

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सटस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1124/Kol/2023
Assessment Year: 2015-16

Techno Electric & Engineering Company Limited (PAN: AAJCS 4414 Q)	Vs.	DCIT, CC-2(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	12.03.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	12.04.2024
For the Appellant/ निर्धारिती की ओर से	Shri Siddharth Agarwal, Advocate
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT, SR.DR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 25.08.2023 for the AY 2015-16.

2. The grounds of appeal as raised by the assessee are as under :-

1. That in the facts and circumstances of the case, ld. Assessing Officer has erred in making disallowance of Rs.2,05,85,190/- under section 14A of the Income Tax Act,

1961 read with Rule 8D(2)(iii) of the Income Tax Rules 1962 without appreciating the facts of the case. The Learned CIT(A) has erred in confirming the action of the Assessing Officer.

2. That the appellant humbly craves leaves to add, alter, withdraw all or any grounds of appeal at the time of hearing.

2. The solitary issue raised by the assessee in its appeal is regarding the disallowance made by the AO under section 14A read with Rule 8D(2)(iii) of I.T. Rules. The assessee is a Limited Company and derived income from Power Generation wind turbine generation. During the course of scrutiny assessment, the AO noted that the assessee has made investments of Rs. 4,13,48,76,000/- in quoted and unquoted equity shares of various entities including its subsidiary companies. The AO further noted that assessee company has received Dividend of Rs. 13,69,49,707/- from such investments which is claimed as exempt. Besides this assessee also claimed interest expenses at Rs. 45,52,329/- in Profit & Loss account. Accordingly AO proposed to disallow the expenses under section 14A of the IT Act. In response, the assessee company explained that the investment excluding the investments in subsidiary, from which the company has earned exempt dividend should only be considered for making disallowance u/s 14A. During the course of assessment proceedings assessee company filed its working according to which the amount which could have been disallowed u/s 14A works out at Rs. 8,681/- only which is reproduced in the assessment order. The AO did not accept the explanation given by the assessee company and after invoking the provision of section 14A has computed the amount of disallowance as per Rule 8D of the IT Rules, which comes to Rs. 2,25,75,782/- for the Assessment Year 2015-16. The assessee challenged the action of AO before the Id. CIT (A) and contended that the assessee has not incurred any expenditure to earn exempt income and further contended that major portion of dividend i.e. Rs. 13,66,59,090/- out of total dividend of Rs. 13,69,49,707/- has been received from the investment made in the shares of 100% subsidiary companies. The assessee also contended that the investments were made out of the own funds and no borrowed funds were applied in making such investments. Therefore, there cannot be any disallowance under section 14A of the Act. The Id. CIT (A) accept the contention

of the assessee to the extent that part of investments in equity shares were made out of its own funds and reduced the amount of disallowance made by AO u/s 14A read with Rule 8D(2)(ii) from Rs. 18,90,592/- to Rs. 2,71,925/- however, confirmed the disallowance of Rs. 2,06,85,190/- made under Rule 8D(2)(iii) towards the administrative and other expenses after applying the methodology provided in Rule 8D. Accordingly out of total disallowance made u/s 14A by AO at Rs. 2,25,75,782/-, disallowance to the extent of Rs. 2,09,57,115/- was sustained by Id. CIT(A). Aggrieved of the order of Id.CIT(A) present appeal is preferred by the assessee before us.

3. Before us, the Id. A/R of the assessee contended that during the year assessee company had made investments both in quoted and unquoted share of its subsidiary companies and also of other companies. During the year under consideration, out of total investment of Rs. 41,328.76 lacs, only three investments had yielded income in the shape of dividend which was claimed exempt and gross value of such investments was of Rs. 3,54,01,54,781/- at the end of the previous year relevant to year under appeal. The corresponding figure as on opening day of previous year was at Rs. 3,54,36,27,121/-. Id. A/R submits that since entire investments in quoted and unquoted equity shares did not resulted into the income exempt from tax, thus for the purpose of computing the average value of investments as prescribed in clause (iii) of Sub-rule (2) to Rule 8D, those investments which had yielded exempt income should only be considered. For this he submits the working of average value of investments at pages 21 & 22 of the paper book where the average value of investment after considering the investments yielding tax free income works out at Rs. 3,54,18,90,951/- and the amount of disallowance as per clause (iii) to Sub-rule (2) to Rule 8D is computed at Rs. 1,77,09,454.76 as against Rs. 2,06,85,190/- as computed by AO. In support of the contentions raised, Id. A/R also placed reliance on the following judicial pronouncements wherein it has been held that only those investments which has yielded exempt income should be considered for the purpose of section 14A of the Act:

- (i) Pr. CIT Vs. Era Infrastructure (I) Ltd. 141 Taxmann.com 289 (Delhi)

- (ii) Pr. CIT Vs. Delhi International Airport Pvt. Ltd. 144 Taxmann.com 80 (Delhi)

- (iii) AVH Resources India Pvt. Ltd. Vs. ACIT, circle 1(1), Delhi (ITAT Delhi SMC Bench) in ITA No. 2570/Del/2022

3.1. Therefore the Id.A/R requested to reduce the amount of disallowance u/s 14A after considering the amount of investment which had exempt income during the year.

3.2. On the other hand, Id. D/R has relied on the orders of the authorities below and stated that Id. CIT(A) has dealt this issue at length and allowed the relief to assessee towards the investment made out of its own funds. Regarding calculation of average value of investment for the purpose of computing disallowance as per clause (iii) to Sub-rule (2) of Rule 8D, he contended that Rule 8D mandates that average is to be worked out by taking the total value of investment as at opening day and closing day of the previous year, irrespective of the fact whether it has yielded exempt income or not. He further submits that assessee had made investment with the intent of earning exempt income and therefore total investment should be taken into account for the purpose of computing the average value of investment. He submits that the earning of exempt income is not a passive activity and is a conscious decision of the assessee involving the engaging of informed experts and senior management. The language of the Rule 8D(2) while providing for disallowance of such expense refers to such expenses incurred to earn income which "does not or shall not" form part of the total income. Therefore, contention of the assessee that disallowance should be restricted to 0.5 percentage of only those investments where assessee has earned exempt income is contrary to the specific provisions of section 14A read with Rule 8D. Accordingly he requested for the confirmation of the order of Id.CIT(A) on this issue.

4. We have considered the rival submissions as well as perused the relevant material available on record. The only grievance of the assessee is regarding the disallowance made by the AO on account of administrative expenses being 0.5% of average investment as per clause (iii) to sub-rule(2) of Rule 8D. The assessee claimed that since the exempt income was earned only from selected investments, it is wrong to consider gross value of investments at the opening day and closing day of the previous year for computing the average value of investments. Basically the disallowance under clause (iii) to sub-Rule (2) of Rule 8D relates to indirect expenses claimed. In this regard we note that the assessee besides claiming interest expenses also claimed other expenses which are appearing in Note 26-28 of the Profit & Loss account. Looking to the fact that investment decisions are highly strategic in nature involving market research and analysis and assessee being a company where the decision of making such investment is taken by the employees and management for which the assessee company incurred certain cost. Further for day to day follow-up of investments not only the time involved but also the skill of technical person which always have cost burden upon the recipient of such services. Since the assessee company has claimed such cost in the shape of salary, managerial remuneration, etc. in its Profit & Loss account thus it cannot be said that only the investment having exempt income suffer such cost. Moreover fact remains that assessee has not challenged the part disallowance confirmed by Id. CIT(A) in terms of clause (ii) to sub-rule(2) of Rule 8D. Therefore, in the present case it is admitted fact that provisions of section 14A are applicable, thus for computing the amount of indirect expenditure in relation to exempt income, clause (iii) to sub-rule (2) of Rule 8D come into play. Before going further the provisions as contained in Rule 8D should be seen which reads 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;

(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :—

$$\frac{A \times B}{C}$$

Where A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

(iii) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.

(3) For the purposes of this rule, the “total assets” shall mean, total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets.”

4.1 From the perusal of the aforesaid provisions as enumerated in Rule 8D, it is clear that Rule 8D (2) has three components to determine the expenditure in relation to exempt income. First component relates to the amount of expenditure directly relating

to income which does not form part of total income, which in the present case is absent. The second component being computed on the basis of the formula given therein in a case where the assessee incurs expenditure by way of interest which is not directly attributable to any particular income or receipt. On this account Id.CIT(A) has restricted the disallowance at Rs. 2,71,925/- against which assessee company has not taken any ground in the present appeal. The third component is an artificial figure i.e. 1/2% (one half percent) of the average value of the investment, income from which does not or shall not form part of the total income as appearing in the Balance Sheets of an assessee, on the first day and the last day of the previous year. It is undisputed that the provisions of section 14A are applicable in the present case and only dispute is about of the quantum of disallowance for which assessee submits that average value of investment which has yielded exempt income should be taken into consideration for the purpose of third component of Rule 8D.

4.2 The Hon'ble Jurisdictional high court in the case of Principal Commissioner of Income-tax Vs. Shalimar Pellet Feeds Ltd. reported in [2022] 138Taxmann.com 124 dealt this issue and has decided in favour of assessee by observing as under:

“1. The next substantial question of law is with regard to the disallowance under section 14A of the Act. The tribunal after noting several decisions has directed the assessing officer to compute the disallowance as per Rule 8D by taking into consideration only those shares which have yielded dividend income in the year under consideration. Though the Tribunal has noted the decision of the Tribunal in REI Agro Ltd. v. Dy. CIT [2013] 35 taxmann.com 404/144 ITD 141 (Kol. - Trib.), there are several other decisions on the said point and the machinery provision under rule 8D can be applied only with regard to the shares which yielded dividend income in the year under consideration. Therefore, we find that the tribunal rightly applied the legal principle and granted relief. Accordingly, the substantial question of law framed on the said issue, namely, the deduction under section 14A of the Act is decided against the revenue.

4.3 The Hon'ble Delhi High Court following the judgment of Hon'ble Calcutta High Court in case of PCIT Vs. Shalimar Pellet Feed Ltd (supra) in the case of Cargo Motors Pvt. Ltd. Vs. DCIT held as under:

"13. Having heard learned counsel for the parties, this Court is of the view that while Section 14A is the charging Section, Rule 8D is a method/mechanism to determine the amount of expenditure incurred in relation to income, which does not form part of the total income of the assessee. By virtue of the charging Section, namely, Section 14A, the Assessing Officer has the power only to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the Act.

14. This Court is further of the view that Rule 8D(2)(iii) clearly postulates that in the calculation of the disallowance amount, "an amount equal to one- half percent of the value of the investment, income from which does not or shall not form part of the total income" should be taken into consideration. Thus, it is not all investment but only that which is expressly spelt out in Rule 8D(2)(iii) read with Section 14A and Rule 8D(i) which is to be reckoned for the purpose of calculation of average of half percent.

15. In fact, the aforementioned issue is no longer res integra. A Division Bench of this Court in ACB India Limited (formerly M/s Aryan Coal Benefications (P) Ltd. Vs. Assistant Commissioner of Income Tax, ITA 615/2014 has held as under:-

"4. The AO, instead of adopting the average value of investment of which income is not part of the total income i.e. the value of tax exempt investment, chose to factor in the total investment itself. Even though the CIT (Appeals) noticed the exact value of the investments which yielded taxable income, he did not correct the error but chose to apply his own equity...."

16. Another coordinate Bench of this Court in Pr. Commissioner of Income Tax-2 Vs. M/s Caraf Builders & Constructions Pvt. Ltd., 2018 (12) TMI 410 has held as under:-

"26. There is another error made by the Assessing Officer in computing the disallowance under clauses (ii) of Rule 8D(2) with reference to the formula

prescribed. Numerical B in clause (ii) refers to average value of the investment, income from which does not form part or shall not form part of the total income. The Assessing Officer for numerical B in clause (ii) had taken the total value of the investment and not the investment that had yielded exempt income. The Delhi High Court in ITA No. 615/2014, ACB India Ltd. vs. Asstt. Commissioner of Income Tax decided on 24th March, 2015 has held that only average value of the entire investment that does not form part of the total income is the factor which could be covered by the numerical B for computing disallowance under clause (ii) of Rule 8D(2) of the Rules...."

17. *Even the Madras and Calcutta High Courts have taken similar views.*

18. *The Madras High Court in The Commissioner of Income Tax, Chennai Vs. Shriram Ownership Trust, 2020 (12) TMI 736-Madras High Court has held as under:-*

"2.The following substantial questions of law have been framed for consideration of this Court:- "1.Whether the Tribunal was correct in holding that the investment which yielded no exempt income was to be excluded while computing deduction u/s.14A when the Act as well as Rules framed do not provide for any such exception, and further such investment shall always remain in tax free territory?"

The first substantial question of law raised by the revenue in this appeal is whether the Tribunal was right in holding that the investment which yielded no exempt income was to be excluded while computing deduction under Section 14A when the Act as well as the Rules do not provide for any such exception. An identical question was raised by the revenue in the assessee's own case in T.C.A.No.241 of 2018 for the assessment year 2013-14. When the said tax case appeal was heard, we noted that the substantial question of law has to be answered in favour of the assessee in the light of the decision of the Hon'ble Division Bench in the case of M/s.Marg Limited vs. CIT, Chennai [T.C.A.Nos.41 to 43 and 220 of 2017 dated 30.09.2020]. However, the appeal filed by the revenue was dismissed on 08.07.2020 owing to low tax effect. The revenue cannot dispute the fact that the above substantial question of law was decided in favour of the assessee. In the case of

M/s.Marg Limited, in which the decision of the High Court of Karnataka in Pragathi Krishna Gramin Bank vs. JCIT [(2018) 95 Taxman.com 41(Kar.)] was followed. Further, the Delhi Bench of ITAT in the case of ACIT, Circle 17(1), New Delhi vs. Vireet Investment (P) Ltd. [(2017) 82 Taxman.com 415 (Delhi-Trib.) (SB)] also decided the said issue in favour of the assessee. Thus, following the above referred decision, substantial question of law No.1 is answered in favour of the assessee and against the revenue."

19. Another Division Bench of the Madras High Court in Commissioner of Income-tax, Central 1, Chennai Vs. ChettinadLogistics (P) Ltd., (2017) 80 taxmann.com 221 (Madras) has held as under:-

"9. In our opinion Section 14 A of the Act, can only be triggered, if the Assessee seeks to square off expenditure against income which does not form part of the total income under the Act.

9.1 The legislature, in order to do away with the pernicious practice adopted by the Assessee's, to claim expenditure, against income exempt from tax, introduced the said provision.

10. In the instant case, there is no dispute that no income i.e., dividend, which did not form part of total income of the Assessee was earned in the relevant assessment year.

10.1 Therefore, to our minds, the addition made by the Assessing Officer by relying upon Section 14 A of the Act, was completely contrary to the provisions of the said Section.

10.2 Mr.Senthil Kumar, who appears for the Revenue, submitted that the Revenue could disallow the expenditure even in such a circumstance by taking recourse to Rule 8D.

10.3 According to us, Rule 8D, only provides for a method to determine the amount of expenditure incurred in relation to income, which does not form part of the total income of the Assessee.

10.4 Rule 8 D, in our view, cannot go beyond what is provided in Section 14A of the Act."

20. Recently, Calcutta High Court in Principal Commissioner of Income Tax, Central-1, Kolkata Versus M/s. Shalimar Pellet Feeds Ltd., 2022 (2) TMI 1209 has held as under:- Cargo Motors Pvt. Ltd. vs Dy Commissioner Of Income Tax

*on 7 October, 2022 Indian Kanoon - <http://indiankanoon.org/doc/48750165/> 6
 ".....The next substantial question of law is with regard to the disallowance under Section 14A of the Act. The tribunal after noting several decisions has directed the assessing officer to compute the disallowance as per Rule 8D by taking into consideration only those shares which have yielded dividend income in the year under consideration. Though the Tribunal has noted the decision of the Tribunal in REI Agro Ltd. Vs. DCIT (2013) 35 taxmann.com 404, there are several other decisions on the said point and the machinery provision under Rule 8D can be applied only with regard to the shares which yielded dividend income in year under consideration. Therefore, we find that the tribunal rightly applied the legal principle and granted relief....."*

21. *Consequently, only those investments are to be considered for computing average value of investments which yielded exempt income during the relevant assessment year.*

22.

23. *Keeping in view the aforesaid mandate of law, the question of law is answered in favour of the appellant-assessee, as this Court is of the view that the ITAT has erred in confirming the disallowance made under Rule 8D by not restricting the disallowance to 0.5% of those investment only where the assessee had earned exempt income."*

4.4 Besides the judicial pronouncements as relied upon by the assessee company, also supports the finding given in the aforesaid judgments. Thus by respectfully following the judgments of Hon'ble jurisdictional high court and also of other high courts and co-ordinate benches of Tribunal, we are of the view that the investment which has yielded exempt income should only be considered for average value of investment as per Rule 8D92)(iii) of the IT Rules. Accordingly AO to re-compute average value of investment as on the opening day and closing day of the previous year by taking the value of only those investments which yielded exempt income and made the disallowance as per clause (iii) to sub-rule (2) of Rule 8D of IT Rules. AO is directed to give relief to the assessee as per the directions given hereinabove after

affording proper opportunity to the assessee of being heard and to file necessary details in the matter.

5. In the result appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 12th April, 2024

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 12th April, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Techno Electric & Engineering Company Limited, C-218, CIR-1, Sector-63 Gautam Buddha Nagar, Noida-201307
2. Respondent – DCIT, CC-2(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata