

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.4296/Mum/2023
(Assessment Year :2018-19)**

ACIT-3(1)(1) Room No.607, Aayakar Bhavan M.K. Road Maharashtra- 400 020	Vs.	Edelcap Securities Limited 4 th Floor, Edelweiss House, Off. CST Road Kalina Santacruz (E) Mumbai - 400 098
PAN/GIR No.AABCE9000A		
(Appellant)	..	(Respondent)

**CO No.30/Mum/2024
(Arising out of ITA No.4296/Mum/2023)
(Assessment Year :2018-19)**

Edelcap Securities Limited 4 th Floor, Edelweiss House, Off. CST Road Kalina Santacruz (E) Mumbai - 400 098	Vs.	ACIT-3(1)(1) Room No.607, Aayakar Bhavan M.K. Road Maharashtra- 400 020
PAN/GIR No. AABCE9000A		
(Appellant)	..	(Respondent)

Assessee by	Shri Siddhesh Chougule
Revenue by	Shri P.D. Chougule
Date of Hearing	30/05/2024
Date of Pronouncement	31/05/2024

आदेश / O R D E R**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the Revenue and Cross Objection by the assessee against order dated 29/09/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for A.Y.2018-19.

2. The Revenue is aggrieved by deletion of disallowance u/s.14A r.w.r. 8D made by the ld. AO. The brief facts are that assessee is a member of interconnected stock exchange registered with SEBI. It is engaged in trading of arbitrage of commodities, securities and derivative instruments and also providing broking and advisory services. The assessee has claimed exempt income of Rs.27,75,28,301/-. For the purpose of computation of disallowance u/s.14A, assessee has calculated the disallowance at Rs.30,36,415/- which was offered as disallowance u/s.14A. The ld. AO noted that assessee had shown expenditure of Rs.41,03,09,573/- and finance cost of Rs.315,53,46,395/- as financial investment. Whwn AO asked to give working of disallowance under Rule 8D, in response assessee gave the working which ld. AO asked under Rule 8D which worked out to Rs.2,25,24,451/- and the same has been added by the AO. The ld. AO without recording his satisfaction has simply applied Rule 8D and worked out the disallowance of 1% of annual average of monthly average of opening and closing balance from the value of investment which income is or shall be

exempt would be disallowable u/s.14A r.w.r.8D. His relevant observation reads as under:-

“Since the assessee has made suo-moto disallowance of an amount of Rs.30,36,415/ as per section 14A read with Rule 8D which is not acceptable. The assessee, vide show- cause notice was asked to submit complete details of all the exempt income earned during the year which does not or shall not form part of the total income along with the details of all the investments and also to explain with reasons and supporting documentary evidence as to why the amount of Rs.2,85,17,048/- (Rs. 3,15,53,463/- minus Rs.30.36,415/-) being 1% of investments which is less than Finance cost expenditure should not be allowed as per section 14A r.w. rule 8A of IT Act, 1961 and added to the total income.”

3. The ld. CIT(A) held that since there was no recording of satisfaction by the ld. AO, therefore, disallowance made under Rule 8D without rejecting the disallowance offered by the assessee as per the provision of Section 14A cannot be sustained. In support he has strongly relied upon the decision of ITAT Mumbai in the case of **M/s. Ederweiss Financial Services Limited in ITA No.2467/Mum/2022.**

4. Before us ld. Counsel submitted that before the ld. AO, assessee had given its detailed explanation as to why suomoto disallowance offered by the assessee was reasonable having regard to the accounts maintained by the assessee and the working of the disallowance was computed in the following manner:-

Particulars	As per P & L A/c	Proportio nate cost allocated to earning of exempt income	Basis of allocation
Salary	258,478,468	2,500,000	cost of 1 employee
Auditors' remuneration	741,900	7.176	% of salary cost
Communication	2,880,384	27,859	% of salary cost
Electricity charges	2,536,939	24,537	% of salary cost
Legal and professional fees	33,944,803	328,314	% of salary cost
Office expenses	15,859	153	% of salary cost
Rent	15,340,757	148,376	% of salary cost

5. Alternatively he submitted that, even otherwise also, if disallowance u/s.14A r.w.r.8D is made, then those investments / stock in trade which had not yielded exempt income will have to be excluded and if that exercise is done then it will come to Rs.57,54,877/- out of which assessee had already disallowed Rs.30,36,415/-, if at all Rule 8D is to be applied. He further submitted that nowhere Id. AO had recorded the satisfaction

about the working and has mechanically rejected the disallowance worked out by the assessee which was based on expenditure debited in the profit and loss account which could have been said to be relatable to earning of the exempt income. He further submitted that one employee was devoted for making investments and monitoring the same and therefore, entire salary of the employee has been offered for disallowance and also under various other heads on a proportionate basis. Thus, the working of disallowance by the assessee was fully justified having regard to the accounts and nature of expenditure debited. He further submitted that it is a well settled law that if Id. AO does not record the satisfaction, then no disallowance can be made by the Id. AO by resorting to Rule 8D.

6. On the other hand, Id. DR relied upon the order of the Id. AO and submitted that now the law provides that computation of disallowance u/s.14A has to be made as per Rule 8D which Id. AO has correctly applied after stating that he is not accepting the suomoto disallowance made by the assessee.

7. We have heard rival submissions and perused the relevant finding given in the impugned order. The assessee for the purpose of disallowance had allocated cost of one employee who was looking after the investments and certain other heads of expenditure like auditor's remuneration, communication, electricity charges, legal and professional fees, office expenses and rent. We had asked the Id. Counsel to file details of entire expenses as per the financial statement. We find that under the

head 'other expenses' the major expenses are referred to commission and brokerage, bad debt written off, member's subscription, repair and maintenance, security transaction tax as service tax, stock exchange expenses, travelling and conveyance, housekeeping and security charges and various other expenses which has no co-relation remotely with the earning of the exempt income. When assessee had given entire accounts alongwith nature of expenses debited, then Id. AO should have pointed out that as to how other expenses can be said to be relatable for earning of exempt income and after analyzing the accounts and expenses he should have recorded his satisfaction having regard to the nature of accounts, then only he could have rejected assessee's working of disallowance and proceeded to apply Rule 8D. This mandate of recording of satisfaction before invoking Rule 8D has been provided in Section 14A(2). It is a well settled law by the Hon'ble Supreme Court in the case of **Godrej & Boyce Manufacturing Co. Ltd. Vs. Deputy Commissioner of Income-Tax and another [2017] 394 ITR 449 (SC)**; and **Maxopp Investment Ltd. vs. CIT** reported in **(2018) 91 taxmann.com 154**. In both the cases Hon'ble Supreme Court have categorically held that Id. AO needs to record his satisfaction having regard to the suomoto disallowance claimed by the assessee in the context of its accounts and should also give reasonable opportunity to show-case on the correctness of the claim made by him. Only if he records his satisfaction after

examining accounts then he can proceed to apply Rule 8D. This has been reiterated by the Hon'ble Jurisdictional High Court in several cases. In the case of **PCIT vs. M/s. Bombay Stock Exchange Ltd., in Income Tax Appeal No.1017 of 2017 by judgment and order dated 15/10/2019**, the Hon'ble Bombay High Court had observed and held as under:-

“9. We note that it is evident from the extracted part of the assessment order referred to hereinabove that the Assessing Officer has come to the conclusion that the disallowance claimed by the Respondent was not consistent with Rule 8D of the said Rules. It is only in view of the disallowances not being worked out as per Rule 8D of the Rules, that the Assessing Officer is not satisfied with the disallowance offered by the Respondent. This, to our mind, is putting the cart before the horse. The Assessing Officer must first record a conclusion that having regard to the accounts of the assessee, he is not satisfied with the disallowance offered by the Respondent in terms of section 14A(2) of the Act. It only on being dissatisfied with the above, does Rule 8D of the Rules can be invoked to compute the disallowance.

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11. Non-satisfaction with the disallowance offered by the assessee has to be arrived at on the basis of the accounts submitted by the assessee. In this case, the Assessing Officer had not carried out the aforesaid exercise but rejected the disallowance claimed by the assessee only on the ground that it was not in accordance with Rule 8D of the Rules. The application of Rule 8D of the Rules would only arise once the Assessing Officer is not satisfied on an objective criteria in the context of its accounts, that suo motu disallowance claimed by the assessee is not proper.

12. In fact, the Supreme Court in the case of *Maxopp Investment Ltd. v. Commissioner of Income Tax* while upholding the view of the Delhi High Court has held that the Assessing Officer needs to record his non-satisfaction having regard to the sou motu disallowances claimed by the assessee in the context of its accounts. It is only thereafter, the occasion to apply rule 8D of the Rules for apportionment of expenses can arise.”

8. Thus, once the assessee had categorically given the working of disallowance on a scientific basis having regard to the nature of expenditure debited and if ld. AO has not recorded his satisfaction, then he cannot proceed to make disallowance under Rule 8D. Accordingly, we uphold the order of the ld. CIT(A) and Revenues ground is dismissed.

9. In so far as the cross objection is concerned, it had been admitted by the ld. Counsel that same will become infructuous if the Revenue’s appeal is dismissed. Accordingly, cross objection raised by the assessee is dismissed as infructuous.

10. In the result, appeal of Revenue as well as cross objection of the assessee are dismissed.

Order pronounced on 31st May, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai; Dated 31/05/2024
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL 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, Mumbai