

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 3201/MUM/2024
Assessment Year: 2016-17**

Asst. CIT Circle-6(1)(2),
Room No. 506, 5th floor, Aayakar
Bhavan, M.K. Road,
Mumbai-400020.

Appellant

Vs. 360 One Prime Ltd.,
IIFL Centre, Kamala City, Senapati
Bapat Marg, Lower Parel (W),
Mumbai-400013.
PAN NO. AABCC 3347 E
Respondent

Assessee by : Mr. Pritesh Mehta
Revenue by : Mr. Krishnakumar, Sr. DR

Date of Hearing : 24/09/2024
Date of pronouncement : 27/09/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the Revenue against order dated 15.04.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)] for assessment year 2016-17, raising following grounds:



1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance under 14A ignoring the fact that the AO has computed disallowance u/s 14A as per rule 8D?

2. The Ld. CIT(A) has erred in directing the AO to delete the addition u/s. 14A of the IT Act, while computing the income under normal provisions of the IT Act 1961. The deletion of this addition has direct impact on addition made by the AO in computing the Income u/s. 115JB of the IT Act 1961. Therefore, whether the decision of the Ld. CIT(A) is correct and it can be said that the provision of Section 14A can be extended & read into Section 115JB, falling under Chapter XII-B of the Act?

3. 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.

2. Briefly stated, facts of the case are that the assessee filed return of income on 15.10.2016 declaring total income at Rs.37,46,060/- under the normal provisions of the Income-tax Act, 1961 (in short 'the Act') at Rs.1,74,08,842/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices were issued and complied with. The assessee made investment in equities and earned dividend income on the same but did not make any disallowance for earning the said exempt income in terms of section 14A of the Act. Therefore, the Assessing Officer made disallowance in terms of section 14A r.w.r. 8D of the Income-tax Rules, 1962 amounting to Rs.186,86,795/- both under the regular provisions as well as to the book profit u/s 115JB of the Act.

3. On further appeal, the Ld. CIT(A) reproduced many decision cited by him and finally decided the appeal observing as under:

"In light of the aforesaid decisions, disallowance computed in accordance with the formula prescribed under Rule 8D cannot be the basis for computing the amount for the purpose of section 115JB(2) of the Act. AO



has to exclude investments which did not yield exempt income during the year, while computing average investments for the purpose of working out disallowances under section 14A of the Act read with Rule 8D of the Rules but AO has included all the investments (including investments which did not yield any exempt income during the financial year) while computing disallowance under section 14A of the Act read with Rule 8D(iii) of the Rules. AO has computed disallowance under section 14A of the Act which exceeds the total amount of expenditure claimed as a deduction by the Appellant which amounts to Rs 35,08,481 in the return of income. Disallowance under section 14A of the Act should be restricted to the extent of exempt income earned by the Appellant during the year and disallowance in any circumstance cannot exceed the amount of expenditure claimed as a deduction in the return of income.

Power to calculate disallowance has been granted to AO under section 14A(2) of the Act only in cases where the officer is not satisfied. Therefore, in order to carry out any adjustments by applying provisions of section 14A of the Act, AO has to be first satisfied that expenditure has been incurred in relation to the exempt income and that the same has not been disallowed by the appellant itself. AO has not reached any satisfaction for disallowing expenditure by applying provisions of section 14A of the Act. AO has not been able to substantiate why NIL disallowance made by the Appellant is unreasonable and the contentions of the appellant are incorrect but has only made general comments in the Order that they are not satisfied with the genuineness of the claim with regard to the expenses related to earning of the exempt income as the accounts prepared does not give true picture about the correctness of expenditure with regard to the exempt income therefore the disallowance needs to be made as per the provisions of section 14A of the Act.

After going through the factual matrix of the case, the documents at hand and in view of the above judicial precedents, these grounds of appeal are, accordingly, allowed and the addition made by AO on this account is, hereby, deleted.”

4. We have heard rival submission of the parties and perused the relevant material on record. The Ld. CIT(A) in his paragraphs reproduced above has mainly given following findings:

- (i) the Assessing Officer has not recorded dissatisfaction to the claim of the assessee vis-à-vis books of accounts,
- (ii) the disallowance has to be restricted to the extent of exempted income earned,



(iii) disallowance u/s 14A of the Act cannot exceed the expenditure debited by the assessee in the profit and loss account and

(iv) The disallowance computed under Rule 8D cannot be imported into the provisions of section 115JB of the Act for computing the book profit.

4.1 As far as the issue of dissatisfaction to the claim of the assessee is concerned, the Ld. CIT(A) himself on page 33 of the impugned order has summarized the finding of the Assessing Officer, which is reproduced as under:

“The AO stated that the appellant company was engaged in the business of non-banking finance sector and during the year, has shown substantial investments in mutual funds which give rise to dividend income and was seen that the appellant has not made any disallowance on account of expenses incurred to earn exempt income. Investments were made out of funds, and funds always involve time, cost and opportunity cost. It is the endeavor of all businesses to make the best possible utilization of the funds. Making investments is an informed decision making process involving study and research and requires professional skills. It requires manpower, man-hours and funds to make the investments at a time which the appellant considers it most prudent for making investments. Even after making the investments, the appellant would still have to take decisions as to the time span for which it should continue to hold its investments and finally take decisions as to the best time to exit from such investments. All these activities require manpower and funds and such man-hours and funds will entail a cost to the appellant. This cost is in the form of both direct costs and indirect costs and is debited in the profit and loss A/c. under various heads such as personnel cost, administration cost, interest costs on the funds invested etc. Therefore, the appellant's method of computation of disallowance u/s. 14A cannot be accepted when the legislature has provided a specific method of computation as laid down in Rule 8D of the Income Tax Rules. The Income tax (Fifth Amendment) Rules, 2008 vide Notification No. 45/2008 dated 24.03.2008 have introduced Rule 8D. The said rules have elaborately laid down a formula to arrive at the disallowance to be made u/s 14A. Appellant's contention that no expenditure is incurred for earning tax free income is not acceptable and the disallowance u/s. 14A has to be computed in accordance with the Rule 8D.”



The AO further stated that it was not acceptable that the investments made in the shares were made out of appellant's own funds only since the appellant did not submit the documentary evidence of utilization of borrowed funds and sources of investment. In spite of repeated opportunities being given, the appellant has not made out a case to prove that only its own funds were utilized for making investments in the investments which yields exempt income. As per the provisions of Rule 8D(2)ii) in case the appellant has incurred expenditure by way of interest during the previous year, which is not directly attributable to any particular income of receipt the disallowance out of interest expense has to be computed as per the procedure laid down in that rule. As the accounts prepared by the appellant did not give true picture about the correctness of expenditure with regard to the exempt income, provision of sub-section (2) of Section 14A was invoked to work out the disallowance u/s 14A as per rule 8D2(ii) & (iii) of the I.T. Rules.

The appellant stated that it is a public limited company incorporated under the Companies Act, 1956 and registered with the Reserve Bank of India as a systemically important non-deposit accepting Non-Banking Financial Company (NBFC ND-SI) offering broad suite of financial products such as loan against securities, loan against properties/mortgage loans, etc. to Corporate and High Net worth clients. During AY 2016-17, the Company has earned dividend income of INR 1,20,149 from equity shares and earned long-term capital gains of INR 19,71,930 from sale of securities on which Securities Transaction Tax was paid, the said income was claimed as exempt under section 10 of the Act while filing the return of income. The Company did not incur any significant cost for earning the exempt income of INR 20,92,079 as the Company had undertaken minimal activities in relation to investment from which the exempt income was earned.”

4.2 In view of the above, it is evident that Assessing Officer has expressly recorded dissatisfaction to the claim of the assessee that no expenditure was incurred for earning the exempt income. In view of the observations of the Assessing Officer, we reject the contention of the Ld. CIT(A) that no dissatisfaction was recorded.

4.3 Now we come to the other finding of the Ld. CIT(A). **Firstly**, it is settled law that the disallowance u/s 14A of the Act cannot exceed the expenses claimed by the assessee in the profit and loss account. **Secondly**, in the case of Joint Investment Pvt. Ltd. in ITA



117/2015, Hon'ble Delhi High Court in order dated 25/02/2015 has held that disallowance u/s 14A of the Act cannot exceed the exempted income earned by the assessee. **Thirdly**, the Special Bench in the case of Vireet Investment Pvt. Ltd. in ITA No. TA 502/D/12 & CO 68/D/2014 held that the disallowance under Rule 8D r.w.s. 14A of the Act cannot be imported to the provisions of section 115JB of the Act and therefore, disallowance computed cannot become part of the book profit. In view of the settled decisions, we restore the matter back to the file of the Ld. CIT(A) with the direction to verify the claim of the assessee and restrict the disallowance, which is least of the three disallowances options discussed above. The ground of appeal of the Revenue is accordingly allowed for statistical purposes.

5. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 27/09/2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 27/09/2024
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai