

आयकरअपीलीयअधिकरण, 'सी'न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर. रघुनाथा, लेखा सदस्यके समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 221/CHNY/2024

निर्धारण वर्ष/Assessment Year:2018-19

IDFC First Bank Limited,
(Earlier known as IDFC Bank Limited)
KRM Tower, 7th floor,
No.1, Harrington Road, Chetpet,
Chennai-600 031.

PAN: AADCI-6523-Q

(अपीलार्थी/Appellant)

**The Deputy Commissioner
of Income Tax,**
Range Corporate Circle-2(2)
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Assessee by

: Shri Ketan Ved, C.A

प्रत्यर्थीकीओरसे/Revenue by

: Shri R.Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing

: 21.08.2024

घोषणा की तारीख/Date of Pronouncement

: 28.08.2024

आदेश /ORDER

PER BENCH:

This appeal by the assessee is arising out of order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)], in Order No. ITBA/NAFC/S/250/2023-24/1058364961(1)dated 30.11.2023. The assessment was framed by the Deputy Commissioner of Income Tax, NFAC, New Delhi, for the

assessment year 2018-19 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 30.11.2023.

2. The first issue in this appeal of the assessee is as regards to order of the CIT(A) confirming action of the Assessing Officer in computing disallowance of expenses relatable to exempt income u/s.14A of the Act r.w. Rule 8D(ii) of the Income Tax Rules, 1962. (hereinafter Rules), in not considering the issue of assessee bank securities held as stock in trade.

For this, the assessee has raised following grounds No.1.1 and 1.1.1:-

“1.1 On the facts and in circumstances of the case and in law, the learned CIT (A) erred in not accepting the method employed by the Appellant for the purpose of computing disallowance under Section 14A of the Act.

1.1.1. On the facts and in circumstances of the case and in law, the CIT(A) ought to have held that section 14A read with Rule 8D does not apply to securities held by the Appellant bank as stock-in-trade.”

3. Brief facts relating to the issue are that the assessee company IDFC First Bank Limited is engaged in the business of banking. The Assessing Officer during the course of assessment proceedings noticed that the assessee has claimed exempt income u/s.10(34) of the Act i.e. tax free income of Rs.2,05,56,27,398/-. The Assessing Officer also noticed that the assessee has disallowed expenses directly relatable to earn this income to the tune of Rs.1,85,00,994/-. According to the Assessing Officer, the assessee has not computed expenses relatable to exempt income as per Rule 8D(2) read with section 14A of the Act in regard to administrative expenses i.e., under Rule 8D(2)(ii). Therefore,

the Assessing Officer required the assessee to explain as to why disallowance, by invoking Rule 8D(2)(ii) r.w.s 14A of the Act, be not made. Therefore, the Assessing Officer recomputed the disallowance at Rs.51.33 crores after allowing credit for already disallowed by the assessee of Rs.1.85crores,remaining amount of Rs.49.48 crores was disallowed by observing as under:-

“In view of the above, an amount of Rs.51.33 crores is to be disallowed u/s 14A r.w.r. 8D and added back to the total income of the assessee under the head Income from Business for the Financial Year 2017-18 relevant to the Assessment Year 2018-19. This figure is also adopted in computing book profit u/s 115JB of the Act. Since the Assessee has already disallowed Rs.1.85crores in its return, the remaining amount of Rs.49.88 crores is hereby disallowed under section 14A of Income Tax Act.”

Aggrieved, the assessee preferred appeal before CIT(A).

4. Before the CIT(A) the assessee has taken various pleas, including not recording of satisfaction, explanation of own funds of the assessee bank being share capital and reserves, computing only such investments which have yielded tax exempt income during the year only is to be considered for computing average value of investments etc., but has not taken any plea in regard to exclusion of securities held by the assessee bank as stock in trade for the purpose of computing disallowance of expenses relatable to exempt income under Rule 8D(2)(ii) r.w.s 14A of the Act. But, now before the Tribunal, the assessee has taken this plea vide ground no.1.1.1 as reproduced above.

5. During the course of hearing, learned counsel for the assessee relied on the decision of the Hon'ble Supreme Court in the case of South Indian Bank Ltd Vs.CIT reported in (2021)438 ITR 1 (SC), wherein it is held that shares and securities held by the bank are stock in trade and all income received on such shares and securities must be considered as business income and this is why section 14A of the Act would not get attracted to such income. The learned counsel for the assessee stated that the issue of exclusion of securities held by the assessee bank as stock in trade for the purpose of computing disallowance of expenses relatable to exempt income under Rule 8D(2)(ii) r.w.s 14A of the Act. He referred to paras 25 to 27 of the judgement of the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court considering the CBDT Circular No.18 of 2015 dated 02.11.2015 held so. The Hon'ble Supreme Court held as under:-

"25. Proceeding now to another aspect, it is seen that the Central Board of Direct Taxes (CBDT) had issued the Circular No. 18 of 2015 dated November 2, 2015¹, which had analyzed and then explained that all shares and securities held by a bank which are not bought to maintain statutory liquidity ratio (SLR) are its stock-in-trade and not investments and income arising out of those is attributable, to business of banking. This circular came to be issued in the aftermath of CIT v. Nawanshahar Central Co- operative Bank Ltd. wherein this court had held that investments made by a banking concern is part of their banking business. Hence the income earned through such investments would fall under the head "Profits and gains of business". The Punjab and Haryana High Court, in the case of Pr. CIT v. State Bank of Patiala while adverting to the Central Board of Direct Taxes Circular, concluded correctly that shares and securities held by a bank are stock-in-trade, and all income received on such shares and securities must be considered to be business income. That is why section 14A would not be attracted to such income.

26. *Reverting back to the situation here, the Revenue does not contend that the assessee-banks had held the securities for maintaining the statutory liquidity ratio (SLR), as mentioned in the circular. In view of this position, when there is no finding that the investments of the assessee are of the related category, tax implication would not arise against the appellants, from the said circular.*

27. *The aforesaid discussion and the cited judgments advise this court to conclude that the proportionate disallowance of interest is not warranted, under section 14A of the Income-tax Act for investments made in tax-free bonds/securities which yield tax-free dividend and interest to the assessee- banks in those situations where, interest-free own funds available with the assessee, exceeded their investments. With this conclusion, we unhesitatingly agree with the view taken by the learned Income-tax Appellate Tribunal favouring the assessees.”*

In term of the above, the counsel for the assessee stated that Assessing Officer be directed accordingly.

6. On the other hand, the Ld.CIT DR made an argument that the assessee in its accounts has to treated the dividend income as business income under the head 'Income from Business or Profession' but it has not included the same. Hence, according to LD. CIT DR, the assessee is not eligible for claim of exemption u/s.10(34) of the Act or alternatively, disallowance u/s.14A of the Act read with Rule 8D(2)(ii) of the Rules is within the provisions of the Act and Assessing Officer has rightly added and the CIT(A) has rightly confirmed.

7. We have heard rival contentions and gone through facts and circumstances of the case. Admittedly, the assessee has earned dividend income of Rs.205,56,27,398/- and claimed the same as exempt. The assessee has also made suo-motu disallowance for

Rs.1,85,00,994/-. The only argument now is to be dealt with is whether the assessee has declared this income of dividend as business income or not and in case it has declared as business income whether the assessee was eligible for claim of deduction u/s.10(34) of the Act and consequently, whether any disallowance is to be made by invoking provisions of Rule 8D(2)(ii) r.w.s 14A of the Act. We have gone through accounts filed by the assessee i.e., the financial statements and noted that this income is declared as income under the head 'Income from Business or Profession' in Schedule 13 interest earned - 'income on investments' in the profit & loss account. We cannot agree with the arguments made by the Ld.CIT DR that dividend income earned from securities held as stock in trade by the assessee bank is not eligible for exemption u/s.10(34) and consequent disallowance is to be made, while computing expenses under Rule 8D(2)(ii) r.w.s 14A of the Act. This aspect has clearly explained by the Hon'ble Supreme Court in the case of South Indian Bank Ltd. Vs.CIT (supra) that the shares and securities held by a bank are stock in trade and all income received on such shares and securities must be considered to be as business income and consequently, provisions of section 14A of the Act would not be attracted to such income. This has been answered clearly by the Hon'ble Supreme Court and the Hon'ble Supreme Court has also approved the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. State

Bank of Patiala (2017) 393 ITR 476 (P&H). The decision of the Hon'ble Supreme Court is law of the land and binding for us and hence, by following the same, we direct the Assessing Officer to recompute the disallowance of expenses relating to exempt income in terms of Rule 8D(2)(ii) r.w.s 14A of the Act by excluding shares and securities held by the assessee bank as stock in trade. We direct the Assessing Officer accordingly. Thus, the first ground raised by the assessee is allowed.

8. The next issue in the appeal of the assessee is as regards to order of the CIT(A) upholding disallowance of expenses relating to exempt income by invoking provisions of section 14A of the Act r.w.s 8D(2)(ii) of the Rules, while computing book profit u/s.115JB of the Act. For this, the assessee has raised ground no.1.2 which reads as under:-

"1.2 On the facts and in circumstances of the case and in law, the learned CIT (A) erred in upholding the v. disallowance under Section 14A read with Rule 8D while computing the book profits under section 115JB of the Act. The Hon'ble Tribunal may direct for deletion of disallowance under Section 14A read with Rule 8D."

9. We have heard the rival contentions and gone through facts and circumstances of the case. We noted that the Assessing Officer simplicitor made disallowance proposed u/s.14A of the Act r.w. Rule 8D(2) of the rules even for the purpose of computing book profit u/s.115JB of the Act, and added the expenses relating to exempt income. The CIT(A) also simplicitor confirmed the action of the Assessing Officer and also misread the decision of the Special Bench of

the Tribunal in the case of ACIT Vs. Vireet Investments Private Ltd. (2017) 82 taxmann.com 415. The CIT(A) has recorded his finding in para 5.1 to 5.5 as under:-

“5.1 In the course of assessment proceedings, the AO has noted that the appellant had earned exempt income of Rs. 205,56,27,398/- during the Financial Year 2017-18. The appellant had made a suo-moto disallowance of administrative expense of Rs. 1,85,00,994/- directly attributable to exempt income. On being asked, the appellant explained that the source of investments yielding tax exempt income, were interest free funds (share capital and reserves) of the Bank; which are far in excess of such investments. Therefore, the appellant has argued that no interest cost can be disallowed under section 14A. However, AO has noted that the appellant had attributed only Rs. 1.85 Crore as expenses related to exempt income during the year, which is less than 1 percent of the investments yielding exempt income; whereas exempt income was more than 1 percent of the total income of the appellant. AO has also noted that the appellant maintained a diverse portfolio of investments in various instruments viz. Government Securities, Tax Free Bonds, Debentures etc., aggregating to Rs. 6,090.44 Crore, which would certainly require huge resources. The assessee would avail expert advice and maintain a dedicated workforce for managing its investment portfolio, thereby incurring substantial expenditure for earning exempt income. Investment activity is one of the key functions of the bank. AO has recorded that he was not satisfied with the claim of the appellant that expenditure of Rs. 1.85 Crore only was incurred in relation to exempt income, on the ground that such allocation was ad-hoc and arbitrary. Thereafter, AO has re-computed the amount of expenditure liable to be disallowed under section 14A, by applying the method prescribed under Rule 8D. AO has accordingly worked out the indirect administrative expenditure incurred in relation to exempt income at Rs 51.33 Crore, being one percent of the average value of investments yielding exempt income, after applying the method given in Rule 8D(2)(ii). Since the appellant had already made a suo-moto disallowance of Rs 1.85 Crore in return of income, AO has restricted the further disallowance to the remaining amount of Rs. 49.48 Crore.”

5.2 During the appellate proceedings, the appellant has submitted that the appellant bank had acquired the financial undertaking of its parent company IDFC Ltd through demerger. The appellant has stated that the issue is covered by ITAT order in the case IDFC Ltd for earlier years (Assessment Years 2003-04 to 2009-10). The appellant has also relied on a plethora of judgements in support of the position that the AO cannot invoke Rule 8D for making the disallowance without expressly recording

that he is not satisfied with the correctness of appellants claim. The appellant has further argued that the disallowance of indirect administrative expenses under section 14A ought to be restricted to 3 percent of the exempt income, as held by ITAT in case of the parent company IDFC Ltd. The appellant has also taken an alternative plea that only those investments which have yielded exempt income should be considered for working out the disallowance under Rule 8D.

5.3 The appellant has relied on the case of ACIT Vs Vireet Investment Pvt Ltd (2017) (165 ITD 27) (ITAT Delhi) (Special Bench) in support of the position that the disallowance made under section 14A cannot be added back to the book profits for the purposes of MAT. The appellant has also relied on the cases of JCIT (OSD), LTU Vs TI Financial Holdings Ltd. (ITA No. 1974/Chny/2019) and ACIT Vs Samalpatti Power Company Ltd (ITA Nos 1592 & 1593/Chny/2019) in support of the position that while section 14A allows the AO discretion to apply Rule 8D; clause (f) of section 115JB (2) mandates to increase the Book profit only to the extent expenses related to exempt income are debited to the Profit and Loss account.

5.4 I have carefully considered the relevant and material facts on record, in respect of this ground of appeal, as brought out in the assessment order and submissions made during appeal proceedings. This is an undisputed fact that the appellant company had earned exempt income of 205,56,27,398/- during the year, which is not includible in total income. The appellant has made a suo-moto disallowance of Rs. 1.85 Crore, being administrative expense directly attributable to exempt income. However, the AO has disallowed an amount of Rs 51.33 Crore by applying the provisions of section 14A read with rule 8D. The AO has computed the quantum of disallowance by applying the method under Rule 8D(2)(ii). The aggregate amount of disallowance comprises of the indirect administrative expenditure at Rs. 51.33 Crore, being one percent of the annual average value of investments, which has been worked out by the AO at Rs. 5133.11 Crore, (as per Rule 8D(2)(ii)).

5.5 The appellant has taken a plea that the AO has not expressly recorded that he was not satisfied with the claim of the appellant. This contention of the appellant, however, is not borne out from facts of the case. I find that the AO has discussed facts of the case in detail, including the facts that the appellant company had earned huge exempt income during the year. AO has expressly recorded that he was not satisfied with the working of the appellant in determining expenses relatable to exempt income, on account of various reasons, viz. (i) the appellant had attributed direct administrative expenses of Rs. 1.85 Crore only, which was less than even one percent of the investments yielding exempt income; whereas exempt income was higher than one percent of total income of the appellant; (ii)

the appellant was maintaining a diverse portfolio of investments in various instruments viz. Government Securities, Tax Free Bonds, Debentures etc. aggregating to Rs. 6090 Crore, which would certainly require huge resources of the appellant company; (iii) Investment was one of the key functions of the appellant Bank. Having recorded such reasons, AO has thereafter proceeded to disallow the expenditure incurred in relation to earning exempt income under section 14A, by invoking the method as prescribed in rule 8D. On these facts, I find that the action of AO in this regard is clearly in conformity with the statutory requirements of sub-section (2) of section 14A. The cases relied upon by the appellant on this proposition, are of no avail as those are distinguished on facts.”

10. We noted that the CIT(A) has totally misread the decision of the Special Bench of this Tribunal in the case of ACIT Vs. Vireet Investments Private Ltd (supra), wherein the Special Bench has held as under:-

“6.22 In view of above discussion, we answer the question referred to us in favour of assessee by holding that the computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated u/s 14A read with Rule 8d of the Income-tax Rules, 1962.”

11. Since this issue is covered by the Special Bench decision of this Tribunal in the case of ACIT Vs. Vireet Investments Private Ltd (supra), we direct the Assessing Officer to delete the addition and thus, this ground is allowed.

12. The next issue is as regards to non-grant of deduction u/s.80JJAA of the Act. For this, the assessee has raised the following ground:-

“2. Non-grant of deduction under section 80JJAA of the Act
On the facts and in circumstances of the case and in law, the learned CIT (A) erred in not accepting the computation made by the Appellant for deduction claimed under section 80JJAA of the Act.”

13. Brief facts are that during the financial year 2017-18 relevant to the assessment year, the assessee claimed deduction u/s.80JJAA of the Act amounting to Rs.2,03,55,313/- for the following:-

- a) For wages pertaining to eligible employees for AY 2018-19 - Rs.1,42,82,111/-
- b) Deduction claimed in AY 2017-18 to be allowed in A.Y 2018-19 as per law – Rs.60,73,302/-

The CIT(A) partly allowed the claim of the assessee and restricted disallowance to the extent of Rs. 60,73,202/- which pertain to financial year 2016-17 by observing in para 8.3 to 8.5 as under:-

“8.3 I have carefully considered the relevant and material facts on record, in respect of this ground of appeal, as brought out in the assessment order and submissions made during appeal proceedings. Section 80JJAA (as substituted by the Finance Act 2016, with effect from 1st April 2017) provides for deduction of an amount of thirty percent of additional employee cost incurred during the previous year in the course of business. The provisions of section 80JJAA were subsequently amended vide Finance Act 2018, with effect from 1st April 2019, by inserting Second proviso below the clause (ii) of Explanation, which defines the term "additional employee" for the purposes of the section. This Second proviso lays down that, an employee who is employed during the previous year, in certain specified circumstances, shall be deemed to have been employed in the succeeding year.

8.4 In the present case, AO has reverted a factual finding that cost of Rs. 60.73 lakh was actually incurred during the Financial Year 2016-17. During the appellate proceedings, the appellant has not disputed this fact. The appellant has taken a legal plea that though this amount relates to the earlier year, the same is allowable in Assessment Year 2018-19, as per the amended provisions of section 80JJAA. In this regard, it is noted that the relevant amendment made by the Finance Act 2018 (as discussed above) is effective from 1st April 2019, hence applicable to Assessment Year 2019- 20 and subsequent years. On the give facts, I find that the benefit of amended provisions of Section 80JJAA, namely the Second

proviso below clause (ii) of Explanation, is not available to the appellant Bank for the impugned Assessment Year 2018-19.

8.5 In view of the facts and circumstances of the case, and the prevailing position of law applicable on such facts, as discussed in the preceding paragraphs, I find that the action of AO in denying the claim of deduction under section 80JJAA, to the extent of Rs. 60,73,202/-, is in accordance with law (as applicable for the Assessment Year 2018-19); hence sustained. However, the Jurisdictional Assessing Officer (JAO) is directed to verify whether the claim of deduction to the tune of Rs. 1.43 Crore, which has been allowed in the body of assessment order, has actually been taken into account in the computation sheet, and make necessary modification to the computation, if found necessary. This ground of appeal is partly allowed.”

Aggrieved, the assessee is in appeal before us.

14. Before us, the learned counsel for the assessee stated that this amount of Rs.60,73,202/- is relating to assessment year 2017-18 is allowable in the assessment year 2018-19 as per amended provisions of section 80JJAA of the Act. We noted that the facts and details regarding 30% additional employees cost incurred during the financial year 2016-17 relevant to the assessment year 2017-18 is not available on record, so that the effect of amendment can be given. Hence, this issue is remitted back to the file of the Assessing Officer to first verify 30% of additional employees cost incurred during the previous year 2016-17 relevant to the assessment year 2017-18 which is allowable in subsequent year also, in view of subsequent amendment by Finance Act, 2017. Hence, this issue is remitted back to the file of the Assessing Officer for verification and his decision according to law.

15. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 28th August, 2024

Sd/-

(एस.आर. रघुनाथा)
(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated :28.08.2024

DS

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त /CIT, Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF.