

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 1036/MUM/2024
Assessment Year: 2020-21**

Mahanagar Gas Ltd., MGL House, G 33, Bandra Kurla Complex, Mumbai – 400051 (PAN : AABCM4640G)	Vs.	Deputy Commissioner of Income Tax, Circle 14(2)(1)
(Appellant)		(Respondent)

Present for:

Assessee : Shri P.P. Jayaraman, CA
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 25.06.2024
Date of Pronouncement : 28.06.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre, Delhi vide order no. ITBA/NFAC/S/250/2023-24/1059896911(1) dated 18.01.2024 passed against the assessment order by Assessing Officer, Assessment Unit, Income Tax Department, dated 27.09.2022 for Assessment Year 2020-21, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

2. Grounds taken by the assessee are reproduced as under:

“1. Disallowance u/s 14A r.w.r 8D: That on the facts and the circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) has erred in making additional disallowance u/s 14A by invoking rule 8D and not restricting the disallowance to the suo-moto amount disallowed by the appellant.

The Ld. A.O. u/s 143(3) has made the addition u/s 14A for Rs. 7,01,51,404/- to total income by invoking Rule BD which has been enhanced by the Ld. CIT(A) order who passed the order confirming the disallowance at Rs. 8,78,03,696/- thereby additional disallowance u/s 14A is made to the extent of Rs. 7,89,77,550/- (Rs. 8,78,03,696/- less suo-moto disallowance made Rs. 88,26,146/-).

The appellant is of the view that the disallowance u/s 14A, if any, should be made only after having regard to the books of accounts of the assessee and after considering the issues relating to the reasonableness of the disallowance.

The appellant is relying on the Mumbai ITAT decision in its own case for AY 2007-08 wherein Hon'ble Tribunal has restricted the disallowance to the extent of 2% of exempt income after referring to the Bombay High Court ruling in the case of CIT vs. M/s Godrej Agrovet Ltd [Appeal No. 934 of 2011 (BOM)].

In the appellant's case he has earned a dividend income of Rs. 15,68,39,544/- which is exempt income and has made suo-moto disallowance of Rs. 88,26,146/- which is reasonable according to the appellant and having regard to the nature of exempt income. However, Ld. CIT(A) by invoking the provisions of rule 8D has made the disallowance of Rs. 8,78,03,696/- which is 55.98% of the exempt income which seems to be very unreasonable having regard to the books of the appellant and the nature of the exempt income which is dividend earned on mutual fund investments.

The appellant therefore requests your Honour to either restrict the disallowance u/s 14A to the suo-moto disallowance made while filing the return of income or it should be restricted to 2% of exempt income having regard to its own Mumbai ITAT decision for AY 2007-08 as mentioned above.”

3. Assessee has also raised additional grounds which are reproduced as under:

“1. That the Ld CIT(A) has erred in upholding the disallowance made by Ld AO u/s 14A of the Act (r.w.r. 8D) without appreciating the fact that the Ld. AO failed to record his dis- satisfaction with regards to the accounts maintained by the appellant with cogent reasons, which is the primary condition for invoking rule 8D.

We are relying on the decisions in the case of:

a) PCIT v Tata Capital Limited (Bom HC) Income Tax appeal no. 1081 if 2018 dated 3rd April, 2024(2024) 161 Taxmann.com 557 (Bombay).

b) PCIT v JSW Energy Limited (Bom HC) (294 Taxman 407) (2023)

c) PCIT v Bajaj Finance Ltd (2019) 110 taxmann.com, 303 (Bom HC).

d) PCIT v Godrej & Boyce Mfg Co Ltd (2023) 149 Taxmann.com 222 (Bom)

e) PIEM hotels Ltd Mumbai C Bench ITAT (Mumbai) order dated 8.5.2024.

f) Wanbury Ltd Mumbai G Bench ITAT (Mumbai) order dated 25.4.2022

(General reasoning given that some expenses may have been incurred etc are not sufficient for invoking Rule 8 D).

2. That the Ld CIT(A) has erred in enhancing the disallowance made by the Ld AO u/s 14 A of the Act (r.w.r.8D) without appreciating the fact that the Ld AO failed to record his dissatisfaction which is the primary condition for invoking rule 8 D and without that the enhancement done is invalid in law.

We are relying on the decision in the case of:

Azimuth Investmetns Ltd New Delhi V ACIT (ITAT Delhi) ITA no 283/Del/2013.”

3.1. Since the additional grounds raised by the assessee goes to the root of the matter, we take it up for adjudication.

4. Brief facts of the case are that assessee filed its return of income on 29.12.2020, reporting total income at Rs.916,18,96,190/-. In the course of hearing, Ld. Assessing Officer noted that assessee had made suo moto disallowance u/s.14A for Rs.88,26,146/- shown in its income tax computation. He further noted that assessee had shown large investments amounting to Rs.112146.81 lakhs in its balance sheet. According to him, since assessee had not reported any exempt income, he computed disallowance u/s.14A as per Rule 8D of the Income Rules, 1962 (hereinafter referred as 'The Rules') by taking 1% of annual average of monthly average which worked out to Rs.7,89,77,550/-. After giving credit for the suo moto disallowance made by the assessee, Ld. Assessing Officer disallowed the amount of Rs.7,01,51,404/- u/s.14A r.w.r. 8D of the Rules. Aggrieved, assessee went in appeal before the Ld. CIT(A).

5. Before the Ld. CIT(A), assessee contested that the Ld. Assessing Officer has not recorded any satisfaction about his disagreement with the suo moto disallowance made by the assessee, having regard to the books of accounts of the assessee. According to the assessee computation of disallowance made by the Ld. Assessing Officer by resorting to Rule 8D is not in accordance with section 14A of the Act. Ld. CIT(A) did not accept the submission made by the assessee and

sustained the disallowance so made by the Ld. Assessing Officer. In fact, Ld. CIT(A) went a step ahead in enhancing the disallowance so made by treating the suo moto disallowance made by assessee as direct expenditure relatable to earning of exempt income by applying Rule 8D(2)(i). He thus, arrived at a total disallowance of Rs.8,78,03,696/-. Aggrieved, assessee is in appeal before the Tribunal.

6. Before us, Ld. Counsel for the assessee took us through the impugned assessment order and submitted that nowhere in the assessment order, Ld. Assessing Officer has recorded his satisfaction as to why he was not satisfied with the claim of assessee in respect of expenditure disallowed suo moto relating to exempt income having regard to the books of accounts of the assessee. Assessee had submitted detailed working on the suo moto disallowance made by it on which there is no whisper by the Ld. Assessing Officer about he being not satisfied with the correctness of the same. According to him, recording of dissatisfaction about the suo moto claim made by the assessee is the primary condition for invoking Rule 8D by the Ld. Assessing Officer.

6.1. Assessee has earned dividend income of Rs.15,68,39,544/- and had suo moto calculated the disallowance based on the amount spent by it on salary and other expenses incurred by the assessee, details of which is listed as under:

i)	Interest paid to others	– Rs.1,29,428/-
ii)	Interest on security deposits	– Rs.71,54,842/-
iii)	Salary of employees	– Rs.15,41,906/-
iv)	Total expenses	– Rs.88,26,146/-

Against this, Ld. Assessing Officer has made the additional disallowance by invoking Rule 8D i.e., 1% of annual average of monthly average of investments which comes to Rs.7.89 crores i.e.,

almost 50.31% of the total exempt income earned by the assessee during the year.

6.2. By placing reliance on the recent decision of Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs. Tata Capital Ltd. [2024] 161 taxmann.com 557(Bom), Ld. Counsel strongly submitted that provisions of Rule 8D should not be applied directly and the disallowance, if any should be made only after having regard to the books of accounts of the assessee. According to the Ld. Counsel, invocation of Rule 8D is not automatic and Ld. Assessing Officer has to record his satisfaction having regard to the accounts of the assessee, that he is not satisfied with the correctness of the claim made by the assessee. He thus requested that the disallowance should be restricted to the amount of suo moto disallowance made by the assessee, i.e., at Rs.88,26,146/-. He further submitted that enhancement made by the Ld. CIT(A) is contrary to the provisions contained in the section 251 of the Act.

7. Per contra, Ld. Sr.DR submitted that there is no specific format for recording of satisfaction by the Ld. Assessing Officer. The Ld. Assessing Officer has discussed the issue in the order and has resorted to computing the disallowance by applying Rule 8D. To support her contentions, she placed reliance on the decision of Hon'ble High Court of Delhi in the case of CIT vs. I.P. Support Services India Pvt. Ltd. in ITA No. 283/2014 dated 24.09.2015 and Hon'ble High Court of Gujarat in the case of Devarsons Industries Pvt. Ltd. vs. ACIT in ITA No.522/2017 dated 25.07.2017. She placed reliance on the order of the authorities below to sustain the disallowance so made.

8. We have heard the rival contentions and perused the material on record. It is a fact on record that assessee had suo moto made a disallowance of Rs.88,26,146/- and furnished the relevant details in this respect before the authorities below. It is not a case where the

assessee claims that no expenditure has been incurred by it against exempt income earned during the year. Ld. Assessing Officer, without pointing out any dissatisfaction on the correctness of the suo moto disallowance made by the assessee, having regard to the accounts of the assessee has resorted to applying Rule 8D to compute the disallowance by taking 1% of annual average of monthly average of investments. Further to this, Ld. CIT(A) has gone one step ahead in not giving credit for the suo moto disallowance but rather treating it as direct expenditure under Rule 8D(2)(i) and thus enhancing the disallowance made by the Ld. Assessing Officer without giving any reasonable opportunity to the assessee and any cogent reasons to make such an enhancement.

8.1. We are in agreement with the Ld. Counsel as to where the Ld. Assessing Officer has not recorded his satisfaction as to why he is not satisfied with the claim of the assessee in respect of expenditure relating to exempt income earned during the year, disallowance made u/s.14A by applying Rule 8D cannot be upheld. For this conclusion of ours, we find force from the decision of Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs. Tata Capital Ltd. (Supra) which has elaborately dealt with the issue.

8.2. In respect of the judicial precedents referred by Ld. Sr. DR, we note that in both the decisions, the claim of the assessee was that no expenses have been incurred for earning of exempt income there being no suo moto disallowance by the assessee and therefore, the facts in these two cases referred by the Ld. Sr. DR are different from the present case where assessee has made suo moto disallowance of expenditure incurred towards exempt income and has furnished all the necessary details in respect of the same.

8.3. Thus, where the Ld. Assessing Officer has not recorded his satisfaction as to why he is not satisfied with the claim of the assessee

in respect of its suo moto disallowance of expenditure in relation to exempt income, computation of disallowance by ld. Assessing Officer by applying Rule 8D is deleted. Since in the given set of facts, we have upheld non applicability of Rule 8D in absence of recording of satisfaction by the Ld. Assessing Officer to this effect, the enhancement made by the Ld. CIT(A) by treating the amount of suo moto disallowance as direct expenditure under Rule 8D(2)(i) does not have legs to stand. Accordingly, the enhancement so made by the Ld. CIT(A) to this effect is also deleted. Additional ground no.1 and 2 taken by the assessee are allowed. Since disallowance made is deleted as noted herein, grounds taken in Form 36 needs no separate adjudication.

9. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 28 June, 2024

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 28 June, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai