

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 496/KOL/2022
Assessment Year: 2013-14**

***Rishra Investments Ltd.....Appellant
[PAN: AABCR 2630 P]***

Vs.

ITO, Ward-1(4), Kolkata.....Respondent

Appearances:

Assessee represented by: Siddharth Agarwal, Adv.

Department represented by: Prabhas Roy, JCIT, Sr. DR.

Date of concluding the hearing : May 1st, 2024

Date of pronouncing the order : June 5th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2013-14 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 23.05.2022 arising out of the assessment order framed u/s 143(3) of the Act dated 30.12.2015.

2. The present appeal has again come up for hearing after passing an order of the ITAT, Kolkata in MA No. 4/KOL/2023 u/s 254(2) of the Act. On perusal of the record, it appears to us that the present appeal had been filed not within time and it was time barred as reported by the Registry. Earlier,

delay was condoned. Since earlier order passed in this case has already been recalled, hence a fresh application with respect to condonation has been filed. The ground is that the order passed in appeal was received through email, and the official concerned missed the relevant email through sheer inadvertence. Keeping in view the several decisions of the Apex Court and considering the facts mentioned in the petition the delay of 45 days are hereby condoned.

1. The brief facts of the case is that the assessee is a company engaged in investment in equity shares and securities. Company filed its return of income for the AY 2013-14 showing total income at Rs. 'NIL'. Assessee company was selected for scrutiny and notices u/s 143(2) and 142(1) of the Act were issued. In response to the said notices, assessee filed relevant details but the ld. AO added a sum of Rs. 1,12,79,513/- by invoking and applying provisions of Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962. Ld. AO has further added Rs. 1,29,77,961/- u/s 14A of the Act while computing the books of profit u/s 115JB of the Act.

Being aggrieved, the assessee placed the said order before ld. CIT(A). The ld. CIT(A) after hearing the parties has held that no interference is called for in the decision of the Assessing Officer (in short ld. 'AO'). However, the disallowance is restricted to the exempt income earned by the appellant of Rs. 1,13,78,823/- after deducting a sum of Rs. 16,98,448/- which has already been *suo-moto* added by the assessee and restricted the allowance to Rs. 1,06,80,375/-. In the said order, ld. CIT(A) has also upheld the amount while calculating the books of profit u/s 115JB of the Act. Being aggrieved and dissatisfied with the impugned order of the ld. CIT(A), assessee preferred the present appeal on the following grounds:

"1. (a) For that on the facts and in the circumstances of the case, Ld. A.O. was not justified in making an addition of Rs. 1,12,79,513/- by applying the provision of sec. 14A read with rule 8D.

b) For that Ld. A.O. has erred in making addition of Rs. 1,29,77,961/- u/s. sec. 14A read with Rule 8D while calculating the Book Profit u/s. 115JB of the Act, 1961.

2. For that the appellant craves leave to add, alter or delete all or any of the grounds of appeal.”

2.2. In course of argument, ld. Counsel for the assessee pressed his ground no. 1(a) and did not give emphasis on the ground no. 1(b). Ld. Counsel for the assessee submits that the ld. AO has wrongly applied the provisions of Section 14A of the Act read with Rule 8D of the Rules and recalculated the expenses attributed in relation to the earning of the exempt income. Ld. Counsel for the assessee further, submits that Section 14A of the Act applied if and only any exempt income was received by the assessee during the relevant previous year which is not incurable in the taxable total income. Ld. Counsel for the assessee further, submits that in the assessment order ld. AO computed the expenditure to be disallowed u/s 14A of the Act by taking the total value of the investment in shares, i.e. against the law and also against the proposition of the law as held in many cases. Ld. Counsel for the assessee placed reliance on the following decisions:

a) REI Agro Ltd. (Kolkata Tribunal) ITA No. 1331/Kol/2011 order dated 19.06.2023.

b) CIT vs. Cortech Energy Pvt. Ltd. (Gujarat High Court) order dated 24.03.2014

c) Alliance Infrastructure Projects Pvt. Ltd. vs DCIT, ITA Nos. 220 & 1043 (BNG)/2013 order dated 12.09.2014.

d) Cheminvest Ltd. 378 ITR 33 (Delhi High Court)

2.3. He has also placed the details of investment and dividend has been received in its paperbook. He has also given a chart of disallowance u/s 14A of the Act read with Rule 8D of the Rules in the light of the decision of the Hon'ble ITAT and the High Court and prayed that only value of the above-mentioned investment in share is to be included in the computation and addition u/s 14A of the Act read with Rule 8D of the Rules should not exceed Rs. 64,27,256/- as he has already *suo-moto* added back a sum of Rs. 16,98,448/-.

2.4. Contrary to that, it has been argued by the ld. D/R that ld. CIT(A) had considering all the aspects of the cases has restricted the exempt income earned by the appellant is Rs. 11,37,88,231/- and the amount which has been *suo-moto* added back by the assessee restricting the same at Rs. 10,68,375/- and the order did not require any interference.

3. We have perused the record and find that it is a case of calculation. As per the submission of the ld. Counsel for the assessee that the AO has wrongly calculated the provisions laid down u/s 14A of the Act read with Rule 8D of the Rules and according to us, it has to be calculated as per the above decisions Hon'ble ITAT and by other several High Courts. We have perused the order of ld. CIT(A) and find that in taking the decision of ground no. 1 the observation of the ld. CIT(A) is as such:

“4.2 I have considered the submissions of the appellant and perused the materials available on record. The appellant has claimed interest expenses on term loan (net) and other expenses in its P & L account and has not provided the details of expenses directly or indirectly attributable to the exempt income/ investments. The appellant has also not maintained any separate account relevant for the exempt income/ investments and for letting and finance business, to support its claim that no expenditure was incurred for making investments. The appellant is under obligation to establish the extent of expenditure out of all the accounts debited to the Profit and Loss Account as such appellant would not make investment in isolation. The Hon'ble ITAT Delhi in the case of Joint Investments Pvt. Ltd. reported in 50 Taxmann.com 271 has held that for making disallowance u/s. 14A it is mandatory to consider all the limbs of rule 8D(2). The appellant has not considered the provisions of rule 8D(2)(iii) as prescribed for making disallowance u/s. 14A r.w.r. 8D.

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In view of the above facts and that no further evidences or arguments have been put forth by the appellant during the course of appellate proceedings. It is held that no interference is called for in the decision of assessing officer as the appellant has failed to discharge the onus required under Section 14A of the Act and the Assessing Officer was justified in disallowed the amounts and the same added to the appellant's income. However, the disallowance is restricted to exempt income earned by the appellant is Rs. 1,13,78,823/-. The appellant has already suo moto added back a sum of Rs. 16,98,448/- u/s 14A r.w. 8D. Thus the disallowance by the AO is

restricted to at Rs. 1,06,80375/- (1,13,78,823/- - 16,98,448/-). Therefore, addition u/s 14A r.w.r. Rule 8D of the Act is confirmed as well the addition of the said amount while calculating the book profit u/s. 115JB. The appeal of the assessee on this ground is partly allowed.”

4. On going through the above findings, it appears to us that ld. CIT(A) has held that the appellant has also not maintained separate account relevant for exempt income investment and for letting and finance business to support its claim that no expenditure was incurred for making investment though the appellant made an obligation to establish. The appellant has filed details of investment vis-à-vis dividend which have been received. We have also gone through several cited decisions and find that the proposition of law as held in many cases is that disallowance u/s 14A of the Act read with Rule 8D of the Rules can be made by applying Rule 8D(1)(e) of the Rules on the investment in respect of which dividend income has been received. In the case of *REI Agro Ltd.* ITAT, Kolkata has held thus:

“The disallowance under section 14A read with rule 8D is to be in relation to the income which does not form part of the total income and this can be done only by taking into consideration the investment which has given rise to this income which does not form part of the total income.”

5. The submission of the ld. Counsel for the assessee is that the AO has taken entire amount of investment for computing the average value of the investment for the calculation to be made u/s 14A of the Act read with Rule 8D of the Rules. From perusal of several decisions as placed by the assessee, we are of firm opinion that calculation ought to have been made the average value of the investment considering only those investments which had yielded dividend during the year and should not have taken the full amount of the investment. The details of accounts which have been submitted by the assessee goes to reveal that investment in selected company out of the entire list of non-current investment in different companies has yielded dividend income (tax exempt income).

6. Going over the entire facts of the case as discussed above, we are of this view to restore the matter back to the file of the AO for afresh adjudication in the light of observation made by the Hon'ble ITAT and High Courts. The

assessee shall be at liberty to move forward all such legal contention and submission as he may be advised in connection with the quantification of the expenses, if any, incurred for the purpose of making and earning dividend income from investments and security. The AO shall decide the issue in light of the proposition laid by several High Courts as well as ITAT. In this view of the matter, the appeal is allowed by setting aside the judgment of both the lower authorities and restored to the file of the AO.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 5th June, 2024.

Sd/-

[Manish Borad]

Accountant Member

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Dated: 05.06.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Rishra Investments Ltd., C/o. Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite No. 213, 2nd Floor, Kolkata, West Bengal, 700 006.**
- 2. ITO, Ward-1(4), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata