

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI PRASHANT MAHARISHI, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 4559/MUM/2023
(Assessment Year : 2014-15)**

M/s Dosti Reality Limited (Formerly Dosti Land Developer Pvt Ltd on Amalgamation) 276, Lawrence and Mayo House, 1 st Floor, DR D.N.Road, Fort Mumbai-400001.	Vs.	Assistant Commissioner of Income Tax-1(1)(1) Mumbai-400020.
PAN/GIR No. AAACD2624A		
(Appellant)	..	(Respondent)

Assessee by	Dr. K. Shivram a/w Mr. Rahul Hakani
Revenue by	Smt. Mahita Nair (SR. DR.)
Date of Hearing	15/05/2024
Date of Pronouncement	24/07/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal is directed against the impugned order dated 31.10.2023 passed in appeal no. CIT(A)2, Mumbai/10493/2016-17 by the Ld. Commissioner of Income-

tax(Appeals), National Faceless Appeal Centre(NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2014-15, wherein assessee's appeal has been partly allowed and the addition to the extent of Rs. 1,05,30,000/- has been sustained as against the addition of Rs. 1,05,32,455/- made by the Assessing Officer vide assessment order dated 06.12.2016.

2. The brief facts under appeal, state that appellant is a Private Limited Company, which is engaged in the business of development of properties. The appellant assessee, electronically filed its return of income for A.Y.2014-15 on 20.11.2014, declaring total income of Rs. 2,58,19,190/-. The case was selected for scrutiny. Statutory notices u/s. 143(2) and 142(1) of the Act were issued and served upon the assessee. Assessee submitted the required details in response to the aforesaid notices. Assessing officer noticed that the assessee company made fresh investments in partnership firms during the year under consideration and earned exempt income of Rs. 26,34,54,660/- and also claimed the same as exempt from tax u/s. 10(2A) of the Act. The assessee, suo-moto disallowed Rs. 43,465/- u/s. 14A of the Act. The investments made in the partnership firms have not been considered for disallowance despite claiming the profit from such partnership firm as exempt from tax. The assessing officer worked out the expenses attributable to exempt income as per section 14A of the Act r/w rule 8D of the Income Tax

Rules 1962 [hereinafter referred to as “rules”] by taking the annual average investments of the monthly averages of the opening and closing balances of the value of investments as per assessee’s accounts at Rs. 1,05,75,920/- [(Rs.2,23,65,60,504/- + Rs. 1,99,38,07,811)/2] x 0.5/100]. After adjustment of assessee’s suo-moto disallowance of Rs. 43,465/-, the disallowance was computed as Rs. 1,05,32,455/- (Rs. 1,05,75,920 – Rs. 43,465). Aggrieved by the assessment order dated 06.12.2016, the assessee company preferred an appeal before learned CIT(A), who partly allowed assessee’s appeal by restricting the additions to the extent of Rs. 1,05,30,000/- only.

3. The appellant assessee company has approached this tribunal on the following grounds:

“1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the additions u/s. 14A r.w.r 8D to the extent of 1,05,73,465/-. Additions confirmed of Rs. 1,05,73,465/- is bad in law and needs to be deleted.

2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the additions u/s. 14A r.w.r 8D of Rs. 1,05,73,465/- as against disallowance u/s. 14A made in computation of income of Rs. 43,465/- ignoring the submissions of the appellant that expenditure debited to Profit & Loss A/c is attributable to taxable income only.

3. Without prejudice to the above and without submitting, Ld CIT(A) erred in confirming the additions u/s. 14A r.w.r 8D of Rs. 1,05,73,465/- without appreciating the fact that disallowance u/s. 14A cannot exceed the actual amount of expenditure under the head "Employee Benefit Expenses" & "Other Expenses" debited to Profit & Loss A/c. Thus, disallowance u/s. 14A cannot exceed salary & other expenses debited to Profit & Loss A/c aggregating to Rs. 12,10,867/-.

ADDITIONAL GROUND:

4. The learned CIT (A) failed to appreciate that addition u/s. 14A r.w. Rule 8D cannot exceed Rs. 60,543/- i.e 5% of Employee benefit expenses and other expenses aggregating to Rs. 12,10,867/- and hence the addition u/s. 14A r.w. Rule 8D cannot exceed Rs. 60,543/-”

4. In response to the notice issued by the tribunal, learned DR appeared and participated in the hearing.

5. We have perused the material on record and heard learned representatives for both the parties.
6. The main point for consideration under appeal is, as to “Whether the disallowance of Rs. 1,05,73,465/- as against assessee’s suo-moto disallowance of Rs. 43,465/- with regards to the expenditure attributable to the exempt income in respect of profits earned by the assessee from investments made in the partnership firms, is tenable under the law?”
7. Learned representative for the appellant company has submitted that learned CIT(A) has erred in confirming the disallowance of Rs. 1,05,73,465/- made by the Assessing Officer in respect of the expenditure incurred in earning profits from the partnership firms. Further, submitted that the share of profit in the hands of the partner, is income suffered tax in the hands of firm & exempt u/s. 10(2A) of the Act. Learned CIT(A) has erred in ignoring the submissions of the appellant that expenditure debited to profit & loss A/c is attributable to taxable income only. Further, submitting that investments in subsidiary/group companies are strategic in nature and has not earned any dividend from its subsidiaries. Learned AR has referred (1) Principal Commissioner of Income Tax V. Godrej and Boyce Mfg. Co. Ltd., [2023] 149taxmann.com 222(Bombay), wherein Hon’ble Bombay HighCourt has held that where assessee earned exempt income and submitted computation of inadmissible expenditure u/s. 14A, since AO has not recorded any satisfaction that working of inadmissible expenditure u/s.14A

- by assessee was incorrect, interest expenditure could not be disallowed. (2) Principal Commissioner of Income Tax-3, Mumbai V. Reliance Capital Asset Management Ltd, [2017] 86taxmann.com 200(Bombay), wherein Hon'ble Bombay HighCourt held that where assessee, an asset management company of reliance mutual fund, invested its own funds in reliance mutual fund and claimed dividend income and long term capital gains as exempt, rule 8D(2)(iii) not applicable to work out disallowance u/s. 14A. (3) Gillette Group India (P.) Ltd. V. Assistant Commissioner of Income Tax, Circle 12(1), [2012] taxmann.com 61(Delhi), wherein Hon'ble Delhi HighCourt has observed that disallowance u/s. 14A cannot exceed expenditure actually claimed by assessee. (4) Assistant Commissioner of Income Tax, Mumbai V. Crompton Greaves Ltd., [2019] 111taxmann.com 338(Mumbai-Trib), wherein the co-ordinate bench of this tribunal has held that where no finding at all had been recorded by AO as to incurrence of any expenditure by assessee for earning exempt income, no disallowance u/s. 14A was called for. Learned AR has accordingly prayed to set aside the impugned order.
8. Learned representative for the department of revenue, has submitted that the assessee has admittedly yielded profits from the partnership firms and submitted that the impugned order, excludes the assessee's investments in its subsidiary companies, hence the impugned order is valid under law.
 9. We shall now take up aforesaid main point under consideration, covering all the grounds of assessee's appeal. It

appears that the assessee company, while determining its income for the relevant A.Y. 2014–15, has not taken into consideration, the disallowance in respect of the investments made in the partnership firms despite claiming the profit from such partnership firms, which is exempt from tax u/s. 10(2A) of the Act. As regards the applicability of section 14A of the Act, assessee has, suo-moto offered an amount of Rs. 43,465/- as expenditure disallowable u/s. 14A of the Act.

10. The relevant section 14A of the Act, reads as under:

“14A. [(1)] [Notwithstanding anything to the contrary contained in this Act, for the purposes of] computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income" under this Act.]

[(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:]

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.]

Explanation. 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.]

11. According to the essential ingredients of above referred Section 14A, for making disallowance from the total income of the assessee, there has to be an expenditure incurred in

relation to the exempt income. The assessee has submitted before the authorities below that no expenses have been incurred by it which are directly related to the exempt income of Rs. 26,34,54,660/- which is in respect of the income from the partnership firms. In this view of the matter, the AO can determine the expenses incurred in earning exempt income in accordance with rule 8D(2) of the rules. The condition precedent is that before resorting to the computation under the aforesaid provision, the AO, having regard to the accounts of the assessee, is required to record his dissatisfaction with regard to the correctness of the claim of the assessee in respect of such expenditure related to exempt income. Assessing Officer, has, in the assessment order, recorded that assessee company made fresh investments in the partnership firms during the year. The AO has further noted that the assessee company earned profit (exempt income) of Rs. 26,34,54,660/-. This fact is substantiated from the break-up of share profit from partnership firms given at page 25 of assessee's paper book. AO also made note of the fact that in the computation of income, assessee has suo-moto disallowed Rs. 43,465/- u/s. 14A of the Act.

12. It is an unambiguous fact that the assessee company did not consider the investments made in the partnership firms for disallowance despite claiming the huge profit of Rs. 26,34,54,660/-, which is exempt from tax u/s. 10(2A) of the Act. The opening and closing balance of assessee's investments in partnership firms as shown at page 82 of

assessee's paper book is Rs. 1,99,38,07,811/- depicted against A.Y. 2013-14 and Rs. 2,23,65,60,504/- depicted against A.Y. 2014-15, respectively. In view of sub section 3 of Section 14A, provisions of sub section 2 of Section 14A will be attracted in the present case as the assessee has denied to have incurred any expenses in relation to the exempt income received from the partnership firms. The Assessing Officer, having regard to the accounts of the assessee, has thus, prudently recorded his dissatisfaction against the assessee's claim that no expenses incurred in respect of the earning of exempt income from partnership firms.

13. It is an undisputed fact that the appellant assessee has earned Rs. 26,34,54,660/- as profit from the partnership firms, which is exempt from tax u/s. 10(2A) of the Act, which reads as under:

“[10(2A)in the case of a person being a partner of a firm which is separately assessed as such, his share in the total income of the firm.

Explanation. For the purposes of this clause, the share of a partner in the total income of a firm separately assessed as such shall, notwithstanding anything contained in any other law, be an amount which bears to the total income of the firm the same proportion as the amount of his share in the profits of the firm in accordance with the partnership deed bears to such profits ;]”

14. A Three member special bench of ITAT Ahmedabad in ITA No. 3002 (Ahd) of 2009, Vishnu Anant Mahajan V Assistant Commissioner of Income Tax, circle 5, Baroda, for the A.Y. 2006-07, vide order dated 25.05.2012, reported in [2012]22taxman.com 88 (Ahd) (SB) has held as under:

“.....In so far as share income is concerned, the field is occupied by the tax law, as it is enacted that the share income shall not form part of total income of the partners.

Therefore, in view of this specific provision and the fact that the firm and partners are separately assessable entities, it will be difficult to hold that the share income is not excluded from the total income of the partner because the firm has already been taxed thereon. When section 10(2A) speaks of its exclusion from the total income, it means, the total income of the person whose case is under consideration. The instant case is that of the partner and therefore what is to be examined is whether the share income is excluded from his total income. The answer is obviously in the affirmative. In such a situation, provision contained in section 14A will come into operation and any expenditure incurred in earning the share income will have to be disallowed.....”

15. The legal position is settled thus that the profit from the partnership firm is taxable in the hands of the firm and it is excluded from the total income of partners u/s. 10(2A) of the Act. The learned Assessing Officer has rightly invoked section 14A of the Act and computed the expenditure on assessee's exempt income by resorting to rule 8D of the rules after prudently recording his dissatisfaction, which is “sine qua non” before invoking rule 8D(2) of the rules, which reads as under:

“8D. (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with-

- (a) the correctness of the claim of expenditure made by the assessee; or*
- (b) the claim made by the assessee that no expenditure has been incurred in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).*

(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:

- (i) the amount of expenditure directly relating to income which does not form part of total income; and*
- (ii) an amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:*

Provided that the amount referred to in clause (1) and clause (ii) shall not exceed the total expenditure claimed by the assessee.]

.....”

16. In Maxopp Investment Ltd. Vs. CIT-[2018] 91 taxmann.com 154 (SC), Hon'ble Supreme Court has held that the objective of holding the investment are immaterial and

disallowance has to be applied in all cases irrespective of the fact whether the same was held as stock-in-trade or as an investment.

17. We find that learned CIT(A) has also excluded the investment of Rs. 4,91,226/- made by the assessee in group/subsidiary companies and calculated the average value of investment for the purpose of section 14A r/w rule 8D(2) and worked out it to be Rs. 1,05,73,465/- and after adjustment of assessee's suo-moto disallowance of Rs. 43,645/- , it was restricted to Rs. 1,05,30,000/- only. The computation of expenditure, thus, cannot be limited to the assessee's taxable income. Learned CIT(A) has very elaborately discussed the main issue at length after coming to the logical conclusion. We do not find any error of fact or law in the impugned order. The facts of the above referred case law are easily distinguishable and not applicable to the facts of the instant case. The aforesaid point, covering all the grounds of assessee's appeal, is thus determined against the assessee and in favour of the revenue.

18. In the result, the assessee's appeal is dismissed.

Order pronounced on 24.07.2024.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai; Dated 24/07/2024
Anandi Nambi, *Steno*

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

*ITA no. 4559/MUM/2023
M/s Dosti Realty Limited
(Formerly Dosti Land Developer Pvt Ltd on Amalgamation)*

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai