

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

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA 235/Mum/2024
(Assessment year: 2017-18)

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| Supreme Nonwovens Private Limited, Plot 110, Supreme House, 16 th Road, Chembur, Maharashtra 400 071 PAN : AAACS5921R | vs | ACIT, Mumbai Room No.455, 4 th Floor Aayakar Bhavan, M.K. Road Mumbai-400 020 |
| APPELLANT | | RESPONDENT |

Assessee by : Shri K. Gopal, Advocate & Ms. Neha
Paranjpe
Respondent by : Shri Dinesh A Chourasia – Sr.AR
Date of hearing : 30/05/2024
Date of pronouncement : 26/06/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is preferred against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2017-18, date of order 13.01.2023. The impugned order was emanated from the order of the ACIT, Circle 14(3)(2), Mumbai passed under section 143(3) of the Act, date of order 11/12/2019.

2. The assessee has taken the following grounds of appeal:-

“1. The Learned CIT Appeals erred in confirming the additions of Rs. 77,17,358/- made by the Learned Assessing Officer while passing the order u/s 143(3) on the grounds that the Learned Assessing Officer was not satisfied with suo moto offering of disallowance of expenditure of Rs. 1,69,01,920/- w.r.t. earning exempt income alleging that the appellant did not suo moto disallow various direct and indirect cost associated with earning of exempt income. The Learned CIT Appeals also ignored the fact that appellant had already disallowed the direct expenditure incurred on earning of exempt income and there was no indirect expenditure of any nature which were incurred.

2. While confirming the additions by Learned CIT Appeals, he has relied on the clarificatory explanation inserted to section 14A(3) by Finance Act 2022 which is not applicable to the appellant's case in the relevant year.

3. The appellant craves leave to add, alter or delete any of the grounds of appeal”

3. Brief facts of the case is that the assessee has filed the return under section 139(1) during the impugned assessment year and in computation Suo-motu disallowed amount to Rs.77,38,091/- which is @1% of the investment amount to Rs.77,38,09,110/- of the investments related to crediting the exempt income under section 14A of the Act. Later, assessee filed a revised return and offered addition U/s 14A of the Act amount of Rs.1,69,01,920/- suo motu under Rule 8D of the Income tax Rule, 1962 (in short, the Rule). On the other hand, the assessee had withdrawn the disallowance made under section 14A in the original return amount to Rs.77,38,091/-. The assessment was framed, and the Ld.Assessing Officer added back the expenses under section 14A amount to Rs.77,17,358/- with total income of the assessee. In the assessment, the assessee submitted the

written submission and appeared regularly. Finally, the Ld.AO calculated the monthly average of investment related to earning of exempt income of Rs.23 crores in impugned assessment year and the annual average of the above monthly average is determined at Rs.77,38,09,110/-. 1% of the annual average was calculated which works out to Rs.77,38,091/-. On that basis, the Ld.AO confirmed amounting to Rs.77,17,358/- which is liable for addition. The assessee already disallowed the expenses of Rs.1,69,01,920/- and accordingly the amount is worked out to Rs.2,46,19,278/-. After the completion of assessment, the addition is confirmed by disallowing under section 14A amount to Rs.77,17,358/-. Aggrieved, the assessee filed an appeal before the Id. CIT(A). The Ld.CIT(A) upheld the assessment order. Being aggrieved, assessee filed an appeal before us.

4. The Ld.AR filed written submission which is kept in record assessee's (in short, APB). The Ld.AR argued vehemently and placed that the assessee in original return disallowed Rs.77,38,091/- in relation to investment made Rs.73,17,10,9120/- @1% of the investment as on 31/03/2017. In the unquoted equity shares, the assessee already earned dividend income amount to Rs.23,25,27,240/- during the impugned assessment year and claimed as exempt income. The Ld.AR further argued that the assessee company submits that the disallowance of Rs.77,38,091/- made under section 14A in the original income-tax return is an inadvertent mistake which is duly rectified in the revised return and the interest bearing fund which invested for earning exempt income amount to Rs.1,69,01,920/- was properly disallowed.

5. The Ld.AR further argued that no satisfaction was recorded by the Ld.AO. The disallowance U/s 14A was in mechanical manner. The disallowance

was made which is against the direction of the Hon'ble Supreme Court in the case of **Maxopp Investments Ltd vs. CIT, New Delhi** 402 ITR 640 (SC). The Hon'ble Supreme Court has qualified that the satisfaction is to be recorded by the Id. AO to show that the voluntary disallowance of expenditure made by the assessee on the expenditure incurred for earning exempt income is not in order. The Ld. Assessing Officer, in such circumstances, is obliged to assign reason for him not being satisfied having regard to the accounts maintained by the assessee and suo motu disallowance made by the assessee under section 14A of the Act.

6. The Ld. DR argued and relied on the order of revenue authorities. The relevant paragraph 11 of the appeal order is reproduced below:-

"11. It cannot be said that Rule 8D has been imposed mechanically by the AO. It is a fact that there exists an investment with an aim to earn exempt income. In fact, originally the appellant had arrived at such disallowance at Rs.24,619,278/- under Rule 8D(ii) out of which Rs.77,17,358/-, which was subsequently withdrawn in the revised return. The AO proceeded as he was not satisfied with the suo moto offering of disallowance of expenses at Rs. Rs. 1,69,01,920/- w.r.t. earning exempt income. The AO observed that although the appellant has made huge investments, the appellant did not suo moto disallow various direct and indirect costs associated with earning of exempt income and thus, gave show cause to the appellant for applying Rule 8D(2). It is also a fact that AO has applied Rule 8D with detailed calculation as per para 4.3.1 of the assessment order taking average value of total assets at Rs. Rs.9,28,57,09,322/-, which is not disputed. Hence, under the given circumstances, it is held that the AO has rightly arrived at the disallowance of Rs.77,17,358/- u/s 14A r.w.r. 8D. Further, as per law, such expenditure has to be added to the net profit for computing book profit u/s 115JB in term of clause (f) to the Explanation to section

115JB(2) to arrive at correct book profit, as otherwise, the whole purpose of MAT provision would be defeated. When one can receive deduction of incomes exempt from tax from book profit, then the expenses in relation to earning those income should also be added, to compute book profit for MAT.

However, the AO had rightly held that since, the tax payable under normal provisions of the Act is higher than the tax payable on book profit u/s 115JB, the provision of section 115JB is not applicable in this case, hence the total income computed under normal provisions of the Act is proposed to be treated as the assessed income of the appellant.

*In view of forgoing, the action of the AO in making disallowance u/s 14A of Rs. 77,17,358/- (Rs.2,46,19,278 - Rs.1,69,01,920/-) is held to be justified. Hence, **Ground Nos. 1 and 2 of the appellant are dismissed.**"*

7. We heard the rival submissions and considered the documents available in the record. The assessee has disallowed the expenses in original return under section 14A. Further, the assessee has filed a revised return and suo motu disallowed the expenses and withdrew the earlier suo moto addition. In question of statement of return, the assessee has complied with the law guided by the provisions. The issue as dealt with the entire disallowance what the assessee made in revised return was duly accepted by the Ld.AO in the assessment order. During the hearing, the Ld.AR placed the details of investments in Schedule VIII of the financial report which is reproduced as below:-

"NON-CURRENT ASSETSNON-CURRENT INVESTMENTSUnquotedM/s Supreme Treon Pvt Ltd

76% Share of investment in 1,68,96,460 shares of Rs.10/- 71,44,60,920 64,46,92,426
 Each (Previous year 74% Share of investment in
 1,64,51,816 shares of Rs.10/- each) of our Joint Ventre Company

M/s Supreme Nonwoven Industries Pvt Ltd

3750 Shares of Rs.100 each.

1,72,50,000 1,72,50,000

TOTAL

73,17,10,920 66,19,42,426

It was submitted that the total investment was made at Rs.73,17,10,920/- which is duly identified by the assessee. On the other hand, the assessee wrongly disallowed the expenses under section 14A in original return which was duly rectified by the revised return and the correct amount is disallowed under section 14A in that case. The Ld. AO during the proceedings of assessment has not recorded any such satisfaction. During the hearing Ld.DR was also not able to submit any specific satisfaction of Ld.AO before the Bench.

Respectfully relied by the Id. AR on the order of Hon'ble Jurisdictional High Court in the case of **PCIT-2v.Bombay Stock Exchange Ltd.[2020] 113taxmann.com303 (Bombay)**. The relevant paragraphs are introduced as below: -

"11. Non-satisfaction with the disallowance offered by the assessee has to be arrived at on the basis of the accounts submitted by the assessee. In this case, the Assessing Officer had not carried out the aforesaid exercise but rejected the disallowance claimed by the assessee only on the ground that it was not in accordance with Rule 8D of the Rules. The application of Rule 8D of the Rules would only arise once the Assessing Officer is not satisfied on an objective criterion in the context of its accounts, that suo motu disallowance claimed by the assessee is not proper.

12. *In fact, the Supreme Court in the case of Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154/254 Taxman 325/402 ITR 640 while upholding the view of the Delhi High Court has held that the Assessing Officer needs to record his non-satisfaction having regard to the sou motu disallowances claimed by the assessee in the context of its accounts. It is only thereafter, the occasion to apply rule 8D of the Rules for apportionment of expenses can arise.*

13. *In the present facts, the Tribunal has correctly come to the conclusion that non-satisfaction as recorded by the Assessing Officer for rejecting the sou motu disallowances claimed by the assessee is not done as required under section 14A(2) of the Act. On facts, the view taken by the Tribunal is a possible view and calls for no interference.*

14. *In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.*

15. *Accordingly, appeal is dismissed.”*

The AO cannot straight away resort to Rule 8D. Sub-Section 2 of Section 14A and Rule 8D (1), both require the Id. AO to first consider the books of accounts of the taxpayer before resorting to Rule 8D. The Id. AO must arrive at an objective satisfaction that the assessee's claim is incorrect. The satisfaction of the AO as to the incorrect claim made by the assessee in this regard is sine qua non for invoking the applicability of Rule 8D. Such satisfaction can be reached and recorded only when the claim of the assessee is verified. If the assessee proves before the Id. AO that it incurred a particular expenditure in respect of earning the exempt income and the AO gets satisfied, then there is no requirement to still proceed with the computation of amount disallowable as per Rule 8D.

We respectfully relied on the order of **Bombay Stock Exchange Ltd.**(supra). We reject the impugned appeal order. The addition amount to Rs. 77,17,358/- is quashed. The appeal of the assessee is succeeded.

8. In the result, appeal in **ITA No.235/Mum/2024** is allowed.

Order pronounced in the open court on 26th day of June, 2024.

Sd/-

sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 26/06/2024

Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai