

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

**BEFORE SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER
AND SHRI ANIKESH BANERJEE, HON'BLE JUDICIAL MEMBER**

**ITA No.2674/Mum/2024
Assessment Year: 2018-19**

Zeel Infotech Pvt. Ltd. 402, Gundecha Indl. Complex, Akurli Road, Near Big Bazar, Kandivali East, Mumbai-400101. PAN: AAACZ 1721 C (Appellant)	vs	PCIT, Mumbai-5, Mumbai (Respondent)
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Present for:

Assessee by : Shri Nishit Gandhi, Advocate
Revenue by : Shri Suhas Dabade, Sr. DR

Date of Hearing : 31.07.2024
Date of Pronouncement : 29.08.2024

ORDER

PER AMARJIT SINGH, AM:

The present appeal filed by the Revenue is directed against the order dated 28.03.2024 of the Pr. Commissioner of Income Tax-5, Mumbai for Assessment Year 2018-19.

2 Fact in brief is that in this case assessment u/s 143(3) r.w.s. 144B of the Act was completed on 05.05.2021 and total income was assessed at Rs. 9,62,74,240/-. During the course of assessment, the assessing officer had disallowed Rs. 5,79,598/- u/s 14A of the Act read with Rule 8D of the Income Tax Rules. Thereafter, the ld. PCIT has initiated proceeding u/s 263 of the Act by issuing of notice dated 18.03.2024 that in the draft assessment order, the assessing officer has proposed disallowance u/s 14A at Rs. 11,77,599/-, however, actually the

disallowance u/s 14A read with Rule 8D was made to the extent of exempt income of Rs. 5,79,598/- therefore order passed by the assessing officer is erroneous as far as it is prejudicial to the interest of revenue within the meaning of section 263 of the I.T. Act. The assessee has raised objection against the proceeding u/s 263 of the Act initiated by the PCIT. The assessee has submitted that assessing officer has restricted the disallowance to the extent of entire exempt income earned by the assessee after considering various details and after making detailed enquiry. However, the PCIT was of the view that assessing officer failed to examine the issue in the light of CBDT Circular No. 5/2014 dated 11.02.2024 which provide for disallowance of the expenditure even where assessee has not earned any exempt income. The ld. PCIT after referring the judicial pronouncement held that assessment order passed u/s 143(3) r.w.s. 144B dated 05.05.2023 is erroneous in so far as it is prejudicial to the interest of revenue and cancelled order passed by the assessing officer. In this regard, the PCIT has directed the assessing officer to re-examine the issue of exempt income and disallowance to be made u/s 14A of the Act read with Rule 8D of the I.T. Rules.

3. During the course of appellate proceedings before us, the ld. Counsel submitted that assessing officer has made complete enquiry on this issue and examine the submission made by the assessee before restricting the disallowance to the extent of dividend income of Rs. 5,79,598/- as per the settled issue in the various judicial pronouncement that disallowance u/s 14A cannot

exceed exempt income earned by the assessee. He referred para 4 & 5 of the assessment order wherein the assessing officer has categorically discussed the issue of disallowance u/s 14A and response of the assessee given to the show cause notice issued by the assessing officer. The ld. Counsel contended that the order passed by the ld. PCIT u/s 263 of the Act is unjustified.

4. On the other hand, ld. DR supported the order of ld. PCIT.

5. Heard both the sides and perused the material on record. Without reiterating the fact as discussed supra in this order, the ld. PCIT has passed order u/s 263 of the Act treating the order passed u/s 143(3) r.w.s. 144B of the Act by the assessing officer as erroneous as far as prejudicial to the interest of revenue on account of restricting the disallowance to the extent of dividend income earned by the assessee of Rs. 5,79,598/- and failed to examine the issue as per the CBDT Circular No. 5/2014 dated 11.02.2014. On perusal of the assessment order passed u/s 143(3) r.w.s. 144B of the Act dated 05.05.2021 it is noticed that assessing officer has elaborately discussed the issue of disallowance u/s 14A read with Rule 8D in the assessment order at page no. 4 & 5 of the order. The assessing officer has categorically questioned the assessee for not making disallowance as per section 14A of the Act and made working of disallowance in the show cause notice to the amount of Rs. 11,77,599/-. In response to the show cause notice issued by the assessing officer, the assessee has made written submission which has been reproduced by the assessing officer at

para 7 of the assessment order. The relevant extract of the submission is reproduced as under:

"7. Hence the assessee was issued Show Cause Notice vide ITBA/AST/F/143(3)(SCN)/2021-22/1032583880(1) dated 1.4.2021 as to why the assessment should not be Completed as per above Draft Assessment Order which was duly served. In response to the Show Cause Notice dated 21/4/2021, the assessee uploaded his reply on 23.04.2021 as under:

1. That due to inadvertent reasons, we have missed out the disallowance of expenditure u/s 14A read with Rule 8D of the Income Tax Act, 1961 while filing the Income Tax Return for the Asst. Year 2018-19. The same was noticed while preparing the Income Tax Return for the Asst. Year 2019-20. Due to time limitation, we could not rectify the error as the due date for filing of Revised/Rectified Return had lapsed. Further, we have taken into consideration the disallowance of expenditure u/s 14A read with Rule 8D of the Income Tax Act, 1961 while filing of Income Tax Returns for the Asst. Year 2019-20 and 2020-21.

2. That, the Assessee has 'unintentionally missed out the disallowance of expenditure and the same is not willful act of the Assessee. Thus, our intentions are very clear to abide law, however due to limitation of time revision was not permissible and hence could not be done.

3. Further, we request your honour to kindly take into the consideration judgement of the Honorable Delhi High Court in the case of M/s. Joint Investments Pvt Ltd Vs CIT ITA 117/2015 wherein the disallowance was restricted to the extent of Exempt Income and restrict the disallowance of expenditure u/s 14A read with Rule 8D of the Income Tax Act, 1961 in the case of the Assessee Company to extent of Exempt Income earned i.e. RS. 5,79,598.00. Copy of the judgement is attached herewith for your perusal."

6. In its submission, the assessee has referred the decision of Hon'ble Delhi High Court in the case of M/s. Joint Investments Pvt. Ltd. vs CIT vide ITA 117/2015 wherein the disallowance u/s 14A read with Rule 8D of the Income Tax Rules, 1962 was restricted to the extent of exempt income earned by the assessee. After considering the detail submission and judicial finding, the assessing officer has restricted the disallowance to the extent of Rs. 5,79,598/- exempt income earned by the assessee during the year under consideration.

7. Looking to the above facts and circumstances we find that ld. PCIT has not substantiated how the order passed by the assessing officer was erroneous and prejudicial to the interest of the revenue. In fact, the assessing officer has passed a detailed speaking order after following the decision of Hon'ble High Court as discussed supra in this order. It is settled issue as per the decisions of various Courts and Tribunals that disallowance u/s 14A read with Rule 8D cannot exceed the exempt income.

8. The ld. Counsel also relied on the decision of Hon'ble Bombay High Court in the case of M/s. Nirved Traders Pvt. Ltd. vs DCIT wherein the disallowance u/s 14A read with Rule 8D of the Income Tax Rules, 1962 was restricted to the extent of exempt income earned by the assessee.

9. Looking to the above facts and findings, we consider that order passed u/s 263 of the Act is not sustainable in law,

therefore, the order passed u/s 263 of the Act is quashed.
Accordingly, the appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 29.08.2024

Sd/-

**(ANIKESH BANERJEE)
JUDICIAL MEMBER**

Sd/-

**(AMARJIT SINGH)
ACCOUNTANT MEMBER**

Mumbai: 29.08.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR .

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai