

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" BENCH, MUMBAI**

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

**ITA No. 4135/MUM/2023  
(Assessment Year: 2018-19)**

**VIP Industries Limited,**  
5<sup>th</sup> Floor, 88C DGP House,  
Old Prabhadevi Road,  
Prabhadevi, Mumbai - 400025  
[PAN: AAACV0177G]

..... **Appellant**

**Deputy Commissioner of Income Tax,  
Circle 8(3)(1), Mumbai,**  
Aayakar Bhawan, Mumbai-400020

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri J P Bairagra  
Ms. Rupa Nanda

For the Respondent/Department : Ms. Rajeshwari Menon

**Date**

Conclusion of hearing : 25.04.2024  
Pronouncement of order : 29.04.2024

---

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order, dated 25/09/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2018-19, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 27/03/2021, passed under Section 143(3) read with Sections 143(3A) & 143(3B) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Assessee has raised the following grounds of appeal:
- "1. *The Ld. CIT(A) erred in confirming the disallowance under section 14A read with rule 8D of Rs 1,06,10,282 as against the disallowance offered by the appellant company u/s 14A of Rs 7,18,309.*
  2. *The Learned CIT(A) further erred in rejecting the suo-moto disallowance made by the appellant company under section 14A without recording his dis-satisfaction having regard to the accounts of the appellant company with cogent reasons for rejecting the claim of the appellant that Rs. 7,18,309 has been incurred in relation to income which does not form part of the total taxable income as per the provisions of sub-section (2) of section 14A of the Income-tax Act, 1961.*
  3. *The Learned CIT(A) failed to appreciate that the disallowance under section 14A read with rule 8D cannot be automatic without considering the working of disallowance made by the appellant in the course of assessment proceedings on the basis of the accounts maintained by the appellant company. The condition precedent of recording the required satisfaction which is safeguard provided in section 14A shall not be overlooked before going to Rule 8D on the basis of the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ldt vs CIT 402 ITR 640.*
  4. *The Learned CIT(A) failed to consider that AO has not recorded satisfaction regarding the correctness of suo motu disallowance offered by the assessee u/s 14A and mere rejection of the explanation of the assessee per se, cannot be said to be a satisfaction as envisaged u/s 14A(2). The ratio laid down by the Delhi High Court in the case of PCIT vs Moonstar Securities Trading and Finance Co. (P) Ltd (supra) and PCIT vs Keshav Power Ltd., as well as the Bombay High Court in the case of Pr.CIT vs Reliance Capital Asset Management Ltd (supra) is squarely applicable.*
  5. *The Learned CIT(A) failed to appreciate that the appellant company has invested short term surplus funds out of share capital and reserve in liquid schemes of mutual funds, Since the investments in mutual funds were made*

*on short term basis in liquid mutual funds, no further expense has been incurred for making such investments over and above the expense suo-moto disallowed by the appellant, which is in respect of the fees paid to an external advisor.*

6. *The Learned CIT(A) failed to appreciate that the assessee has minimal activities relating to exempt income and no substantial expenditure is required to be incurred by the assessee for making and maintaining these investments as the same is made only in five liquid mutual fund schemes for which market analysis is readily available in public domain. Further the investment in these liquid mutual funds is not like purchase and sale of listed equity shares where various other activities are involved.*
  7. *The Learned CIT(A) further erred in relying on CBDT circular No. 5/2014 dated 11 February 2014 and decisions in the case of DCIT v. Viraj Profiles Ltd, Insaallah Investments Ltd. v/s ITO which are not applicable to the case of the appellant and are on different issue i.e. whether disallowance under section 14A is to be made when no exempt income is earned, and this is not the subject matter in the present case.*
  8. *The Learned CIT(A) further erred in not appreciating the facts that in the AY 2016-17 & AY 2017-18 the Suo-moto disallowance made by the appellant was accepted on the similar facts and thereby though Res Judicata is not applicable in income tax proceeding but consistency has to be followed.*
  9. *The Learned CIT(A) wrongly erred in holding that he is not satisfy with the claim of the appellant that no expenditure is incurred and no disallowance u/s 14A read with rule 8D is warranted. The correct facts that appellant had made the disallowance u/s 14A read with rule 8D in its Return of Income on the basis of the expenditure incurred in making the investment in liquid scheme of mutual fund.”*
3. All the grounds raised in the present appeal pertaining to the Assessment Year 2018-19 are directed against the addition of 1,06,10,282/- made by Assessing Officer under Section 14A of

the Act read with Rule 8D of the Income Tax Rules, 1962 [for short '**IT Rules**'] vide assessment order dated 27/03/2021, passed under Section 143(3) read with Sections 143(3A) & 143(3B) of the Act which was sustained by the CIT(A) vide order dated 25/09/2023.

4. Before us it was contended by the Learned Authorised Representative for the Appellant that the Assessing Officer has failed to record his dis-satisfaction regarding the correctness of the suo-moto disallowance of INR 7,18,309/- made by the Appellant under Section 14A of the Act in the return of income before invoking the provisions of Rule 8D of the IT Rules and computing the amount of disallowance under Section 14A of the Act at INR 1,06,10,282/-. The Learned Authorised Representative for the Appellant vehemently contended submitted that the Assessing Officer has merely quoted statutory provisions and judicial precedents without making any reference to the account of the Assessee before invoking provisions of Rule 8D of the Rules for computing the amount of disallowance. The Assessing Officer has not considered the suo-moto disallowance made by the Appellant in the return of income. Referring to computation of suo-motu disallowance at page 241 of the paper-book, he submitted that the Appellant had parked funds in liquid mutual funds. The amount/salary paid to the concerned person dealing with investments and the telephone expenses related thereto were disallowed by the Appellant. Since the Appellant had sufficient own funds no interest cost or other expenses were incurred in relation to earning of the exempt income. On the strength of the aforesaid, the Ld. Authorised Representative for the Appellant submitted that the disallowance/addition made under Section 14A of the Act be deleted.

5. Per contra, the Ld. Departmental Representative submitted that dis-satisfaction recorded by the Assessing Officer can be discerned from reading of paragraph 2 to 2.2 of the Assessment Order. It was submitted by the Ld. Departmental Representative that the Assessing Officer had duly recorded dis-satisfaction as per the mandate of law before working out the disallowance under Section 14A of the Act read with Rule 8D of the Rules. The CIT(A) has rejected identical contentions of the Assessee.
6. We have considered the rival contentions and perused the material on record.
7. The Hon'ble Supreme Court in the case of Godrej & Boyce Mfg. Co. Ltd. v. Dy. CIT: 394 ITR 449 had observed that it was only after the Assessing Officer had recorded his dis-satisfaction as regards the correctness of the claim of the Assessee that the provisions of Section 14A of the Act read with Rule 8D could be invoked. It relevant observations of the Hon'ble Supreme Court are as under:

*"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing,*

would become applicable." (Emphasis Supplied)

8. Similar view was taken by the Hon'ble Supreme Court in case of Maxopp Investment Ltd. vs. CIT 347 ITR 272 wherein it was held as under:

*"41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO." (Emphasis Supplied)*

9. Thus, it is settled legal position that before proceeding to invoke provisions of Rule 8D of the Rules for computing disallowance under Section 14A of the Act the Assessing Officer must express his dis-satisfaction regarding the computation of disallowance made by the Assessee. However the fact whether such dissatisfaction has been recorded by the Assessing Officer would depend upon the facts and circumstances of each case.

10. Coming to the facts of the present case, we note that the Assessing Officer has made following observations before invoking provisions of Section 14A of the Act read with Rule 8D of the Rules:

*"Perusal of the assessment records reveal that assessee has made huge investment in M/F etc. yielding dividend income of Rs.5,11,07,996/- which is exempt. Assessee has made disallowance of Rs.7,18,309/- in accordance with the provisions of Section 14A read with Rule 8D of the Income Tax Rules, 1962 whereas the same comes to Rs.98,91,972/- as per detailed calculation arrived. In this regard, detailed & specific query letter dated 13.01.2021 and 08.02.2021 duly issued to the assessee*

*fixing the case for 20.01.2021 & 11.02.2021 respectively. In response, though assessee has submitted requisite details vide its replies dated 28.01.2021 (Sr. No. 1) and 11.02.2021 submitting that disallowance of Rs.7,18,309/- has been disallowed by assessee itself on account of salary cost of person making investments & no other disallowance is required since no fund borrowed for investment in M/F and no interest is paid on utilized funds for investment in M/F as no funds have been borrowed. However, assessee's contention lacks forces & substance as huge exempt income of Rs 5,11,07,996/-has been earned by assessee during the A.Y. 2018-19.*

2.1 The submissions of the assessee have been considered but the same are not tenable in view of the following:

- (i) The provision of sub-section (1) of Section 14A provides for as under:

*"14A. For the purposes of computing the total income under the Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act."*

- (ii) Investment of crores of rupees require many investment related decisions to be made. The office infrastructure and resources are used while making these decisions. Some expenditure ought to be incurred in the form of administrative expenses and various general expenses. It would be not proper to say that tax-free income can be earned by incurring no or nominal expenditure. The term "expenditure" occurring in Section 14A would take in its sweep not only direct expenditure but also all forms of expenditure regardless of whether they are fixed, variable, direct, indirect, administrative, managerial or financial. **Thus, the contention that no expenditure is incurred in not acceptable.**
- (iii) **It is pertinent to mention here that even if no exempt income is actually earned or received during the year in any form whatsoever, the provisions of Section 14A read with Rule 8D apply where any such investment is made wherefrom such type of income might be generated either in the past or in the future year(s).**

(iv) *In this regard, CBDT vide Circular No. 5/2014 dated 11th February, 2014 has clarified that the legislative intent is to allow only that expenditure which is relatable to earning of taxable income. It has laid emphasis on the usage of the term "includible" in the heading for the Section and Rule and stated that it indicates that exempt income need not necessarily be included in a particular year's income, for disallowance to be triggered. Thus, section 14A disallowance shall be made in case the assessee has made investments which are capable of yielding exempt income even though there might not be an actual receipt of exempt income.*

(v) *Mumbai Tribunal in the case of DCIT, Central Circle 18 & 19, Mumbai v. Viraj Profiles Ltd. [2015] 64 taxmann.com 52 (Mumbai Trib.) in order dated October 21, 2015 has observed as below: -*

xx xx

(vi) *The Delhi Tribunal has also taken the view in the case of Insaallah Investments Ltd. v/s ITO [23 SOT 130] by holding that the phrase 'income which does not form part of total income' used in Section 14A is not limited to only the cases where some income has actually been received. It will also apply to the cases, where income cannot be included in the total income whether received or not.*

(vii) *The CBDT Circular No. 5/2014 dated 11th February, 2014 is binding on the Assessing Officer. With utmost regard to the Hon'ble Supreme Court dismissing the SLP in the case of Chettinad Logistics Pvt. Ltd. (supra), but the dismissal is "in limine" (at the threshold stage itself without delving in to the merits/question of law in the case) and the Hon'ble Court has not chosen to discuss on merits/question of law, at length and uphold/dismiss any particular reasoning of High Court. The dismissing of SLP in limine does not constitute any declaration of law or binding precedent. The law to this effect was culled by Justice Lahoti in Kunhayammed & Others vs. State of Kerala & Anr. (AIR 2000 SC 2587), which forms leading case in this regard. The position of law emerges from this case is as below: -*

xx xx

*This view has also been endorsed by Hon'ble Supreme Court itself in a recent case of Palam Gas Vs. CIT (Civil Appeal No. 5512 of 2017 dated 03.05.2017) vide Citation No. (2017) Taxmann.com 43 (SC).*

*2.2 In view of the above discussion, I am not satisfied with the claim of the assessee that no expenditure is incurred and no disallowance u/s 14A is warranted. Therefore, the provisions of Section 14A are applicable to the assessee's case. The disallowance u/s 14A is hereby computed in accordance with the provisions of Rule 8D as under: ....." (Emphasis Supplied)*

11. On perusal of above, it can be seen that the Assessing Officer has rejected the suo-moto disallowance should under Section 14A of the Act. While doing so, the Assessing Officer has neither referred to any expenses incurred/claimed by the Appellant for earning the exempt income, nor made any reference to the accounts of the Appellant. The computation of the suo-moto disallowance offered by the Appellant under Section 14A of the Act (*placed at page 241 of the paper-book*) was filed by the Appellant during the assessment proceedings as Annexure to Reply Letter, dated 11/02/2022. The Appellant had disallowed INR 7,18,309/- consisting of the salary cost of one of its employees aggregating to INR 7,13,000/- and telephone reimbursement expenses of INR 5,309/-. However, the Assessing Officer has simply rejected the same without recording any dissatisfaction in relation to the same. The Assessing Officer has proceeded on incorrect understanding that the Appellant has claimed that no expenditure was incurred for earning exempt income. Even while computing the quantum of disallowance, the Assessing Officer has not reduced the amount computed in terms of Rules 8D of the IT Rules by the amount of suo-moto disallowance of INR 7,18,309/- offered to tax by the Appellant in the return of income, and has proceeded to make addition of the

entire amount of INR 1,06,10,282/-. Further, we note that the Assessing Officer has observed that even if no exempt income is earned provisions of Section 14A of the Act would attracted. The aforesaid observations made by the Assessing Officer have no application to the facts of the present case since the Appellant has earned exempt income and offered suo-moto disallowance under Section 14A of the Act. In our view, the Assessing Officer has invoked the provisions of Section 14A of the Act read with Rule 8D of the IT Rules on incorrect understanding of facts and without due application of mind. Therefore, we hold that the Assessing Officer has failed to record proper dis-satisfaction about the suo-moto disallowance of 7,18,309/- made by the Appellant. Accordingly, in view the above judgments of the Hon'ble High Courts addition of INR 1,06,10,282/- made by the Assessing Officer under Section 14A read with Rule 8D of the IT Rules is deleted, and Ground No. 2, 3 and 4 raised by the Appellant are allowed while all the other grounds raised by the Appellant are dismissed as being infructuous.

12. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 29.04.2024.

**Sd/-**  
**(Om Prakash Kant)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 29.04.2024  
Alindra, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai