIT(A) also accepted the without prejudice contention of the Assessee and by placing reliance on the decision of the Special Bench of the Tribunal in the case of Assistant Commissioner of Income Tax Vs. Vireet Investment Pvt. Ltd. : [2017] 165 ITD 27 (Delhi -Trib) (SB), concluded that for computing the average value of investment only those

investments are to be considered which yielded exempt income during the relevant previous year.

6. In the above facts and circumstances, the Revenue has preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 3 above.

7. We find that the CIT(A) has granted relief to the Assessee holding as under:

"7.5 a) *The main business of Appellant is financial services. It is also in investment activity. It maintains separate books of a/cs for main business activity and investment activity. It had good financial growth and had huge reserve and surplus to make investments in Shares, Mutual funds and Bonds. It had made suo motto disallowance u/s 14A of Rs. 4,13,683/- (salary Rs. 3,68,719/- + Demat charges Rs. 44,964/-). The other expenses debited relate to its main business activity i.e. financial services and has no correlation to exempt income. The expenditure of Rs. 4,13,683/- has been debited separately to P&L a/c and not mixed with expenses related to financial services. Separate ledger a/c is maintained for with expenditure.*

*b) Thus, disallowance u/s 14A in Rule 8D cannot be made due to following reasons:*

- *All investments made out of own funds and no borrowed funds used and no interest debited to P&L a/c.*
- *Expenditure related to earning exempt income of Rs. 4,13,683/-has been debited separately in P&L a/c.*
- *Separate ledger is maintained for the expenses related to earning exempt income.*
- *All other expenditure debited to P&L a/c is related to financial services business of Appellant.*
- *Most importantly, there are no borrowings in this case. Appellant has drawn from its own*

internal accruals for these investments. No interest is debited to P&L a/c.

7.6 a) Even for the sake of argument the disallowance made u/s. 14A by the AO is not as per Rule 8D. The AO has erroneously considered all the investments to arrive as investment figure of Rs.1,59,53,65,244/- as against Rule 8D(ii) which Provides to consider only those investments, income from which do not and shall not form part of total income. The investments which are capable of earning exempt income are only to be considered for the computation of disallowance under Rule 8D.

b) In this regard reliance is placed on the order of the Special Bench of the **Hon'ble Delhi ITAT in the case of ACIT Vs Vireet Investment (P) Ltd (2017) 82 taxmann.com 415** wherein the Special Bench inter alia considered the question whether investments which did not yield any exempt income should enter into the computation under rule 8D while arriving at the average value of investment, income from which does not form part of the total income? It was held by the Special Bench that only those investments are to be considered for computing the average value of investment which yielded exempt income during the year.

Reliance is also placed on following judgments

- **Era Infrastructure (India) Ltd in 288 Taxman 384 (Del).**
- Delhi International Airport Private Limited (2022) in 144 taxmann.com 80 (Del.)
- Hon'ble Jurisdictional Bombay High court in HDFC Bank Limited in 366 ITR 505.

c) xx xx

d) In view of above discussion the amount of investments to be considered for disallowances u/s 14A r.w. Rule 8D works out to Rs.43,47,41,271/- and not Rs.1,59,53,65,244/- as calculated by the AO. Even for the sake of argument the disallowance as per Rule 8D(2)(ii) will work out to 1% of average of monthly

average investment i.e. Rs.43,47,412/- and not Rs. 1,59,53,652/- as disallowed by the AO.

- 7.7. In view of the above facts and discussion and respectfully following the judgments outlined in Para 7.2 to 7.6 of this order including judgments of Hon'ble Jurisdictional High Court and Hon'ble Jurisdictional ITAT, the disallowance made by AO of Rs.1,55,84,933/- (1,59,98,616- 4,13,683) is not sustainable in the eyes of law as the Appellant has made investments yielding exempt income from its own funds and not from borrowed funds. The disallowance made by the AO is not sustainable as borrowed funds were not used for making these investments yielding tax free income. The funds available with appellant from own sources was higher than the impugned investments in Mutual funds / Shares / Bonds yielding exempt income.

*The provision of Rule 8D Cannot be invoked by the AO as it is clear from the record of Appellant that no borrowed funds were utilized and investment was made by Appellant from its own funds to earn tax free income.*

*Hence the disallowance made by AO of Rs.1,55,84,933/- is hereby deleted. GOA NO 1 to 5 are allowed. GOA NO 6 is routine and general in nature."*

8. Before the authorities below it was contended on behalf of the Assessee that in the facts and circumstances of the present case no disallowance under Section 14A of the Act was warranted in addition to the so Moto disallowance of INR 4,13,683/- made by the Assessee. Without prejudice to the aforesaid, it was submitted on behalf of the Assessee that even if provisions contained in Rule 8D of the IT Rules were to be invoked, only the investments yielding exempt income during the relevant previous year should be taken into consideration. On perusal of the order passed by CIT(A) we find that the CIT(A) accepted both the aforesaid contentions. On perusal of paragraph 7.5 of the order passed by CIT(A) it can be seen that the CIT(A) has concluded that disallowance under Section 14A of the act cannot be made in view of the facts and circumstances of the case noted therein.

Thereafter, in paragraph 7.6 of the order impugned, the CIT(A) has accepted the alternative submission of the Assessee that even if provisions contained in Rule 8D of the IT Rules were to be applied, only the investments yielding exempt income during the relevant previous year were to be taken into consideration. On perusal of the grounds raised by the Revenue, we find that the grievance raised by the Revenue in the present appeal is restricted to the order of CIT(A) allowing the without prejudice contention raised by the Assessee. In Ground No. 1 raised in appeal before us, the Revenue has contended that disallowance under Section 14A of the Act is warranted even in case of the investments which are likely to yield exempt income even though no exempt income has been earned during the relevant previous year. In other words, all the investments which have yielded exempt income during the relevant previous year as well as the investments which may yield exempt income in the future must be taken into account while determining the quantum of disallowance as per Rule 8D of the IT Rules. Reliance in this regard was placed on behalf of the Revenue on Explanation to Section 14A of the Act inserted by the Finance Act 2022 which reads as under

*Explanation.—For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income.*

9. The contention of the Revenue was that the above Explanation, though introduced with effect from 01/04/2022, would also apply

retrospectively to Assessment Year 2018-2019. In this regard we note that during the appellate proceedings before CIT(A), reliance on behalf of the Assessee on the judgment of Hon'ble Delhi High Court in the case of Principal Commissioner of Income-Tax (Central) -2 Vs. M/s Era Infrastructure India Ltd: 448 ITR 674 (Delhi)[20-07-2022]. In that case the Hon'ble Delhi High Court has rejected the contention of the Revenue that amendments to Section 14A introduced by the Finance Act 2022 shall have retrospective effect. Accordingly, we do not find any infirmity in the order passed by the CIT(A) holding that for the Assessment Year 2018-2019, only the investments yielding exempt income should be taken into consideration while determining the quantum of disallowance under Section 14A of the Act in terms of Rule 8D of the IT Rules. Accordingly, Ground Nos.1 & 2 raised by the Revenue in the appeal are dismissed.

**Assessment Year 2020-2021 (ITA No. 2854/MUM/2023)**

10. We would first take up appeal for the Assessment Year 2020-2021 filed by the Revenue challenging the order, dated 28/06/2023 passed by the CIT(A) whereby the Ld. CIT(A) had allowed the appeal of the Assessee against the Assessment Order, dated 19/09/2023 passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
11. During the course of hearing both the sides fairly agreed that our findings/adjudication in respect of grounds raised by the Revenue in appeal for the Assessment Year 2018-19 shall apply mutatis mutandis to the respective grounds raised by the Revenue in appeal for the Assessment Year 2020-21, in view of identical facts, except with variance in figures. Accordingly, adopting the findings/reasoning given while adjudicating grounds raised in

appeal for the Assessment Year 2018–19 hereinabove, we decline to interfere with the order passed by CIT(A) and dismiss Ground No.1 & 2 raised by the Revenue in the appeal for the Assessment Year 2020- s2021.

12. In result, both the appeals preferred by the Revenue are dismissed.

Order pronounced on 27.03.2024.

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(RAHUL CHAUDHARY)**  
**JUDICIAL MEMBER**

Mumbai; Dated 27.03.2024  
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**