

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

1. ITA No. 3880/Mum/2024 (A.Y.2017-18)

ACIT – 14(1) (2),

Room No. 455, 4th Floor,
Aayakar Bhavan, M. K. Road,
Mumbai- 400 020.

..... Appellant

Vs.

M/s. Godrej Properties Ltd.

5th floor, Godrej One, Pirojshanagar,
Eastern Express Highway,
Vikhroli (E), Mumbai.
PAN: AAACG3995M

..... Respondent

&

2. C.O. No. 189/Mum/2024(A.Y.2017-18)

M/s. Godrej Properties Ltd.

5th floor, Godrej One, Pirojshanagar,
Eastern Express Highway,
Vikhroli (E), Mumbai.
PAN: AAACG3995M

..... Appellant

Vs.

ACIT – 14(1) (2),

Room No. 455, 4th Floor,
Aayakar Bhavan, M. K. Road,
Mumbai- 400 020

..... Respondent

Appellant by : Shri P. Suresh, Ld. DR
Respondent by : Shri Jeet Kamdar, Ld. AR
Date of hearing : 19/09/2024
Date of pronouncement : 20/09/2024

ORDER

PER GAGAN GOYAL, A.M:

These appeals by Revenue and C.O. filed by Assessee are directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 05.06.2024, passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2017-18, respectively. For the sake of clarity and better understanding of the matter, we are taking departmental appeal first and then will deal with cross objection of the assessee accordingly. The Revenue has raised the following grounds of appeal:-

- 1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the disallowance made u/s. 14A r. w. Rule 8D (2)(ii) Of the Rules by holding that disallowance under rule 8D(2)(ii) of the Rules is not required to be made and hence committing a bonafide mistake while giving the decision which needs to be set aside.*
- 2. Without prejudice to the above, whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the appeal of the assessee ignoring the fact that disallowance under Rule 8D(2)(iii) is warranted as the explanation to section 14A, inserted by Finance Act, 2022, clarifies that the provisions of this section shall apply and shall be deemed to have always applied even when no exempt income is earned during the year and the language of explanation makes it clear that it operates retrospectively and disallowance has to be made even when there is no exempt income.*
- 3. "Whether on the facts and circumstances of the case, the Ld. CIT (A) was justified in deleting the disallowance made u/s. 14A ignoring the CBDT Circular No. 5/2014 dated 11.02.2014 wherein it is clarified that even if there is no exempt income earned by the assessee in the year under consideration, disallowance under Rule 8D read with section 14A of the Act is required to be made.*

4. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deletion of addition made on account of mismatch of income as per ITS/26AS and the total income declared in ROI, by placing reliance upon assessee's own case in A.Y. 2012-13, ignoring the fact that the said decision was challenged by the Revenue before the Hon'ble ITAT and the Hon'ble ITAT had just dismissed the appeal of the Revenue due to low tax effect and not on the merits of the case?"

5. The appellant prays that the order of the CIT (A) on the above grounds be set aside and that of the Assessing Officer be restored.

6. the appellant craves leave to amend, or alter any grounds or add new ground, which may be necessary.

The assessee has raised the following grounds in CO: -

1. The Id. CIT (A) erred in not restricting the disallowance u/s. 14A of the Act to the amount of exempt dividend income of Rs. 36,218/- earned during the year under consideration.

2. The brief facts of the case are that the assessee filed its return of income on 31.10.2017 claiming loss of Rs. (-) 120, 49, 42,463/-. The return of income was revised on 03.01.2019 claiming the same amount of loss. The return of the assessee was selected for complete scrutiny under CASS and relevant notices were issued. Ultimately, case of the assessee was assessed by making various additions /disallowances under the head 'Income from House Property' and 'Profit and Gains of Business or Profession' amounting to Rs. 1.68 lakhs and Rs. 6,18,74,204/- and Rs. 7,24,896/- respectively. The assessee being aggrieved with this order of AO preferred an appeal before the Ld. CIT (A) who in turn allowed the appeal of the assessee and deleted the above mentioned

additions/disallowances made by the AO. Now with this order of the Ld. CIT (A), the revenue being aggrieved filed the present appeal before us.

3. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of the assessee and revenue alongwith grounds taken by both the parties. Ground no. 1 to 3 are inter related i.e. pertaining to disallowance u/s. 14A of the Act read with Rule 8D. It is observed that the Ld. CIT (A) while deciding the issue in favour of the assessee relied upon the orders of the Coordinate Bench in the case of the assessee for A.Y. 2011-12 to 2014-15. He found that identical issue is involved in the previous years as adjudicated by the Coordinate Bench vis-a-vis issue involved in the present assessment year i.e. 2017-18. For the sake of better clarity and analysis of the issue, we deem it fit to reproduce section 14A of the Act alongwith Rule 8D applicable for the year under consideration as under:-

Section - 14A, Income-tax Act, 1961 - FA, 2023

Expenditure incurred in relation to income not includible in total income.

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.

The explanation mentioned (supra) Inserted by the Finance Act, 2022, w.e.f. 1-4-2022.

Rule - 8D, Income-tax Rules, 1962

Method for determining amount of expenditure in relation to income not includible in total income.

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).

⁵¹(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 (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.]

52(3) [***]

51. Substituted by the IT (Fourteenth Amdt.) Rules, 2016, w.e.f. 2-6-2016. Prior to its substitution, sub-rule (2) read as under:

"(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;
- (ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :—

$$A \times \frac{B}{C}$$

Where A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year ;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year ;

C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

- (iii) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year."

52. Omitted by the IT (Fourteenth Amdt.) Rules, 2016, w.e.f. 2-6-2016. Prior to its omission, sub-rule (3) read as under:

'(3) For the purposes of this rule, the "total assets" shall mean, total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets.'

4. In this case the Ld. CIT(A) relied upon the orders of the coordinate benches in assessee's own case, whereas the same pertains to the period A.Y. 2011-12 to 2014-15, but there is a phenomenal change in Rule 8D w.e.f. 02.06.2016, i.e. A.Y. 2017-18. By Finance Act 2006 w.e.f. 01-04-2007 sub-section (2) and (3) were inserted to provide that amount to be disallowed u/s. 14A of the Act will be calculated in accordance with the method prescribed. Such method will be followed only when AO is not satisfied with the correctness of the claim of the assessee in respect of the expenditure in relation to income which does not form part of the income. The method prescribed would also be followed where assessee claimed that no expenditure has been incurred by him in relation to exempted income. In order to avoid controversy between section 14A of the Act and other provisions of the Act according to which an expenditure is allowable even in respect of exempted income, amendment was made by Finance Act 2022 w.e.f. 01-04-2022 by substituting the expression "for the purposes of" with the expression "Notwithstanding anything to the contrary contained in this Act, for the purposes of". Finance Act 2022 also inserted an *Explanation* in section 14A of the Act to provide that expenditure incurred in relation to an exempted income which has neither accrued nor arisen during the current year shall also be considered for disallowance under this section. The method for computation of disallowable expenditure under this section is prescribed in rule 8D.

5. We have referred the financials of the assessee to ascertain the factual matrix of the matter. The assessee has shown Rs. 618.74 Crores as investments in Subsidiaries, Joint Ventures & Associates, and Rs. 211.49 Crores as other investment (Under the head Non-Current Assets) and Rs. 285.21 as investments (Under the head Current Assets). We have gone through the profit & loss account of the assessee and observed that the assessee has earned Rs. 88.10 Crores from share of profit and loss in Limited Liability Partnerships (LLPs), Interest Income amounting to Rs. 233.10 Crores and income from Investments measured at FVTPL amounting to Rs. 13.78 Crores in addition to Rs. 36,218/- received as dividend by the assessee.

6. **The above facts strongly establishes that the assessee has a strong appetite for investments and rather the assessee's operational income is only Rs. 369.04 Crores (Rs. 457.14 Crores – Rs. 88.10 Crores), whereas other income is Rs. 336.24 Crores (Rs. 248.14 + Rs. 88.10).** These calculations establishes that provisions of section 14A of the Act will certainly be applied here, looking at the intentions of the assessee. Section 14A of the Act provides for disallowance of expenditure which is related to income not forming part of total income. Investment made by an assessee may result in both type of income exempt, as well as taxable. The expenditure incurred for earning such income may be either separately accounted for or may be mixed. **The onus is on the assessee to identify expenditure which relates to exempt income.** However, the AO can reject such *suo-moto* disallowance only after recording satisfaction that claim of disallowance made by the assessee as per accounts maintained by him are not correct. If no such satisfaction is recorded or satisfaction recorded is not based on

the accounts maintained by the assessee, no further disallowance can be made by the AO. Where AO gets jurisdiction to make disallowance, he has to compute the disallowance in accordance with prescribed method under rule 8D. **While applying rule 8D, AO has to consider only such investments which yielded tax free income.**

7. The judgment of Hon'ble Apex Court in Maxopp Investment Ltd. 91 Taxmann.com 154 (SC.) inferring that "*thus, while deciding the issue of applicability of section 14A of the Act, the apex court by observing in para 40 has settled the issue that section 14A of the Act has to be invoked for disallowance of any expenditure in relation to any exempt income irrespective of fact whether the dividend is actually earned or not in the FY.*" The amount of disallowance of expenditure u/s 14A, as prescribed in Rule 8D is the aggregate of the following:

(i) For Period up to 1.6.2016

- (1) Amount of expenditure directly relating to income which does not form part of total income;
- (2) Interest expenditure not directly attributable to any particular income, in the proportion, which the average value of investments yielding tax-free income bears to the average value of total assets in the Balance Sheet of the assessee;
- (3) Half percent of the average of opening and closing balances of investments, yielding tax-free income.

(ii) For Period on or after 2.6.2016

- (1) Amount of expenditure directly relating to income which does not form

part of total income;

- (2) One percent of the annual average of monthly averages of opening and closing balances of investments, yielding tax-free income.

Proviso to Rule 8D further provides that the amount of disallowance as computed in accordance with Rule 8D shall not exceed the total expenditure claimed by the assessee.

Now after change in rule 8D w.e.f. 02.06.2016 and after considering the ruling in the case of Maxopp Investment Ltd. (supra) in our opinion, there is no room left for the assessee to escape disallowance u/s. 14A of the Act r.w.r. 8D of the Rules.

8. Very recently, the High Court of Delhi in the case of *Pr. CIT v. Vedanta Ltd.* [2019] 102 taxmann.com 95/261 Taxman 179, referring to the decision of Apex Court in *Godrej & Boyce Mfg. Co. Ltd.* (supra) has held that Rule 8D cannot be invoked and applied unless AO records his dissatisfaction regarding the correctness of claim made by assessee in relation to expenditure incurred to earn exempt income. This issue also in our opinion the AO has fulfilled vide para 5 of the assessment order, wherein the AO dealt with the calculations *suo-moto* declared by the assessee. As discussed (supra) the financial picture of the assessee, even if for the time being if we ignore the applicability of section 14A of the Act r.w.r. 8D of the Rules, still by applying the traditional proportionate method of calculation, disallowance will be much higher than what envisaged in section 14A of the Act r.w.r. 8D of the Rules.

9. It was also argued on behalf of assessee that when the shares were acquired, as part of promoter holding, for the purpose of acquiring controlling

interest in the company, the dominant object is to keep control over the management of the company/joint venture/LLPs and not to earn the dividend from investment in shares. Whether dividend is declared/ earned or not is immaterial and, in either case, assessee would not liquidate the shares in investee companies. Therefore, no expenditure was made 'in relation to' the income, *i.e.*, the dividend income and, therefore, section 14A would not be attracted. The Apex Court held (*supra*) that the dominant purpose test for which the investment into shares is made by an assessee may not be relevant while interpreting section 14A of the Act. The fact remains that such dividend income is non-taxable and in that scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Therefore, the fact remains that the dividend income from the investments made by the assessee is not taxable and in that scenario the expenditure incurred in respect of investment in shares of subsidiaries/joint venture/LLPs is hit by section 14A of the Act inasmuch as the dividend received on such shares does not form part of the total income.

10. On identical facts the Hon'ble jurisdictional High Court in the case of [2023] 153 taxmann.com 186 (Bom.) PCIT, Central-1 vs. D.B. Realty (P.) Ltd.

"1. the Principal Commissioner of Income Tax, Central-1, Mumbai ('PCIT') has filed this appeal aggrieved by an order dated 20-2-2017 passed by the Income-tax Appellate Tribunal ('ITAT') dismissing the appeal of the Revenue. Respondent is the assessee and this relates to the Assessment Year 2010-11.

2. Respondent was engaged, in the business of construction, development and real estate. Respondent filed its return of income on 30/09/2010 declaring loss of Rs. 86, 50,349/-.

Assessment order under section 143(3) of the Income-tax Act, 1961 ('the Act') came to be passed on 28-3-2013 and the income came to be assessed at Rs. 3,86,29,793/- after making disallowances of Rs. 4,05,42,608/- under section 14A of the Act and of Rs. 67,37,534/- under section 36(i)(iii) of the Act. The assessed income thereafter was set off against carried forward business loss making the total income of respondent as nil.

3. Aggrieved by the said assessment order, respondent preferred an appeal to the Commissioner of Income-tax (Appeal)-36, Mumbai [CIT (A)]. CIT(A) partly allowed the appeal of respondent and relied upon a decision given by his predecessor in respondent's own case in Assessment Year 2009-10 and restricted disallowance at 5% of aggregate of expenditure, i.e., restricted to Rs. 19,99,230/-. Aggrieved by this order, Revenue preferred an appeal to ITAT. ITAT dismissed the appeal filed by Revenue by observing that the Assessing Officer ('AO') had computed disallowance under Rule 8D (2)(iii) @ 0.5% of average value of investment. ITAT also observed that CIT (A) noted that respondent had major portion of investments only in subsidiary companies, associates concerns and partnership firms in which respondent was a partner. The CIT (A) has taken a view that the investments made by company are in the form of strategic investments and directed the AO to compute the disallowance at 5% of the fixed/semi variable expenditure incurred by respondent and there was nothing wrong in the view expressed by CIT (A).

4. Respondent though served, as is evident from affidavit of service of Mr. Vijay Kumbhar affirmed on 26-11-2021, has not entered appearance.

5. Following substantial questions of law are proposed:

- (a) Whether on the facts and in the circumstances of the case and in law the Hon'ble ITAT was justified in confirming the computation of disallowance of expenditure u/s. 14A adopted by the CIT (A) without appreciating that the disallowance u/s. 14A was required to be determined according to Rule 8D of Income-tax Rules 1962 as had been done by the Assessing Officer?"
- (b) Whether on the facts and in the circumstances of the case and in law disallowance of expenditure was required to be made u/s. 14A of the Act in relation to the share income from the firm received by the assessee as such share income is exempted under 10 (2A) of the Act and whether such disallowance was required to be determined in accordance with Rule 8D of the Income-tax Rules 1962?"
- (c) "Whether on the facts and in the circumstances of the case and in law the Hon'ble ITAT

was justified in not upholding the computation of the disallowance u/s. 14A of the Act made by the assessing officer when the assessing officer has simply accepted the computation made by the assessee?"

(d) Without prejudice to the above, whether on the facts and in the circumstances of the case and in law the Hon'ble ITAT was justified in not itself correcting the computation of the disallowance u/s. 14A of the Act read with rule 8D made by the Assessing Officer or setting aside the assessment to the file of the Assessing Officer to rework the disallowance u/s. 14A of the Act read with Rule 8D if it had any reservation about the computation of disallowance u/s. 14A of the Act.

(e) Whether on the facts and in the circumstances of the case and in law, the order of the Hon'ble ITAT confirming the order of the CIT(A) is not perverse when it specifically disapproved the method of computation of disallowance u/s. 14A of the Act adopted by the CIT(A)?

6. *The Apex Court in Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154/254 Taxman 325/402 ITR 640 relied upon by Mr. Sharma has held that as per Section 14A of the Act inserted by Finance (Amendment) Act, 2001, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. The Apex Court held that as per section 14A (1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by assessee "in relation to income which does not form part of the total income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income. Rule 8D provides for method for determining amount of expenditure in relation to income not includible in total income.*

7. *In view of the judgment of the Apex Court in Maxopp Investment Ltd. (supra), we hereby quash and set aside the order impugned passed by ITAT and direct the AO to give effect to this order passed by us. The AO shall strictly follow the law and formula laid down in Maxopp Investment Ltd. (supra). Before passing any order, the AO shall give reasonable opportunity to assessee to show cause."*

[2022] 145 taxmann.com 219 (Del.) H.T. Media Ltd. v. PCIT

The assessee in the facts of the instant case has admittedly not furnished particulars of the actual expenditure incurred by it for earning the exempt income. It is the case of the assessee that it had incurred negligible expenses, which are indeterminate and it has therefore relied upon its own self - devised method for estimating the said negligible expenditure. However, the Assessing Officer recorded his dissatisfaction with the computation of disallowance after examining the accounts of the assessee. Section 14A of the Act read with rule 8D (2)(iii) Prescribes the method to be applied for determining the expenditure incurred for earning exempt income. The Assessing Officer and the appellate authorities, in the facts of this case, cannot be faulted for applying the statutory method for determining the expenditure and rejecting the assessee's suo moto disallowance. [Para 8.12]

- *The dissatisfaction of the Assessing Officer is expressly recorded in the assessment order. The said dissatisfaction has been upheld by the appellate authorities after perusing the records of the assessee. Thus, no merit is found in the submission of the appellant that the Assessing Officer has failed to record satisfaction. The assessee has failed to point out any error in the findings of the appellate authorities except to state that the disallowance offered by the assessee should be accepted as it was done in assessment years 2008-09 and 2009-10 on the principle of consistency. In this regard, this Court in its decision for assessment year 2008-09 while setting aside the deletion under section 14A of the Act has not upheld the self-devised method adopted by assessee for making the allowance but adjudicated on the failure of the Assessing Officer to record his proper satisfaction before invoking section 14A of the Act.*
- *The submission of application of principle of consistency is already rejected. The disallowance offered by the assessee in the assessment years under consideration being on an ad-hoc basis has been rightly rejected by the Assessing Officer. Therefore, there is no reason for interfere with the said concurrent findings of the appellate authorities. [Para 8.12]*
- *As noted above, in the instant case as well, a perusal of the record reveals that the Assessing Officer has applied his mind to the controversy as he firstly examined accounts, secondly duly invited the reply of the assessee to explain the basis of the disallowance offered by the assessee and thirdly after examining the explanation of the assessee has recorded its dissatisfaction after observing that the 'basis' adopted by the assessee for making such an estimate was unclear. The Commissioner (Appeals) and Tribunal, which are the fact finding authorities upon examination of record, have concurred with the said finding of dissatisfaction of the Assessing Officer. [Para 10]*

- *Therefore, in the facts of this case, no substantial question of law arises for consideration in the instant appeals, accordingly the same are dismissed. [Para 11]*

11. It has been time and again reiterated by the Supreme Court that only the expenditure relatable to earning of taxable income has to be allowed. If the expenditure, has not been incurred for the purpose of earning of taxable income, that cannot be allowed irrespective of the fact that any exempt income has been earned or not by incurring such expenditure. However, in a situation where there is a hotchpotch of the expenditure attributable to both earning of taxable and exempt income, the theory of apportionment applies and the expenditure relatable to earning of exempt income has to be disallowed irrespective of the fact that such expenditure is otherwise allowable under the respective head. This is further strengthened by the change in Rule 8D of the Rules w.e.f. 02.06.2016. The judicial pronouncements discussed (supra) were rather rendered with reference to the earlier Rule, which still has some room for the assessee. But, now in our opinion, considering the peculiar financial facts of the matter, there is no room left to sustain the arguments of the assessee.

12. To strengthen its arguments, the assessee relied upon following judicial pronouncements as under:

- i) Era Infrastructure (India) Ltd. reported in 448 ITR 674 (Delhi HC)*
- ii) Keti Construction Ltd. reported in 162 taxmann.com 278 (MP HC)*
- iii) Edelweiss Asset Management Ltd. (ITA No. 3020/Mum/2023)*
- iv) M/s Welspun Steel Ltd. (ITA No. 2137/Mum/2021)*
- v) The Indian Hotels Company Limited (ITA No. 2308/Mum/2016)*

Not applicable in the case of the assessee. Neither the AO applied the same nor the bench considered the applicability. (About retrospectivity of section 14A.)

vi) State Bank of Patiala reported 99 taxmann.com 286 (SC)

vii) Thrill Park Limited (ITA No. 316/Mum/2024) - A.Y. 2018-19

viii) Anant Raj Limited (ITA No. 625 & 626/Mum/2023)

- A.Y. 2017-18 & 2018-19

Not applicable in the case of the assessee. As the same were rendered prior to amendment in Rule 8D, i.e. w.e.f. 02.06.2016.

ix) Redington (India) Ltd. 392 ITR 633 (Madras HC)

x) Amadeus India (P.) Ltd. 452 ITR 206 (Delhi HC)

Not applicable in the case of the assessee. Neither the AO applied the same nor the bench considered the applicability. (About Circular No. 5/2014, Dated: 11.02.2014)

xi) Appellant's own case vide ITA No. 2994 & 3002/Mum/2023, 655/Mum/23 & CO-41/Mum/2023, 6486 & 6637/Mum/2018 and 6361/Mum/2017.

13. In view of the above facts and law applicable and reiterated and confirmed by various Hon'ble High Courts and Hon'ble Apex Court, We allow the ground no. 1 to 3 raised by the revenue with a rider that while doing calculation for disallowance under Rule 8D(ii) of the Rules, a proper opportunity of hearing is to be given to the assessee for explanation to be filed with reference to the investments not able to fetch any exempt income and the same is to be excluded while considering the figure for the purposes of Section 14A of the Act r.w.r. 8D of the Rules. Based on above, ground no. 1 to 3 raised by the revenue are allowed for statistical purposes.

14. Ground no. 4 raised by the revenue pertains to addition made on account of mismatch of income as per ITS /26AS and the total income declared in ROI. We have gone through the order of the Ld. CIT (A). On the ground of consistency, the Ld. CIT (A) allowed the appeal of the assessee for A.Y. 2012-13 and 2015-16.

Thereafter the order of the Ld. CIT (A) was further confirmed by the Coordinate Bench for A.Y. 2015-16 vide para 11 to 13 (page 8 to 11). As the facts of the year under consideration and previous years mentioned (supra) are identical, we respectfully follow the same and in the light of previous decisions in favour of assessee, ground no. 4 raised by the revenue is **dismissed**.

C.O. No. 189/Mum/2024

15. The ground raised by the assessee through this C.O. is dismissed in the light of our findings (supra) against ground no. 1 to 3 raised by the revenue.

16. In the net result the appeal filed by the revenue is partly allowed for statistical purposes and CO filed by the assessee is dismissed.

Order pronounced in the open court on 20th day of September, 2024.

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 20/09/2024

Dhananjay, Sr. PS

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
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BY ORDER,

(Asstt. Registrar)

ITAT, Mumbai