

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

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

**ITA No.787/MUM/2024  
Assessment Year: 2017-18**

<b>Income Tax Officer Ward 13(2)(1)</b> Room no. 147, 1 <sup>st</sup> Floor, Aaykar Bhawan, Mhaharshi Karve Road, Marine Lines, Mumbai - 400020. <b>PAN: AAKCS0055J</b>	Vs.	<b>Sterling Oil Resources Ltd.</b> 329, Sandesara House, Jawahar Nagar, Goregoan (West), Mumbai - 400104.
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri P. D. Chougule (Addl. CIT) Sr. DR.

Date of Hearing : 29 . 05 . 2024  
Date of Pronouncement : 25 . 06 . 2024

**O R D E R**

**Per: Ratnesh Nandan Sahay, Accountant Member:**

1. This appeal has been filed by the Revenue against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] vide DIN & Order No ITBA/NFAC/S/250/2023-24/1059060709(1) dated 26/12/2023 for assessment year 2017-18.

2. Following grounds of appeal have been raised by the appellant:

- “1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 4,79,11,916/- made by the Assessing Officer under section 14A r.w.r. 8D without considering the CBDT's Circular No. 5 of 2014 dated 11.02.2014 clarifying Rule 8D read with section 14A of the Act which provided for disallowance of the expenditure even where the tax payer in a particular year had not earned any exempt income”.*
- 2. Whether on facts and circumstance of the case, the Ld. CIT(A) is justified in deleting the addition made by the AO under section 14A r.w.r 8D without considering the facts that the Legislature has inserted clarificatory Explanation under Section 14A of the Act by Finance Act, 2022 stating that "For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income."*
- 3. "Whether on facts and circumstance of the case, the Ld. CIT(A) erred in justifying the facts and circumstances that that even though the assessee company made all investments in a foreign subsidiary from which it did not earn exempt income, however, it is evident that the decision to make such investments was taken by higher administrative personnel. The assessee certainly incurred expenses related to such administrative*

*decisions, including salaries for higher management, bank charges, office expenditures, and ancillary expenses grouped under administrative costs. These expenses shall be quantified by way of formula laid down under Rule 8D of the Rules and the proportionate expenses need to be disallowed in view of the Explanation under Section 14A of the Act by Finance Act, 2022 and CBDT's Circular No. 5 of 2014 dated 11.02.2014 clarifying Rule 8D read with section 14A of the Act."*

3. The facts of the case, in brief, are that the appellant i.e. Sterling Oil Resources Limited (SORL) was incorporated on 10<sup>th</sup> July, 2006 and is primarily an investment holding company. It has invested in various companies through its wholly owned subsidiary Sterling Global Oil Resources Private Ltd. (SGPL), (Mauritius). Investments of Sterling Oil Resources Limited SORL are primarily into exploration and production of oil and natural gas. Thus, Sterling Oil Resources Limited (SORL) is engaged in the business of exploration of oil and gas through its subsidiaries.
4. The Appellant has filed its Return of Income for A.Y. 2017-18 on 29.11.2017 declaring total income at Rs.7,51,060/-. The said return was first processed by CPC then it was selected under CASS for Limited Scrutiny assessment to examine "Expenses incurred for earning exempt income."
5. The Assessing officer, after affording reasonable opportunity of being heard to the assessee, finally assessed the income at Rs.4,86,62,976/- u/s.143(3) of the Act dated 29.11.2019 by making a disallowance of Rs.4,79,11,916/-

u/s.14A of the Act read with Rule 8D of Income Tax Rules on the ground that the assessee company had reported opening balance of the investments at Rs.6,08,78,90,015/- and again the same amount was shown as closing balance. The Ld. assessing officer has stated that the effect of this position of the above investments would imply that the assessee company had receivable exempt income. Therefore, although there was no actual receipt of exempt income yet provisions of section 14A would come to the force. The capacity to earn exempt income, based on maintenance of level of investment would also come under the ambit of section 14A. The Ld. assessing officer, then, placed reliance on CBDT Circular No. 5/2014 dated 11/02/2014 which categorically states that disallowance u/s. 14A was possible even in cases where no income has been earned by the assessee company that had been claimed exempt. Further, the Ld. AO has quoted “the Hon'ble Income Tax Appellate Tribunal, Ahmedabad, Judgement in the case of Shankar Chemicals Works Vs. DCIT [47 SOT 121], wherein, it has been held that if any expenditure has been incurred for earning exempt income same has to be disallowed even if there is no actual earning of exempt income” The Ld. assessing officer, then, computed the disallowance at Rs.4,79,11,916/- u/s. 14A read with Rule 8D of the Income Tax Act Rules, the break-up of which are given in the body of the assessment order.

6. Aggrieved by the order of the Ld. assessing officer, the assessee preferred an appeal before the Ld. CIT (A) who decided the appeal vide its Order No.

ITBA/NFAC/S/250/2023-24/1059060709(1) dated 26/12/2023 for assessment year 2017-18 passed u/s. 250 of the Income Tax Act and deleted the said addition made by the assessing officer on the ground that the provisions of section 14A of the act is not applicable in the case of the appellant as “neither there is any exempt income nor the investments made would give rise to any exempt income”.

7. Now, the revenue has preferred this appeal before us against the order of the Ld. CIT(A). During the appellate proceedings, no one appeared from the assessee side. The appellant was represented by Shri P. D. Chougule Sr. Departmental Representative who relied on the order of the Ld. AO.
8. We have considered the rival submissions and found that the assessee has categorically submitted before the Ld. AO vide its letter dated 22/11/2019 that the *“assessee has neither earned/received any exempt income.”* We would like to state that the assessee company has invested only in foreign subsidiary and step down subsidiary companies only as the details submitted vide our letter dated 7<sup>th</sup> November, 2019. No income has been earned on this investment. The said investment is foreign investment and, hence, any gain or loss on transfer of shares is taxable. It is reiterated that the said investments shall not bear any exempt income and hence, the said expenditure shall in no way attract the provisions of section 14A read with Rule 8D of the Act. It is to be noted that no exempt income was earned during the relevant financial year. Therefore, applicability of section 14A is

*completely out of question. At this juncture, to further substantiate the stand of the assessee. The assessee company has quoted various decisions of Hon'ble High Courts and ITAT in support of its stand”.*

9. Considering the above position, we hold that since no income has been earned on the investments made by the assessee during the assessment year under consideration, no disallowance u/s. 14A can be made. Otherwise also, since the said investment is a foreign investment, the gain or loss on transfer of shares is taxable. The appeal of the revenue is, therefore, dismissed.

10. In the result, the appeal is dismissed.

**Order pronounced in the open court on 25.06.2024.**

**Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

**Sd/-  
(RATNESH NANDAN SAHAY)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 25.06.2024.  
*Snehal C. Ayare, Stenographer*

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.