

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.495/Ahd/2023
(Assessment Year: 2017-18)

Aksharchem (India) Ltd., 30, Ambica Society, Usmanpura, Ahmedabad-380013	Vs.	Assistant Commissioner of Income Tax, Circle-1(1)(1), Ahmedabad (Present Jurisdiction Deputy Commissioner of Income Tax, Central Circle- 2(3), Ahmedabad)
[PAN No.AABCA2805M]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Sunil Talati, A.R.
Respondent by:	Shri Sushil Kumar Katiar, Sr. DR

Date of Hearing	01.04.2024
Date of Pronouncement	30.04.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-12, (in short “Ld. CIT(A)”), Ahmedabad vide order dated 09.05.2023 passed for A.Y. 2017-18.

2. The assessee has taken the following grounds of appeal:-

“1. The Ld. CIT(A) has erred in confirming the disallowance u/s. 14A of the Act amounting to Rs.28,41,379/- by invoking Rule 8D of the Income Tax Rules, 1962. The Ld. CIT(A) has erred in not appreciating the fact that during the year, appellant company had neither made any fresh investment which may fetch exempt Income nor any expenditure has been incurred to claim the exempt Income. In view of this, there is no justification in making the disallowance and therefore the disallowance so made prayed to be deleted.

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2. *Without prejudice to the above, the Ld. CIT(A) has erred in confirming disallowance u/s. 14A r.w.r. 8D without recording dissatisfaction with regard to the accounts of the appellant company as per Section 14A(2) of the Act. It is submitted that Appellant company furnished detailed submission stating that it had sufficient interest free funds and therefore disallowance u/s 14A r.w.r. 8D is not applicable. In view of this, it is prayed to delete the impugned disallowance.*

3. *The Ld. CIT(A) has erred on facts as well as law in confirming the disallowance u/s. 14A of the Act amounting to Rs.28,41,379/- in spite of the fact that appellant company had sufficient interest free own funds to meet its tax-free investment yielding exempt income although no fresh investment which may fetch exempt income has been made during AY 2017-18. It is submitted that Ld. CIT(A) has grossly erred in not following Segal precedents and binding decision of jurisdictional tribunal and other tribunals has erred in confirming the disallowance of Rs. 28,41,379/- which is absolutely incorrect and illegal and the same be deleted now.*

4. *The order passed by the Ld. CIT(A) is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.*

5. *Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing of appeal.”*

3. The brief facts of the case are that during the course of assessment proceedings, the Assessing Officer made disallowance of Rs.28,41,379/- by invoking Rule 8D(ii) of the Act, by taking note of the fact that the assessee had shown exempt income of Rs.5,50,70,054/-, however, the assessee had not disallowed/added back any direct or indirect expenses related to such exempt income. The Assessing Officer observed that for the immediately previous Assessment Year 2016-17, the assessee has suo motu added a sum of Rs.37,87,819/- under Section 14A, treating the expenses to be related to earning exempt income.

4. In appeal before Ld. CIT(Appeals), the main thrust of the assessee's argument was that the assessee and further had not made any fresh investment during the impugned year under consideration so as to earn

exempt income, it was submitted that the assessee had also not incurred any expenditure for earning exempt income. Secondly, the assessee submitted that it had sufficient interest free funds available at its disposal and therefore no disallowance was called for under Section 14A of the Act read with Rule 8D(ii). Thirdly, the assessee submitted that the Assessing Officer has also not recorded his satisfaction regarding the correctness of claim made by the assessee, in the assessment order. The assessee submitted that it is a well-settled proposition of law that recording of satisfaction is a pre-requisite before making any disallowance under Section 14A read of the Act with Rule 8D(ii). The Ld. CIT(Appeals), after taking note of the arguments of the assessee, dismissed the appeal of the assessee with the following observations:

“6. Ground of appeal 1 and 2 are against the disallowance of Rs.28,41,379/- made by the AO by invoking Rule 8D(2)(ii) of the Income tax Rules. Facts of the case are that the AO noted that the appellant had shown exempt income of Rs.5,50,70,054/- (out of capital gain and dividend income as Is seen from the financial statement) however, had not disallowed added back any direct or indirect expenses related to such income. He also noted that for the previous AY the appellant had suo motou added back Rs.37,11,819/- u/s 14A treating the expenses to be related to earn exempt income. The appellant contended before the A direct or indirect expenses have been incurred for making investment which was rejected and held to be untenable. The AO proceeded to invoke the provision of Rule 8D(2)(ii) and made a disallowance of Rs. 28,41,379/-. Aggrieved the appellant is in appeal.

6.1 The main thrust of the appellant's argument is that it has not made any fresh investment that may fetch exempt income nor made any expenditure with respect to the exempt income earned. Hence the addition made by the AO was treated to be not justified. More importantly the appellant pleaded that it had sufficient interest free funds and therefore disallowance u/s 14A r.w. Rule SD is not applicable in its case. It submitted that in various case laws, courts/tribunals had -held similar proposition. It cited several case laws listed therein in its favour which are listed in the written submission. In a separate ground of appeal the appellant has also raised the issue that the AO has not recorded his satisfaction regarding the correctness of the claim by the appellant.

6.2 Facts of this case are that the AO has noted that the appellant had shown exempt income of Rs.5,50,70,054/- but had not disallowed/added back any expenses related to earning of such income. He also noted that the appellant had on his own motion added back a sum of Rs.37,11,819/- related to earn exempt income during the previous AY. He had also noted that this year the appellant had shown expenses like DEM AT charges etc. that are directly related to the earning of exempt income. Thus, he had clearly noted his satisfaction for invocation of rule 8D r.w.s 14A of the Act in the case of the appellant, it is added that there is no standardized recording of such satisfaction note. Hence the plea of the appellant that the AO has not recorded his satisfaction is not born by facts.

6.3 The appellant has made a plea in its favour stating that the provision of Sec. 14A r.w.r 8D cannot be invoked in its case as it had sufficient interest free funds available with it to invest in funds that are exempt from tax. It has highlighted that as per the balance sheet for AY 2017-18, the appellant had total own funds of Rs.1,33,84,57,280/- in the form of share and reserve and surplus. Out of the same total investment including non-current and current was only Rs. 43,19,78,544/-. Further, the non-current investments were of quantum Rs.23,69,17,890/- and current investment of Rs.19,50,60,654/- out of which Rs.1,50,00,000/- was only invested in mutual fund with dividend plan. Balance amount was invested in mutual fund with growth plan and therefore not earning any exempt income. Thus, factually the appellant had sufficient interest free funds to its command to invest in funds that are exempt from tax. He cited several case laws by the Supreme Court as well as the jurisdictional High Court which support its claim that if the appellant had sufficient interest free funds then the presumption is that it is those funds that are utilized for purpose of earning exempt free income.

6.3.1 The reply of the appellant is considered and the same not acceptable. The subordinate legislation governing the manner of calculation of expenditure not includible in total income as per Rule 8D has been amended by Notification No. 43/2016 dated 02.06.2016 by Income-tax (14th Amendment) Rules, 2016. The new rule applicable year is reproduced as under:-

“S.O. 1949(E):-[Method for determining amount of expenditure in relation to income not includible in total income.

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 provision 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 balance 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.”*

Accordingly, the plea made by the appellant is related to the pre amended provision of law. Similarly, the case laws cited are also pertaining to the same and hence not applicable. This argument is therefore rejected.

6.4 *The AO has applied the extant and applicable provision of law. No objection regarding the manner of application of the method as per Rule 80(2) has been raised. The quantum determined after Rule 8D(2)(ii) is not under challenge.*

6.5 *In view of the above, as the appellant had earned huge amount of exempt income during the relevant FY and had not claimed any expenditure pertaining to earning of such exempt income the AO is held to be well within his rights to invoke the provisions of rule 8D(2)(ii) of the Income-tax Rules. The claim that the appellant did not even incur any administrative expenses is also not tenable and rejected. Accordingly, the disallowance of Rs.28,41,379/- u/s 14A r.w.r 8D(2)(ii) of the Act is confirmed. Ground of appeal 1 and 2 are dismissed.”*

5. The assessee is in appeal before us against the order passed by Ld. CIT(Appeals) confirming the addition made by the Assessing Officer under Section 14A of the Act read with Rule 8D(ii). The Counsel for the assessee primarily reiterated the arguments which were taken before Ld. CIT(Appeals) as well, which are that the assessee company has sufficient interest free funds out of which investment in shares and mutual funds have been made by the company from time to time, no borrowed funds/interest-bearing funds were utilised for the purpose of making the investments in instruments yielding exempt income, the Assessing Officer has not brought about any evidence to show that any expenses were actually incurred by the assessee for earning exempt income and that since the entire investments

were being handled by professionals, there was no question of incurring expenditure to earn interest income and finally, the Assessing Officer has not recorded the requisite satisfaction regarding the incorrectness of the claim made by the assessee in relation to no expenditure has been incurred to earn exempt income, which is a pre-requisite before making any disallowance under Section 14A read of the Act with Rule 8D(ii).

6. In response, the Ld. DR placed reliance on the observations made by the Assessing Officer and Ld. CIT(Appeals) in their respective orders.

7. We have heard the rival contentions and perused the material on record. On going to the facts of the instant case, we are of the considered view that the Assessing Officer and CIT(A) have not erred in facts and in law in making the aforesaid disallowance of Rs.28,41,379/- by invoking Section 14A of the Act read with Rule 8D(ii). We observe that in the instant facts, on going to the records of the assessee's case, the assessee has been consistently making suo moto disallowance under Section 14A in its return of income for the previous assessment years. We observe that for the immediately preceding Assessment Year 2016-17, the assessee had made a disallowance of Rs.37,11,819/- under Section 14A of the Act read with Rule 8D(ii). Further, we observe that for Assessment Year 2015-16, the assessee had made a suo moto disallowance of Rs.31,29,858/- in the return of income under Section 14A of the Act read with Rule 8D(ii). For Assessment Year 2014-15, the assessee had made a suo moto disallowance of Rs.6,80,711/- in the return of income under Section 14A of the Act read with Rule 8D(ii). Accordingly, looking into the instant facts, we find no justifiable reason as to why the assessee, on identical set of facts, has not made any disallowance

Section 14A of the Act read with Rule 8D(ii) for the impugned year under consideration. Further, regarding the recording of satisfaction by the Assessing Officer, we observe that Ld. CIT(Appeals) has correctly observed that the Assessing Officer has given categorical finding/basis for making the aforesaid disallowance, and therefore, the argument of the assessee that no satisfaction was recorded is not found to be correct. In our considered view, looking into the instant facts, we are of the considered view that the Assessing Officer has made a reasonable disallowance Section 14A of the Act read with Rule 8D(ii) for the impugned year under consideration, and accordingly, we find no infirmity in the order of Ld. CIT(Appeals) so as to call for any interference.

8. In the result, the appeal of the assessee is dismissed.

This Order pronounced in Open Court on	30/04/2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 30/04/2024

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad