

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

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

ITA NO. 3985/MUM/2023 (A.Y: 2017-18)

ACIT – Circle -2(1)(1) Room No. 575, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai – 400020	v.	M/s. DSP Investment Pvt., Ltd., 11th Floor, Mafatlal Centre Nariman Point, Mumbai – 400021 PAN: AAACB1574H
(Appellant)		(Respondent)

C.O. No. 44/MUM/2024

[ARISING OUT OF ITA NO. 3985/MUM/2023 (A.Y: 2017-18)]

M/s. DSP Investment Pvt., Ltd., 11th Floor, Mafatlal Centre Nariman Point, Mumbai – 400021 PAN: AAACB1574H	v.	ACIT – Circle -2(1)(1) Room No. 575, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai – 400020
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Fenil Bhatt
Department Represented by	:	Shri Paresh Deshpande
Date of conclusion of Hearing	:	09.05.2024
Date of Pronouncement	:	15.05.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. ITA No. 3985/MUM/2023 and C.O. No. 44/MUM/2024 are appeal by the revenue and cross objection by the assessee preferred against the order dated 21.09.2023 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y.2017-18.

2. The grievance of the revenue read as under: -

"1. The learned CIT(A) erred in admitting additional evidence of computation of amount of disallowance of expenses related to the earning of exempt income under section 14A without compliance of Rule 46A(3) of I T Rules.

2. The learned CIT(A) erred in setting aside the issue of disallowance u/s 14A to verify the correctness Of the computation furnished by assessee and to allow the deduction thereof if found correct, ignoring the fact that the power of the CIT(A) to set aside back to the assessing officer has been rescinded with effect from 1.6.2001

3. The Ld. CIT(A) erred in deleting the addition made under section 14A r.w. Rule 81) disregarding the provisions of clause 'f' of Explanation-I to section 115JB(2) which requires any expenditure in relation to the exempt income also to be taken into consideration while computing the book profit under section 115JB, ignoring the fact that the Assessee has itself considered the amount computed by it under section 14A as adjustable under clause 'f' of Explanation I to section 115JB for computation of book profit in its return?"

4. The appellant craves the leave to add, amend, alter and/or delete any of the grounds Of appeal as above."

3. The grievance raised by the assessee in its cross objection read as under: -

"1. On the facts and in the circumstance of the case and in law, the learned CIT(A) has erred in holding that AO in his show cause letter issued to the Appellant has discussed the facts along with computation of disallowance of expenditure u/s 14 r.w. rule 8D, which can be regarded as satisfaction of the AO for invoking the provisions of section 14A of the Act?"

2. The learned CIT(A) has failed to appreciate that the objective satisfaction as required under section 14A(2) of the Act, has not been recorded by the Assessing Officer and, therefore, Rule 8D is not applicable.

3. The learned CIT(A) has failed to appreciate the jurisdictional ITAT in the appellant's own case in the earlier years has on identical facts has decided in favour of the appellant by holding that the disallowance made by the Appellant under section 14A of the Act is reasonable and, hence, Rule 8D of the Rules cannot be applied."

4. Since the issue raised in the cross objection go to the root of the matter we decided to adjudicate it first.

5. Briefly stated the facts of the case are that the, assessee electronically filed its return of income on 31.10.2017 declaring total income at ₹.19,90,11,760/- under normal provisions and ₹.39,49,41,967/- under section 115JB of Income-tax Act, 1961 (in short "Act"). The return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee.

6. During the course of the scrutiny assessment proceedings the Assessing Officer noticed that assessee has earned Long Term Capital Gain at ₹.10,76,63,070/- and exempt dividend income of ₹.4,56,90,217/-. The Assessing Officer further noticed that the assessee has also earned exempt distribution income from venture capital fund of ₹.23,95,914/- and interest on tax-free bonds at ₹.68,76,735/- resulting in total exempt income of ₹.16,26,25,936/-. The Assessing Officer found that the assessee has suo moto disallowed ₹.46,09,955/- under section 14A of the Act. Assessee was asked to explain as to why the disallowance should not be made under section 14A r.w. Rule 8D of I.T.Rules. Assessee filed a detailed reply which do not find any favour with the Assessing Officer who computed the disallowance of ₹.5,81,42,521/-.

7. Assessee challenged the disallowance before Ld. CIT(A), it was strongly contended that the issue in the appeal is covered in favour of assessee by the decision of the Tribunal in assessee's own case in A.Y.2008-09. Alternatively, the assessee furnished a computation sheet wherein it was pointed out that only those investments need to be considered which yielded exempt income. The Ld. CIT(A) accepted the

alternative plea and directed the Assessing Officer to verify the working of the assessee.

8. Before us, the counsel reiterated that the issue has been already decided in earlier assessment years by this Tribunal from A.Y. 2008-09 to A.Y. 2016-17 and supplied the copies of the Coordinate Bench. We have carefully perused the latest order of the Coordinate Bench in A.Y.2016-17 in ITA No. 3714/MUM/2023 dated 06.03.2024, the relevant findings read as under: -

"9. After considering the relevant finding given in the impugned order as well as computation for disallowance by the assessee, it is seen that assessee has excluded those expenditure which has no relation with the earning of exempt income. The working of expenditure which had no co-relation with the exempt income was as under:-

Total Expenditure as per profit & loss a/c	130,711,587
Less Expenditure incurred in relation to income other than	10,890,055
Provision for Diminution in Value of Investments	72,675,000
Donation 80G	2,525,000
Donation CSR	1,344,405
Depreciation Audit Fees	551,901
Demat Charges	1,738
Professional Tax	2,500
Security Charges	83,226
Rates and Taxes	60,200
Total	42,577,582

Accordingly, assessee has taken the total income as per profit and loss account and in proportion of the dividend income has calculated the disallowance of indirect expenditure of Rs.47,87,358/-. The said work of disallowance is based on the nature of expenditure debited to the profit and loss account and those, expenditure has been excluded which do not have any

connection remotely with the earning of exempt income. This is evident from the details of expenditure noted above. If these expenditure are removed, then in proportion to the total exempt income, the indirect expenditure which has been offered takes into consideration of the other expenditure which can be said to be attributable for earning of exempt income. Precisely this working has been accepted in the case of the assessee by the Tribunal in the earlier years and therefore, such a working of given by the assessee is upheld. Even otherwise also now it is settled by various decisions that investment which has not yielded exempt income should be excluded from the working of disallowance under Rule 8D and if that exercise is carried out, then amount equal to 0.5% of annual average of investment whose income is or shall be exempt works out to Rs.43,59,051/- which is much more than what assessee has offered as suomoto disallowance. Accordingly, the additional disallowance made by the AO is directed to be disallowed."

9. And the working of expenditure which has no correlation with the exempt income for the year under consideration is as under: -

"Total expenditure excluding expenditure that would be considered for disallowance in computation of total income/ Note 2) expenditure considered in (a) above:

<i>Total Expenditure as per profit & loss a/c</i>	<i>12,65,42,594</i>
<i>Less Expenditure incurred in relation to income other than</i>	<i>--</i>
<i>Provision for Diminution in Value of Investments written back</i>	<i>--</i>
<i>Donation 80G</i>	<i>7,15,00,000</i>
<i>Donation CSR</i>	<i>25,25,000</i>
<i>General Provisions on Standard Assets</i>	<i>6,50,000</i>
<i>Depreciation</i>	<i>11,53,577</i>
<i>Audit Fees</i>	<i>5,64,070</i>
<i>Demat Charges</i>	<i>54,395</i>
<i>STT</i>	<i>93,224</i>
<i>Professional Tax</i>	<i>2,500</i>
<i>Security Charges</i>	<i>---</i>
<i>Rates and Taxes</i>	<i>79,717</i>
<i>property, plant and equipment written off</i>	<i>16,33,237</i>
<i>Total</i>	<i>4,82,86,874</i>

10. Respectfully following the findings of the Coordinate Bench (supra), the Assessing Officer is directed to delete the impugned disallowance. Since the cross objection has been allowed the appeal of the revenue becomes otiose.

11. In the result, cross objection filed by the assessee is allowed and the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 15th May, 2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Mumbai / Dated 15.05.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

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, Mum