

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SUNIL KUMAR SINGH, JM**

ITA No. 4548/Mum/2023
(Assessment Year: 2017-18)

Quantum Advisors ESOP Trust
6th Floor, Hoechst House
Nariman Point,
Mumbai-400 021

(Appellant)

The Income-tax Officer
(Exemptions)
The Income-tax Officer
(Exemptions), Ward, 2(4),
Piramal Chamber, Lal Baug,
Parel, Mumbai-400 012

(Respondent)

PAN No. AAATQ0156D

Assessee by : Mr. Ninad A Patade, AR
Revenue by : Shri Rajesh Meshram, DR

Date of hearing: 21.05.2024
Date of pronouncement : 28.05.2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal is filed by Quantum Advisors ESOP Trust (assessee /appellant) for A.Y. 2017-18, against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 17th October, 2023, wherein the appeal filed by the assessee against the assessment order

passed under Section 143(3) on 26th December, 2019, by the ITO ward 2(4), Mumbai (the learned Assessing Officer), was partly allowed.

2. Therefore, the assessee is aggrieved with the same and has raised following grounds of appeal:-

1:0 Re: disallowance u/s 14A of the Income-tax Act, 1961 amounting to ₹28,43,433/-.

1:1 The Commissioner of Income-tax (Appeals). Has erred in confirming the disallowance of ₹28,43,433/- under Section 14A r.w.r 8D of the Income-tax Rules, 1962, while computing the appellant's total income for the year under consideration.

1:2 The Appellants submit that considering the facts and circumstances of its case and the law prevailing on the subject, no disallowance under Section 14A of the Income-tax Act, 1961 is called for the Commissioner of Income-tax (Appeals) ought to have held as such.

1:3 The Appellant submits that the Assessing Officer be directed to delete the disallowance so made by him and to re-compute its total income accordingly.

Without prejudice to the foregoing and even otherwise

1:4 The Commissioner of Income-tax (Appeals) has erred in not restricting the disallowance under Section 14A to extent of exempt income of ₹3,00,000/-.

2:0 Re.: General:



2:1 The Appellant craves leave to add, alter, amend and/or substitute and/or modify in any manner whatsoever modify all or any of the foregoing grounds of appeal at or before the hearing of the appeal.”

3. Before us, the only grievance of the assessee which has been raised and argued is that disallowance under Section 14A of the Act should be restricted to the extent of exempt income of ₹3,00,000/-. For this proposition the learned Authorized Representative has submitted the decision of the Hon'ble Bombay High Court in ITA no.149 of 2017, M/S Nirved Traders Pvt. Ltd. Vs. DCIT dated 23rd April, 2019, wherein it has been held that the disallowance under Section 14A of the Act in excess of exempt income is not sustainable.
4. The brief fact shows that assessee is a Trust created by the company Quantum Advisors Pvt. Ltd. for employees' stock option plans. The assessee has earned dividend income of ₹3 lacs which is claimed as exempt under Section 10(34) of the Income-tax Act, 1961 (the Act). On that basis, the return of income was filed on 1st August, 2017, at a taxable income of ₹34,21,630/-. As the assessee has earned exempt income and has debited total expenditure of ₹28,43,443/-, including interest of ₹25,98,082/-, the learned Assessing Officer questioned about the provisions of Section 14A of the Act and disallowance therein. The assessee stated that it has earned exempt income of only ₹3 lacs and has not incurred any expenditure to earn such income. The learned Assessing Officer rejected the contention of the assessee and computed disallowance under Section 14A of ₹31,51,890/-. He restricted



the disallowance to the extent of expenditure claimed of ₹28,43,433/- and accordingly, the assessment under Section 143(3) of the Act was passed on 26th December, 2019, at a total income of ₹62,65,060/-.

5. The assessee preferred the appeal before the learned CIT (A), who passed an appellate order on 17th October, 2023, confirmed the above disallowance. Therefore, the assessee is in appeal before us.
6. The learned Authorized Representative submitted that the disallowance under Section 14A of the Act cannot exceed the exempt income. He submits that exempt income earned by the assessee is merely about ₹ 3 lacs and therefore, disallowance made by the learned Assessing Officer of ₹28.43 lacs is not sustainable.
7. The learned Departmental Representative supported the order of the lower authorities.
8. We have carefully considered the rival contentions and perused the orders of the lower authorities. Undisputed fact shows that assessee has earned exempt income of ₹3 lacs during the year. The assessee did not offer any disallowance and stated that it has not incurred any expenditure which earned the exempt income. The learned Assessing Officer invoked the provisions of Section Rule 8D of the Act and made disallowance of ₹28,43,433/- to the extent of total expenditure incurred. Now it is a settled position of law that disallowance in excess of exempt income cannot be sustained under Section 14A of the Act. Hon'ble Karnataka High Court



in Pragathi Krishna Gramin Bank Vs. Joint Commissioner of Income Tax, 256 taxman 349 and Hon'ble Gujarat High Court in CIT vs. M/S. Corrttech Energy Ltd. 372 ITR 97, has clearly held so. Further, Hon'ble Bombay High Court in case of HSBC Invest Direct (India) Ltd dated 4th February, 2019, has also held so that the disallowance under Section 14A of the Act cannot exceed the exempt income. Hon'ble Bombay High Court in case of M/S Nirved Traders Pvt. Ltd. (supra) dated 23rd April, 2019, has clearly held so. In view of this, ground no. 1.4 of the appeal of the assessee is allowed.

9. All other grounds are not pressed hence dismissed.
10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 28.05. 2024.

Sd/-
(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 28.05. 2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//



Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai