

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI

BEFORE SHRICHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
DR. BRR KUMAR, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A Nos.5635/Del/2018
निर्धारणवर्ष/Assessment Year: 2015-16

UFO Moviez India Ltd., Valuable Techno Park, Plot No.53/1, Road No.7, Marol Midc, Andheri (East) Mumbai, Maharashtra.	<u>बनाम</u> Vs.	DCIT Circle-27(2), C.R. Building, New Delhi.
PAN No.AABCV8900E		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

&

आ.अ.सं./I.T.A Nos.5825/Del/2018
निर्धारणवर्ष/Assessment Year: 2015-16

DCIT Circle-27(1), C.R. Building, New Delhi.	<u>बनाम</u> Vs.	UFO Moviez India Ltd., Valuable Techno Park, Plot No.53/1, Road No.7, Marol Midc, Andheri (East) Mumbai, Maharashtra.
		PAN No.AABCV8900E
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Vishal Kalra, Adv. & Shri Ankit Sahni, Adv.
Revenue by	Shri Vivek Vardhan, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	01.02.2024
उद्घोषणाकीतारीख/ Pronouncement on	30.04.2024

आदेश / O R D E R

PER C.N. PRASAD, J.M.

These two appeals are filed by the Assessee and Revenue against the orders of the Ld.CIT(Appeals)-9, New Delhi dated 27.06.2018 for the AY 2015-16. The assessee has raised revised grounds of appeal as under: -

1. *“That on the facts and circumstances of the case and in law, the Hon’ble CIT(A) has erred in upholding an additional disallowance of INR 1,84,372 under section 14A of the Act over and above the suo moto disallowance of INR 8,60,000 made by the Appellant.*
2. *That on the facts and circumstances of the case and in law, the satisfaction recorded under section 14A(2) of the Act by the CIT(A) / AO was improper and otherwise bad in law and as such, no disallowance under section 14A was called for.*
3. *That on the facts and circumstances of the case and in law, CIT(A) has erred in disallowing .the expenditure to the extent of the exempt dividend income earned without appreciating the fact that expenditure incurred in towards earning exempt income was suo-moto disallowed by the Appellant and no further expenditure has been incurred in earning the aforesaid exempt income.*
4. *That on the facts and circumstances of the case and in law, CIT(A) has erred in not considering the basis adopted by the Appellant for computing suo-moto disallowance of INR 8,60,000 under section 14A of the Act and enhancing the addition to the extent of exempt income earned by the Appellant.”*

2. The Ld. Counsel for the assessee, at the outset, submits that the Assessing Officer did not record proper satisfaction for invoking the provisions of section 14A of the Act before making disallowance under Rule 8D. Ld. Counsel submits that the assessee made *suo moto* disallowance of Rs.8,60,000/- and has given explanation as to how the assessee has arrived at the *suo moto* disallowance but the AO did not give proper explanation for rejecting the *suo moto* disallowance. The Ld. Counsel submits that on identical circumstances the Tribunal in assessee's own case for immediately preceding assessment year i.e. AY 2014-15 in ITA No.1730/Del/2018 dated 20.02.2024 deleted the disallowance made under Rule 8D r.w.s. 14A accepting the contention of the assessee that there was no proper satisfaction recorded by the AO.

3. Ld. DR placed reliance on the orders of the authorities below.

4. Heard rival submissions, perused the orders of the authorities below and order of the Tribunal. We find that the Tribunal in assessee's own case held that there is no proper satisfaction recorded on the *suo moto* disallowance made by the assessee and,

therefore, there cannot be any disallowance under Rule 8D r.w.s.

14A of the Act observing as under: -

“9. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Ld.CIT(A) after considering the various submissions made by the assessee, decided the issue partly in favour of the assessee. The relevant contents of the findings of Ld.CIT(A) are reproduced as under:-

5.1.5. “It is undisputed fact that the appellant has received dividend income amounting to Rs.2761157/- being claimed exempt in computation of total income for the previous year relevant to the AY 2014-15. The contention of the appellant that only dividend yielding investment be considered for computation of disallowance u/s 14A is quite logical and therefore requires to be accepted as has been held in the case of ACIT vs. Vireet Investment Pvt. Ltd. (ITAT Delhi) (Special Bench), supra. So far claim with respect to borrowing of the fund and its investment is concerned the appellant has not controverted the finding of fact of the Ld. AO that it had a systematic investment over the period of time and therefore, the appellant contention that it has surplus find in the form of share capital and reserve and surplus being used for investment does not hold conclusive. It is also not the case of the appellant that investments made over the period of time has been through an exclusively independent investment account maintained separately for the purpose.

5.1.6. Since, the computation of disallowance u/s 14A made by Ld. AO has not factored in the above principle, it is optimum that disallowance be limited to the maximum of exempt income claimed by the appellant in its return of income for the previous year relevant to the AY 2014-15, This issue

has been dealt with by the Hon'ble jurisdictional High Court in judgment cited as Joint Investments Pvt. Ltd. vs. CIT - (2015) 372 ITR 694 (Del.) as under:

".....Disallowance under Section 14A read with Rule 80 volunteered Rs.2,97,440/- as attributable under Section 14A for the purpose of disallowance - AO on the basis of his own understanding of Rule 8D of the Income Tax Rules disallowed the sum of Rs.52,56,197/- Held that:- In the present case, the AO has not firstly disclosed why the appellant/assessee's claim for attributing Rs.2,97,440/- as a disallowance under Section 14A had to be rejected. In Taikisha [2014 (12) TMI 482- DELHI HIGH COURT] says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assessee's claim or explanation. The second aspect is there appears to have been no scrutiny of the accounts by the AO - an aspect which is completely unnoticed by the CIT (A) and the ITAT. The third, and in the opinion of this court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is Rs.48,90,000/-, the disallowance ultimately directed works out to nearly 110% of that sum, i.e., Rs. 52,56,197/-. By no stretch of imagination can Section 14A or Rule 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in Section 14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case....."

10. *The contention of the assessee is that had the AO excluded the non-dividend bearing investments and investment made out of non-interest bearing fund, no*

disallowance would have been called for. The Ld.CIT(A) has sustained the additions to the extent of exempt income without adverting to the contentions of the assessee regarding exclusion of investments that did not earn dividend income, investments that earned taxable income and investments that were made out of interest free own funds. There is no ambiguity under the law that Section 14A of the Act casts statutory obligation on the Assessing Authority to verify and satisfy itself about the correctness of claim of the assessee regarding suo-moto disallowance or no disallowance at all in relation to expenditure incurred for earning of exempt income. If the AO fails to give clear finding, he would be failing into statutory obligation. In the present case, the AO had not adverted to the objections of the assessee and did not accept the suo- motto disallowance made by the assessee. Looking to the facts of the present case, the AO failed to take into account that the assessee was having interest free fund. Certain investment did not earn exempt income and some investments in foreign entities were amendable to tax in India. Further, AO did not give any cogent reason for rejecting the suo-motto disallowance. We therefore, are considered view in the absence of such finding under the facts of the present case, disallowance made by AO and restricted by Ld.CIT(A) to the extent of exempt income, is not justified. We therefore, direct the AO to delete the impugned addition. The ground raised by the assessee is accordingly, allowed.”

5. On perusal of the assessment order, we find that there is no proper recording of satisfaction by the AO for rejecting the suomoto disallowance made by the AO. Thus, respectfully following the order of the Tribunal, we allow the grounds raised by the assessee.
6. Coming to the Revenue's appeal, ground no.1 is in respect of disallowance made under section 14A read with Rule 8D. Since we

have held that there is no proper satisfaction recorded by the AO and hence no disallowance under Rule 8D read with section 14A of the Act is warranted while dealing with the issue in the appeal of the assessee this ground of Revenue is dismissed.

7. Coming to ground no.2 of grounds of appeal of the Revenue i.e. in respect of disallowance under 14A of the Act while computing the provisions u/s 115JB of the Act. The issue is covered by the decision of the Special Bench in the case of Vireet Investments, wherein the Hon'ble Spl. Bench of Delhi held that there cannot be any disallowance under Rule 8D read with 14A of the Act in terms of clause (f) of Explanation 1 to section 115JB of the Act. Thus, respectfully following the said decision, we hold that the disallowance made under Rule 8D read with section 14A of the Act while computing book profits cannot be sustained. In any case since the assessee itself made *suo moto* disallowance of Rs.8,60,000/- there cannot be any further disallowance u/s 14A read with Rule 8D of IT Rules while computing the book profits u/s 115JB of the Act. Ground raised by the Revenue is rejected.

8. In the result, appeal of the assessee is allowed and appeal of the Revenue is dismissed.

Order pronounced in the open court on 30/04/2024

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 30/04/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi