

**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.488/M/2024
Assessment Year: 2018-19**

Mahanagar Gas Limited MGL House, G33, Bandra Kurla Complex, Mumbai- 400051. PAN: AABCM4640G	Vs.	Deputy Commissioner of Income Tax Circle 14(2)(1), Aayakar Bhavan, Mumbai.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri P. P. Jayaraman, A.R.
Revenue by : Shri P.D. Chougule (Addl. CIT), SR. D.R.

Date of Hearing : 27 . 05 . 2024
Date of Pronouncement : 26 . 06 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed against the order of the Ld. CIT Appeal passed u/s 250 of the Income Tax Act [the 'Act' in short] vide DIN & Order No. ITBA/NFAC/ S/250/2023-24/1059081791(1) dated 26/12/2023 for assessment year 2018-19.
2. Following grounds of appeal have been raised:

"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.68,70,04,731/- to total income by invoking Rule 8D wherein he has wrongly made the disallowance of Rs.68.70 Cr which is 1% of the average investments which needed to be further divided by 12 to arrive at the annual average of monthly average investments submitted during assessment proceedings. This mistake in computation of disallowance in accordance with Rule 8D has been brought to the notice of Ld. CIT(A) and considering the arithmetic mistake, Ld. CIT(A) has corrected the same but passed the order confirming the disallowance at Rs.5,96,10,581/- thereby additional disallowance u/s 14A is made to the extent of Rs.5,74,31,947/- (Rs.5,96,10,581/- less Suo-moto disallowance made Rs.21,78,634/-).

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 Agrovat Ltd [Appeal No. 934 of 2011 (BOM)]**.*

*In the appellant's case he has earned a dividend income of Rs.18,89,83,748/- which is exempt income and has made Suo-moto disallowance of Rs.21,78,634/- 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.5,96,10,581/- which is 31.54% of the exempt income** which seems to be very un-reasonable 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 the Mumbai ITAT decision for AY 2007-08.

2. Your appellant prays for permission to add to, amend or alter any or all the grounds of appeal at any time prior to the hearing of the appeal.”

3. The facts of the case, in brief, are that the assessee company i.e. Mahanagar Gas Limited has filed its return of income for the assessment year 2018-19 on 30/10/2018 declaring total income of Rs.637,93,53,290/- after claiming deduction under Chapter VIA amounting to Rs.69,40,417/-. Subsequently, the case was selected for scrutiny and accordingly, the statutory notices u/s.143(2) and 142(1) were issued to the assessee company from time to time. The assessee company is engaged into business of distribution of Compressed Natural Gas (CNG) for vehicle and Piped Natural Gas (PNG) to domestic and commercial industrial undertaking.
4. During the course of assessment proceedings, it was noticed by the Ld. AO that the assessee has shown large investments in the balance sheet against which the assessee had shown exempt income of Rs.18,89,83,748/-. The Ld. assessing officer, therefore, asked the assessee to explain why it has not made disallowances u/s. 14A of the Act on account of expenditure incurred to earn exempt income. In response to that the assessee submitted *“the investments are done on various dates in various mutual funds. The source is from internal accruals i.e. money generated through business operations and there*

are no loans taken by the company on which interest is paid. The only loan which is appearing in the balance sheet is that of the sales tax deferral scheme which is interest free.

*As per rule 8D of the Income Tax Rules, the proviso says as follows:-
Provided that the amount referred to in clause (i) and (ii) shall not exceed the total expenditure claimed by the assessee.” Since the total amount expended does not exceed Rs.21,78,634/- as computed, the disallowance is restricted to Rs.21,78,634/-.”*

5. The reply of the assessee, stated as above, was considered by the AO but he didn't accept the same and disallowed a sum of Rs.68,70,04,731/- u/s. 14A of the Act r.w. rule 8D of the Income Tax Rules, 1962 and CBDT Circular No. 05/2014 dated 11/02/2014, the details of which are given in the body of the impugned assessment order.
6. Aggrieved by the assessment order, the assessee filed the appeal before the Ld. CIT (A) who restricted the above disallowance to Rs.5,74,31,947/- as under:

Total monthly average of opening and closing balances of investment	Rs.6891,83,36,467/-
Annual average of month average of opening and closing balances of investment	Rs.6891,83,36,467/12 = 5743194706/-
1% of the annual average	Rs. 5,74,31,947/-

Thus, total disallowance u/s. 14A r.w.r. 8D(2) of the IT rule was worked out at Rs.5,96,10,581/-(Rs. 5,74,31,947/- + Rs. 21,78,634/-).

7. Aggrieved by the order of the Ld. CIT (A), the appellant has filed this appeal. During the appellate proceedings before us, the appellant company placed reliance on the Mumbai ITAT decision in its own case for assessment year 2007-08 wherein Hon'ble Tribunal had restricted the disallowance to the extent of 2% of exempt income by following the Bombay High Court decision in the case of CIT vs. M/s. Godrej Agrovet Ltd. (Apl. No. 934 of 2011 Bombay) (A.Y. 2007-08). The CIT D.R., on the other hand, relied on the order of Ld. CIT (A).
8. We have considered the facts of the case, rival submissions and the legal position on this issue and found that the Coordinate Bench in the case of Piem Hotels Ltd. (No citation) has considered this issue in detail vide ITA No. 4338 & 4339 of 2023 dated 08/05/2024 and after considering the three decisions of Principal Commissioner of Income Tax v. Bajaj Finance Ltd. [[2019] 110 taxmann.com 303 (Bombay)], Principal Commissioner of Income Tax-2 v. Bombay Stock Exchange Ltd. [[2020] 113 taxmann.com 303 (Bombay)] and Principal Commissioner of Income Tax v. Godrej & Boyce Mfg. Co. Ltd. [2023] 149 taxmann.com 222/292 Taxman 497 (Bombay), has concluded that recording satisfaction is mandatory. So, the first and foremost test for disallowance u/s. 14A is to find out whether the Ld.

assessing officer has recorded his satisfaction as to how the calculations made by the assessee u/s. 14A is incorrect and why the Ld. assessing officer is not satisfied with that calculations. Here in the present case, we find that the Ld. assessing officer neither has recorded his satisfaction nor has pointed out as to how the calculation made by the assessee is incorrect. So, without recording the satisfaction, the Ld. AO cannot apply rule 8D of IT Rules to make disallowance u/s. 14A of the Act. Thus, we hold that the disallowance claimed by the appellant company should be allowed.

9. In the result, the appeal is allowed.

Order pronounced in the open court on 26.06.2024.

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

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

Mumbai, Dated: 26.06.2024.
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.