

- a. Addition of interest income of Rs. 12.02 crores;
 - b. Disallowance made under Section 14A of the Act at Rs. 13.45 crores;
2. The first issue relates to addition of interest income of Rs. 4.02 crores. The assessee had declared interest income of Rs. 20,76,070/- in its return of income. From an internal portal named 'insight portal', which could be viewed by the Assessing Officer only, the AO noticed that the assessee has received interest income from the following persons:

S.No.	Name	TAN	Amount of Interest Rs.
1.	Essar Oilfield Services India Ltd.,	MUME0779B	85,04,279
2.	Essar Shipping Ltd.,	MUME08627D	2,89,71,560
3.	AXIS Bank	MUMU05151G	8,48,27,750
	Total		12,23,03,589

Hence, the Assessing Officer proposed to make addition of the difference amount of interest income Rs. 12.02 crores to the total income of the assessee. Since the assessee did not furnish any reply, the Assessing Officer added the above said amount to the total income of the assessee.

3. Before the Ld.CIT(A), the assessee submitted that the Assessing Officer has not confronted the material relied upon by him for making the impugned addition. Hence, the Ld.CIT(A) called a remand report from the Assessing Officer. However, in the remand report also, the Assessing Officer reported that the addition has been made on the basis of the

material available with him. Accordingly, the Ld.CIT(A) confirmed the above said addition of Rs.12.02 crores.

4. We heard the rival contentions and perused the record. At the time of hearing, Ld. DR clarified that 'insight portal' is a facility available only to the Assessing Officer and he could view details of all the incomes pertaining to the assessee. We notice that the Assessing Officer has made the impugned addition on the basis of information available in the 'insight portal'. However, the fact could remain that the Assessing Officer has not supplied the said information to the assessee. It is the submission of Ld A.R that the assessee could not have offered explanations with regard to the information available in the 'insight portal', unless the relevant information were supplied to the assessee. We find merit in the above said submissions of Ld A.R. The Principles of natural justice would require the AO to confront the materials relied upon by him for making the addition. In the instant case, we are of the view that there is violation of the above said principle. Accordingly, we are of the view that this issue needs a fresh examination at the end of the Assessing Officer. Accordingly, we set aside the order passed by the Ld.CIT(A) on this issue and restore the same to the file of the Assessing Officer for examining it afresh, after providing the relevant material to the Assessing Officer.

5. The next issue relates to disallowance made under Section 14A of the Act. The Assessing Officer noticed that the assessee has held the investments to the tune of Rs. 4,078 crores as on 31-03-2017. The assessee had also shown long term borrowings of Rs. 6,453 crores and

claimed interest expenditure of Rs. 20.66 crores. The Assessing Officer noticed that the assessee did not make any disallowance as required under Section 14A of the Act. When questioned about the same, the assessee replied that it has not earned any exempt income during the year under consideration and hence, it has not incurred any expenditure on the NIL exempt income. The Assessing Officer, however, did not accept the above said contentions of the assessee and accordingly computed the disallowance under Section 14A r.w. Rule 8D of Income Tax Rules, 1962 ('the Rules') at Rs. 13.45 crores. The Assessing Officer added the same to the total income of the assessee. The Ld.CIT(A) also confirmed the same by placing reliance on the Circular No. 05/2015, dt. 11-02-2014. The assessee is aggrieved.

6. We heard the parties on this issue and perused the record. The question is whether any disallowance u/s 14A can be made when the assessee has not earned any exempt income. Before us, Ld.AR placed reliance on the decisions rendered in the case of *Ajit Ramakant Phatarpekar* [2021] 124 taxmann.com 124 (Bombay), wherein the Hon'ble High Court has followed the decision rendered by it in the case of *Nirved Traders (P) Ltd. vs. Dy.CIT* [2019] 3 NYPCTR 411 (Bom), wherein it was held that the disallowance made under Section 14A of the Act cannot be more than the exempt income. The Hon'ble Delhi High Court in the case of *IL & FS Energy Development Company Ltd.*, 399 ITR 483 has held that the disallowance under Section 14A of the Act is not required to be made when the assessee has not earned any exempt income.

7. In the instant case, the admitted fact is that the assessee did not earn any exempt income. Hence, the disallowance under Section 14A of the Act is not called for as per the decision rendered by Hon'ble Delhi High Court in the case of IL & FS Energy Development company Ltd (supra). Hence the AO was not justified in making disallowance u/s 14A of the Act when the assessee has not earned any exempt income. Accordingly, we set aside the order passed by the Ld.CIT(A) and direct the Assessing Officer to delete the disallowance made under Section 14A of the Act.

8. In the result, appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 23rd July, 2024

Sd/-

(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,
Date : 23rd July, 2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "C" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai