

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.2233/M/2024
Assessment Year: 2016-17**

M/s. Godrej Investment Pvt. Ltd. (Now Amalgamated with Godrej and Boyce Mfg. Co. Ltd.), M/s. Kalyaniwalla & Mistry LLP, Esplanade House, 2 nd Floor, 29, Hazarimal Somani Marg, Fort, Mumbai- 400 001 PAN: AAACG1391H (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle 14(1)(2), Room No.475, Aayakar Bhavan, Mumbai - 400020 (Respondent)
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Present for:

Assessee by : Shri Jeet Kamdar, A.R.
Revenue by : Shri Manish Ajudiya, Sr. A.R.

Date of Hearing : 15 . 07 . 2024
Date of Pronouncement : 26 . 07 . 2024

O R D E R

Per : Satbeer Singh Godara, Judicial Member:

This assessee's appeal for assessment year 2016-17 arises against the National Faceless Appeal Centre(NFAC) Delhi's DIN & order No.ITBA/NFAC/S/250/2023-24/1062231076(1) dated 08.03.2024 in proceedings under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. Heard both the parties at length. Case file perused.

3. The assessee pleads the following substantive grounds in the instant appeal:

“1) The learned Commissioner of Income Tax (Appeals) erred in holding that the Appellant did not respond to the notices issued on 06.05.2021, 01.11.2022, 18.12.2023 and 31.01.2024 ignoring the fact that these notices were actually not received by the Appellant and the Appellant had requested for an adjournment to the notices dated 17.03.2021 and 10.10.2023 which were received by the Appellant. The Appellate order has therefore been passed without giving the Appellant an opportunity to explain the facts and hence, vitiates the principles of natural justice.

2) The learned Commissioner of Income Tax (Appeals) erred in upholding the action of the Assessing Officer in assuming jurisdiction under Section 14A(2) of the Act after recording objective satisfaction when in actual fact no such satisfaction was recorded by the Assessing Officer.

3) The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in computing the disallowance under Section 14A of the Act in accordance with sub-clause (ii) and (iii) of clause (2) of Rule 8D, when the Appellant has suo moto computed the actual amount of interest and administrative expenditure liable for disallowance under Section 14A of the Act read with Rule 8D(2)(1) amounting to Rs.15.44 lakhs.

4) *The learned Commissioner of Income-tax (Appeals) erred in relying on factually erroneous presumptions and rejecting the contention raised by the Appellant that even if interest expenditure was to be disallowed under Section 14A of the Act, then the interest income arising from the utilization of such borrowed funds was to be reduced from such interest expenditure and only the net interest expenditure was to be considered for computing the disallowance under Rule 8D(2)(ii).*

5) *The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in disallowing interest and administrative expenditure u/s.14A of the Act aggregating to Rs.4.74 crores towards the earning of dividend income, by applying clause 2(ii) & 2(iii) of Rule 8D by holding that the Appellant had not maintained separate books of accounts and that there was a direct nexus between the investments made and the costs incurred by the Appellant.*

6) *The learned Commissioner of Income Tax (Appeals) erred in upholding the action of the Assessing Officer in disallowing the entire administrative and other expenditure u/s.14A of the Act aggregating to Rs.4,30,794/- as incurred for earning of dividend income. Having regard to the facts and circumstances of the case, the Appellant submits that the unwarranted and arbitrary disallowance is unwarranted and the same requires to be deleted.”*

4. Learned counsel first of all invites our attention to the assessee's 4th substantive ground raising the issue of correctness of section 14A r.w.Rule 8D(2)(ii) proportionate interest disallowance amounting to Rs.4,69,49,406/-, made in the course of assessment dated 26.11.2018 and upheld in the CIT(A)/NFAC's lower appellate discussion. He took us to page No.17 in the assessee's paper book indicating its interest income on inter corporate deposits of Rs.745,92,200/- as against interest expenditure on short term borrowings to the tune of Rs.633,20,017/-; respectively. His case accordingly is that once the assessee had derived net positive interest income, the necessary inference which it had not incurred any such corresponding interest expenditure which could not be disallowed on proportionate basis in both the lower proceedings. He referred to this tribunal's co-ordinate bench's order in assessee's case itself ITA No.3163/M/2019 for preceding assessment year 2015-16 rejecting the Revenue's very contentions to this effect as under:

"12. Considered the rival submissions and material placed on record, we observe from the record that no doubt assessee has earning exempt income to the tune of ₹.55.21

crores and assessee has suo moto declared direct expenses relating to interest to the extent of ₹.4219/- and administrative expenses to the extent of ₹.4.8 lakhs. We observed from the Assessment Order that Assessing Officer while perusing the Profit and Loss Account clearly brought on record that assessee has earned interest income of ₹.11.96 crores which is taxable and claimed interest expenditure to the extent of ₹.7.68 crores. In the net result assessee is actually earned net taxable interest during this year, it clearly indicates that assessee has used own funds for the purpose of making investments in shares only from which assessee has earned exempt income, as held in the cases of CIT v. Jubilant Enterprise (P.) Ltd, (supra) and Pr.CIT v. Nirma Credit & Capital (P.) Ltd., (supra), the tax authorities can disallow interest expenditure after reducing the interest income earned by the assessee for the purpose of disallowance u/s. 14A of the Act. In the given case since assessee has earned net interest income the disallowance of interest under Rule 8D(2)(ii) of I.T. Rules can be made only if there is any positive expenditure. Considering the fact that assessee has net interest income, there is no interest expenditure claimed by the assessee which can be applied to disallow u/s. 14A r.w. Rule 8D(2)(ii) of I.T.Rules. Accordingly, ground raised by the assessee is allowed.”

5. The Revenue has chosen to draw strong support from both the lower authorities' respective findings making the impugned section 14A r.w. Rule 8D proportionate interest expenditure disallowance (supra).

6. We have given our thoughtful considerations to the vehement rival stands regarding the sole issue canvassed hearing i.e. correctness of the impugned section 14A r.w.r. 8D(2)(ii) proportionate expenditure disallowance. Suffice to say, two basic things could hardly be rebutted from the Revenue's side inter-alia that the assessee had derived net surplus interest income in the impugned assessment year and this tribunal has already allowed its claim of recomputation on the very netting basis in the preceding year (supra). We thus adopt judicial consistency to accept the assessee's instant sole substantive grievance in principle and direct the learned Assessing Officer to frame his fresh computation on the very basis in consequential proceedings as per law. The assessee succeeds in its instant 4th substantive ground. Therefore faced with the situation the learned counsel has chosen not to press assessee's 1st to 3rd and 5th & 6th substantive grounds by

submitting a written endorsement in the case file. Dismissed as not pressed in very terms.

7. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court on 26.07.2024.

**Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

**Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.