

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

I.T.A. No.2540/Mum/2024
Assessment Year: 2013-14

Nawrosjee Wadia and Sons Ltd. (Successor to NW Exports Ltd.) 4 th Floor, Neville House J.N. Heredia Marg Ballard Estate Mumbai - 400001 [PAN: AAACN1836A]	Vs	Income Tax Officer, Ward - 2(2)(3), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Ronak Doshi, A/R
Revenue by :	Shri Ajay Kumar Singh, Sr. D/R

सुनवाईकीतारीख/**Date of Hearing** : 19/09/2024
घोषणाकीतारीख/**Date of Pronouncement**: 25/09/2024

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 26/03/2024 by NFAC Delhi [in short 'ld. CIT(A)] pertaining to AY 2013-14.

2. The grievance of the assessee reads as under :-

"1. GROUND NO 1: DISALLOWANCE OF RS. 3,08,61,892/- UNDER SECTION 14AR. W.R. 8D OF THE ACT (GROSS DISALLOWANCE OF RS. 3,83,61,892/- LESS SUO-MOTO DISALLOWANCE RS. 75,00,000/-):

1.1. On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in upholding the disallowance u/s 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 ('the Rules').

1.2. The Ld. CIT(A) failed to appreciate that Ld. AO cannot invoke Rule 8D without recording any objective satisfaction qua Appellant's claim that no expenditure is

relatable to earning of exempt income apart from suo-motu disallowance of 14A offered by the Appellant, having regard to its books of account.

1.3. Without prejudice to the above, the Ld. CIT(A) erred in rejecting the suo-moto disallowance offered by the Appellant, since disallowance u/s. 14A cannot exceed actual expenditure debited to Statement of Profit and Loss and claimed in the computation of income.

1.4. Without prejudice to above, the Ld. CIT(A) failed to appreciate that the insertion of Explanation to first proviso of S. 14A of the Act vide Finance Act 2022, is prospective in nature and therefore ought to have directed the Id. AO to consider only those investments which have actually yielded tax free income during the year.

1.5. The Appellant prays that the disallowance of Rs. 3,08,61,892/- u/s 14A r.w.r. 8D be deleted and /or appropriately reduced.

2. GROUND NO 2: ADDITION OF RS. 3,08,61,892/- BEING DISALLOWANCE U/S14A R. W.R. 8D WHILE COMPUTING THE BOOK PROFIT U/S 115JB OF THEACT:

2.1. On the facts and in the circumstances of the case and in law, Ld. AO erred in making addition of Rs. 3,08,61,892/- being the disallowance u/s 14A r.w.r. 8D, while computing the book profit u/s 115JB of the Act.

2.2. The Appellant prays that the addition made in book profit u/s 115JB of the act be deleted.

GENERAL

The Appellant craves leaves to add to, alter and/or amend any of the above grounds of appeal on or before the date of hearing."

3. Briefly stated the facts of the case are that the assessee filed its return of income on 30/09/2014 declaring total loss of Rs.(-) 35,42,755/-. The return was selected for scrutiny assessment under CASS and accordingly, statutory notices were issued and served upon the assessee. While scrutinizing the return of income, the AO noticed that the assessee is engaged in the business of distribution of mutual fund units and earned brokerage on investments made during the year. The AO found that the assessee has earned exempt dividend income of Rs.4,38,01,950/- on which

it *suo moto* disallowed Rs.75,00,000/- u/s 14A r.w.r 8D. the AO was not satisfied with the *suo moto* disallowance made by the assessee and invoked the provisions of Section 14A r.w.r. 8D. The AO computed the disallowance at Rs.3,83,61,892/- and after reducing the *suo moto* disallowance of Rs.75,00,000/-, made addition of Rs.3,08,61,892/-.

3.1. Assessee carried the matter in appeal before the Id. CIT(A) but without any success.

4. Before us, the Id. Counsel for the assessee pointed out that finance cost includes interest of Rs.1,23,57,140/- and at the same time the assessee has shown interest income on long term capital assets and others at Rs.30,20,271/- and it is the say of the Id. Counsel that the interest expenditure should have been netted off while computing the disallowance u/s 14 r.w.r. 8D. Further the Id. Counsel for the assessee pointed out that under the head Other Expenses, the only expense which needs to be considered for the disallowance is miscellaneous expenses of Rs.15,17,507/-. The Id. Counsel further stated that out of the total expenses of Rs.20,18,850/-, only sum of Rs.9,648/- relates to D-mat which only deserves to be disallowed. The Id. Counsel for the assessee vehemently stated that for the purpose of computation of book profits u/s 115JB, Rule 8D cannot be applied and only actual expenditure, if any, for earning exempt income has to be considered.

4.1. Per contra, the Id. D/R strongly supported the findings of the lower authorities.

5. We have given a thoughtful consideration to the orders of the authorities below. It is true that the assessee has shown interest

expenditure of Rs. 1,23,57,140/- and at the same time has shown interest income of Rs.30,20,271/- meaning thereby that interest expenditure to be considered for disallowance u/s 14A of the Act has to be net interest i.e., interest expenditure (minus) interest income.

5.1. Further we find that the total other expenses debited to the profit and loss accounts amounts to Rs.20,18,850/- against which the AO has computed the disallowance of Rs.3,08,61,892/- meaning thereby that expenditure has been disallowed far in excess of the expenditure charged to profit and loss account. On perusal of the details of other expenses, we find that only expenditure which is relatable to earning the exempt income is the D-mat charges of Rs.9,648/- and since the assessee has *suo moto* disallowed Rs.75,00,000/-, we are of the considered view that on facts of the case, no further disallowance needs to be made. We accordingly direct the AO to delete the impugned disallowance. Since we have deleted the entire disallowance, there remains nothing for the computation of peak profit u/s 115JB of the Act.

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

Order pronounced in the Court on 25th September, 2024 at Mumbai.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(NARENDRAKUMARBILLAIYA)
ACCOUNTANTMEMBER

Mumbai, Dated 25/09/2024

**SC S.P.*

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. संबंधितआयकरआयुक्त/ Concerned Pr. CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)-
5. विभागीयप्रतिनिधि , आयकरअपीलीयअधिकरण, मुंबई/DR,ITAT, Mumbai,
6. गार्डफाई/Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकरअपीलीयअधिकरण
ITAT, Mumbai