

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

M/s. Smita Conductors Private Limited 1402/03, 1402/3, Raheja Centre, Free Press Road, Nariman Point- 400021. PAN: AAACS5379K	Vs.	Circle 3(3)(1) Aayakar Bhavan, Maharshi Karve Rd, New Marine Lines, Churchgate- 400020.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Sunil Hirawat, A.R.
Revenue by : Shri P. D. Chougule (Addl. CIT), Sr. D.R.

Date of Hearing : 27 . 05 . 2024
Date of Pronouncement : 30 . 05 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the order of the Ld. CIT Appeal passed u/s 250 of the Income Tax Act (Act in short) vide its order no. ITBA/ NFAC/S/250/2023-24/1058749394(1) dated 14/12/2023 for assessment year 2018-19.
2. Following grounds of appeal have been raised:

- “1. On facts and in law, the Learned Commissioner of Income Tax (hereinafter referred to as Ld. CIT-A) had erred in confirming the application of Rule 8D by the Learned Assessing Officer (hereinafter referred to as LAO) without rejecting the claim of the appellant. Under the facts and circumstances of the matter, the disallowance u/s.14A should be restricted to the amount disallowed by the appellant.*
- 2. On facts and in law, the Ld. CIT-A has failed to appreciate that there should not be any disallowance under Rule 8D (2)(ii) r.w.s. 14A of the Act as no amount of interest was incurred for earning income exempt from tax.*
- 3. On facts and in law, the Ld. CIT-A had erred in confirming a sum of Rs.2,27,19,863/- in place of Rs.2,74,326/- disallowed by the appellant u/s.14A of the Income-tax Act. Under the facts and circumstances of the matter, he ought to have restricted the disallowance u/s.14A to Rs.2,74,326/- as disallowed by the appellant.*
- 4. On facts and in law, the Ld. CIT-A had erred in confirming a sum of Rs.2,27,19,863/- u/s.14A while computing the Book Profit u/s. 115JB in place of Rs.2,74,326/-. Under the facts and circumstances of the matter, he ought to have restricted the disallowance u/s.14A to Rs.2,74,326/- as disallowed by the appellant.*
- 5. The appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble ITAT to decide this appeal according to law.”*

3. The facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing of ACSR and Aluminum Conductors and Financing activities. During the

assessment year under consideration, the assessee company had received total exempt income of Rs.14,50,88,572/- comprising of dividend income of Rs.5,36,60,947/- claimed as exempt u/s.10(34) and long term capital gains (after payment of STT) of Rs.9,14,27,625/- claimed as exempt u/s.10(38) of the Act. Against this exempt income earned by the assessee company, a sum of Rs.2,74,326/- was *suo moto* disallowed u/s.14A of the Act in its computation of total income which was found to be meager and inadequate by the assessing officer considering the magnitude of investments held by it and the amount of exempt income received during the year.

4. The assessee company has shown non-current investments and current investments at Rs.37,85,64,504/- and Rs.189,34,21,835/- respectively aggregating to total investments of Rs.227,19,86,339/- as on 31/03/2017. The details of the investments are given below:

Non-Current Investment

Particulars as on 31.03.2018	Amount
Investment in Equity Shares	2,22,60,987/-
Investment in Mutual Funds	35,62,33,517/-
Investment in Partnership Firms	70,000/-
TOTAL	37,85,64,504/-

Current Investment

Particulars as on 31.03.2018	Amount
Investment in Mutual Fund	189,34,21,835/-
Total	189,34,21,835/-

5. The assessing officer, therefore, asked the assessee company to explain why this allowance should not be calculated as per section 14A of the income tax act r.w. rule 8D. In response to that the assessee company provided its own working of disallowance based on the estimated cost of man-hours to look after the investments, the income of which was claimed to be exempt.
6. The assessee company also submitted before the assessing officer that rule 8D should not be made applicable in the case of the assessee in view of provision of section 14A of the IT Act. In support of this claim, the assessee company submitted the findings of the ITAT where the Hon'ble Tribunal had restricted the disallowance as per assessee's calculation based on man-hours instead of rule 8D in the case of the appellant itself for the A.Y 2008-09 and A.Y 2012-13 vide ITAT Orders ITA No. 158/Mum/2013 and ITA No.3678/Mum/2016 respectively. The

extract of the said ITAT orders have been given in the body of the assessment order.

7. The Ld. Assessing officer, however, after analyzing the objections raised by the assessee against calculating of disallowance as per section 14A read with Rule 8D and also the decisions of Ld. CIT (A) and Hon'ble ITAT on which reliance was placed by the assessee, held that nowhere in the judgments of Ld. CIT (A) and Hon'ble ITAT, the applicability of rule 8D was denied for calculating the disallowance u/s.14A. The restriction of disallowance u/s.14A as per the assessee's calculation was accepted by the Hon'ble ITAT in the A.Y 2008-09 on the ground that the assessing officer had not rejected the accounts filed by the assessee. Similarly, in the A.Y 2012-13, the Ld. CIT Appeal had restricted the disallowance as per assessee's calculation stating therein that *"in the instant case I find that the assessing officer has not given any justification for rejecting the claim of the appellant that neither expenditure was incurred in earning of dividend income nor has he given any specific reasons for rejecting the computation of indirect expenses as submitted by the appellant. He has also not take into consideration the fact that the appellant's own funds by way of capital and reserves were more than the investments made"*

8. The assessing officer, therefore, re-worked out the disallowance as per rule 8D and made a disallowance of Rs.2,27,19,863/- as attributable expenses for investment and added a sum of Rs.2,24,45,537/- (Rs.2,27,19,863/- minus Rs. 2,74,326/-) to the book profit u/s. 115JB of the act by placing reliance on the decision of the Hon'ble ITAT (Mumbai) 'F' Bench decision in the case of Dy. CIT Cen. Cir. 18 & 19, Mumbai Vs. Viraj Profiles Ltd., [2015] 64 taxmann.com 52 (Mumbai-Trib.)/[2016] 156 ITD 72 (Mumbai - Trib.), wherein the Hon'ble Tribunal has held that in terms of clause (f) to Explanation 1 to section 115JB(2), disallowance made by Assessing Officer under section 14A, read with rule 8D of Income-tax Rules 1962, has to be added back for purpose of arriving at figure of book profit.
9. Aggrieved by the order of the Ld. Assessing Officer, the assessee filed appeal before the Ld. CIT Appeal, the Ld. CIT Appeal after considering the provisions of section 14A, rule 8D and the various decisions of the Hon'ble ITAT and High Court of Bombay upheld the addition made by the Ld. Assessing Officer on the ground that the Ld. Assessing Officer had rightly invoked the rule 8D of the IT Rules to work out the disallowance made u/s. 14A of the IT Act.

10. Further aggrieved by the order of the Ld. CIT Appeal, this appeal has been preferred before us. During the course of hearing, the appellant submitted a paper book in which details of cost to exempt income u/s. 14A were worked out as to how the total expenditure relating to exempt income was calculated. The appellant also placed reliance on the decision of the Hon'ble ITAT (Mumbai) 'F' Bench in assessee's own case of ITA No. 4721/Mum/2023 for assessment year 2013-14 in Smita Conductors Private Limited vs. Dy. Commissioner of Income Tax-3(3)(2), Mumbai, where the Hon'ble ITAT has accepted the working of the expenditure relating to exempt income and accordingly directed the Ld. Assessing Officer to accept the disallowance made by the assessee both u/s. 14A and 115JB.

11. The D.R. of the revenue on the other hand, relied on the orders passed by the Ld. Assessing officer and Ld. CIT Appeal. We have considered the rival submissions. Though, the appellant has raised several grounds of appeal, all pertains to only one issue is whether the Ld. AO was correct in not accepting the assessee's calculation of disallowance made u/s. 14A r. w. Rule 8D of Income Tax Rules despite the fact that the Coordinate Bench of Hon'ble Tribunal has already accepted the disallowance in appellant's own case (Supra). Thus, after giving

due consideration of all aspects involved in this case, we find that there is no reason to differ from the order of the Coordinate Bench. Accordingly, respectfully following the above decision, we direct the Ld. AO to accept the working of disallowance given by the appellant u/s. 14A and 115JB of the Act.

12. Accordingly, the appeal of the assessee is allowed.

Order pronounced in the open court on 30.05.2024.

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

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

Mumbai, Dated: 30.05.2024.
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.