



।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "B" :: PUNE

**BEFORE SATBEER SINGH GODARA, JUDICIAL  
MEMBER, AND  
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA Nos.590, 595 & 1478/PUN/2024

निर्धारण वर्ष / Assessment Years: 2016-17, 2014-15 & 2015-16

|  |        |  |
|--|--------|--|
| The Assistant<br>Commissioner of Income<br>Tax,Pune. | V<br>s | Persistent Systems Limited,<br>402, Bhageerath, Senapati<br>Bapat Road, Pune –<br>411016.<br>PAN: AABCP1209Q |
| Appellant/ Revenue                                   |        | Respondent / Assessee  |

|                       |                                  |
|-----------------------|----------------------------------|
| Assessee by           | Shri R.D.Onkar – AR              |
| Revenue by            | Shri Arvind Desai – Addl.CIT(DR) |
| Date of hearing       | 17/09/2024                       |
| Date of pronouncement | 24/10/2024                       |

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

These three appeals filed by the Revenue are against the separate orders of Id.Commissioner of Income Tax(Appeal)[NFAC], under section 250 of the Income Tax Act, 1961 dated 31.01.2024 and 06.05.2024, for the A.Y.2015-16, 2016-17 and 2014-15; respectively. The Revenue for A.Y.2016-17has raised the following grounds of appeal :

“1. Whether in. the facts and circumstances of the case and in law,



*Ld.CIT(A)is correct in deleting the addition made by AO u/s 14A r.w.r 8D in set aside proceedings In- holding that the AO failed to record the satisfaction for invoking section 14A while- making the disallowance without considering the fact that the Hon'ble Tribunal while remanding back the issue in its order dated 21.06.2023 has already held that the AO has recorded satisfaction while making the disallowance u/s 14A?*

2. *Whether in the facts and circumstances of the case and in law, Ld. CIT(A) is correct in deleting the addition u/s 14A r.w.r 8D without considering the fact that the impugned order is passed during set aside proceedings wherein Hon'ble Tribunal had remanded back the matter only for limited purpose of verification regarding suo-moto disallowance of the assessee and the question whether disallowance u/s 14A is applicable in this case was already decided by the tribunal in its order dated 21.06.2021?*

3. *Whether in the facts and circumstances of the case and in law, Ld. CIT(A) is correct in deleting the addition u/s 14A r.w.r 8D by holding that there is no clarity and satisfaction of the AO by which he has made disallowance, without considering the facts that detailed findings have been given in the Assessment order by AO on Page no. 7-11 regarding non-acceptance of suo-moto disallowance of the assessee and AO has also recorded satisfaction for application of Section 14 A?"*

1.1 For A.Y.2015-16 the Revenue has raised the following grounds of appeal :

*“1. Whether in the facts, and circumstances of the case and in law, Ld.CIT(A) is correct in deleting the addition made by AO u/s 14A r.w.r 8D in set aside proceedings by holding that the AO failed to record the satisfaction for invoking section 14A while making the disallowance without considering the fact that the Hon'ble Tribunal while remanding back the issue in its order dated 21.06.2021 has already held that the AO has recorded satisfaction while making the disallowance u/s 14A?*

2. *Whether in the facts and circumstances of the case and in law, Ld. CIT(A) is correct in deleting the addition u/s 14A r.w.r 8D without*



*considering the fact that the impugned order is passed during set aside proceedings wherein Hon'ble Tribunal had remanded back the matter only for limited purpose of verification regarding suo-moto disallowance of the assessee and the question whether disallowance u/s 14A is applicable in this case was already decided by the tribunal in its order dated 21.06.2021?*

3. *Whether in the facts and circumstances of the case and in law, Ld.CIT(A) is correct in deleting the addition u/s 14A r.w.r 8D by holding that there is no clarity and satisfaction of the AO by which he has made disallowance, without considering the Facts that detailed findings have been given in the Assessment order by AO on Page no. 7-11 regarding non-acceptance of suo-moto disallowance of the assessee and AO has also recorded satisfaction for application of Section 14A?"*

1.2 For A.Y.2014-15 the Revenue has raised the following grounds of appeal :

*"1. Whether in the facts and circumstances of the case and in law, Ld.CIT(A) is correct in deleting the addition made by AO u/s 14A r.w.r 8D in set aside proceedings by holding that the AO failed to record the satisfaction for invoking section 14A while making the disallowance without considering the fact that the Hon'ble Tribunal while remanding back the issue in its order dated 21.06.2021 has already held that the AO has recorded satisfaction while making the disallowance u/s 14A?"*

2. *Whether in the facts and circumstances of the case and in law, Ld.CIT(A) is correct in deleting the addition u/s 14A r.w.r 8D without considering the fact that the impugned order is passed during set aside proceedings wherein Hon'ble Tribunal had remanded back the matter only for limited purpose of verification regarding suo-moto disallowance of the assessee and the question whether disallowance u/s 14A is applicable in this case was already decided by the tribunal in its order dated 21.06.2021?"*

3. *Whether in the facts and circumstances of the case and in law, Ld.CIT(A) is correct in deleting the addition u/s 14A r.w.r 8D by holding that there is no clarity and satisfaction of the AO by which he*



*has made disallowance, without considering the facts that detailed findings have been given in the Assessment order by AO in para no.2.7 to 2.17 regarding non-acceptance of suo-moto disallowance of the assessee and AO has also recorded satisfaction for application of Section 14A ?”*

**Submission of ld.AR :**

2. The ld.Authorised Representative(ld.AR) for the Assessee submitted a paper. Ld.AR supported the order of ld.CIT(A). Ld.AR vehemently submitted that ld.CIT(A) had correctly appreciated the facts of the case and applied the Principle of law laid down by the Hon’ble High Court. Ld.AR submitted that once it was set-aside by ITAT, the ld.CIT(A) has jurisdiction to decide all the aspects of the impugned issue.

**Submission of ld.DR :**

3. Ld.DR for the Revenue read out the relevant part of the ITAT Order dated 21.06.2021. Ld.DR submitted that ITAT had set-aside the issue for a limited purpose, hence, ld.CIT(A) should have restricted only to the issue of suo-moto disallowance. Therefore, ld.CIT(A) had erred in deleting the disallowance.

**Findings and Analysis :**

4. We have heard both the parties and perused the records.We are taking the ITA No.590/PUN/2024 A.Y.2016-17 as lead appeal.



4.1 This is a second round of litigation before this Income Tax Appellate Tribunal. In this case the assessee had filed Return of Income for AY 2016-17 on 12/11/2016. The assessee's case was selected for scrutiny. The Assessing Officer (AO) after hearing the assessee's Counsel passed an order u/s 143(3) on 29/12/2018. The Assessee filed an appeal before the Ld.Commissioner of Income Tax (appeal). The Ld.CIT(A) decided the appeal vide order dated 13.03.2020. Aggrieved by the Order of the Ld.CIT(A), the Revenue filed an appeal before this Hon'ble Tribunal. The Hon'ble Income Tax Appellate Tribunal in ITA No.499/PUN/2020, 497/PUN/2020 and 498/PUN/2020 passed a common order dated 21/06/2021. In the first round of appeal before ITAT in ITA 499/PUN/2020 for A.Y.2016-17, the Revenue had raised three grounds, out of that Ground Number 1 & 2 was regarding disallowance made u/s14A read with rule 8D and the Ground Number 3 was regarding disallowance made u/s.10AA(9) of the Act. The ITAT in 499/PUN/2020 has held as under for disallowance made u/s 14A read with Rule 8D :

*Quote, "12. First of all, we observe that nowhere in the assessment order it has been stated that the assessee had made suo-moto disallowance of Rs.16.8 lakhs. The Ld. CIT(Appeals) has made this*



*findings but the basis of such findings is not there in his order. Secondly, the case law relied on by the Ld. CIT(Appeals) for providing relief to the assessee, the rationale therein was that while making disallowance U/s.14A r.w.r.8D of the Rules, the Assessing Officer must be satisfied as to why such disallowance has been made and vis- a-vis facts of the assessee's case. However, as noted by us, the Assessing Officer in the case before us has made detailed analysis in the assessment order regarding the applicability of Section 14A r.w.r.8D of the Rules with the facts of the assessee's case and further that why such disallowance was required that has also been explained by the Assessing Officer. This findings sans satisfaction is not the case here. That further, he has made disallowance only one half percent of the average value of investment i.e. 0.50% of Rs.406,47,45,829/- i.e. Rs.2,03,23,729/-. Therefore, it becomes essential to verify whether the assessee had actually made suo-moto disallowance of Rs.16.8 lakhs and whether the same had been analyzed by the Assessing Officer while making disallowance of 0.50% at the time of assessment. For this exercise, in the interest of justice, the issue needs to be remanded back to the file of Assessing Officer for adjudication after detailed verification as indicated hereinabove while complying with the principles of natural justice and as per law. Thus, **Ground Nos. 2 & 3 raised in appeal by the Revenue are allowed for statistical purposes.**" Unquote.*

4.2 Thus, the ITAT in ITA No.499/PUN/2020 had set aside the issue of disallowance u/s.14A for a limited purpose. The Assessing Officer passed an order u/s.143(3) r.w.s.254 to give effect to the order of the ITAT in ITA No.499/PUN/2020. The Assessing Officer in the order dated 30/09/2022 passed u/s 143(3) r.w.s. 254 held that an amount of Rs.99,27,035/- is to be disallowed u/s 14A read with rule 8D of Income Tax rules. Aggrieved by the said order of the AO, the assessee filed an appeal before the ld.CIT(A).



The Ld.CIT(A)[NFAC] vide order dated 31/01/2024 u/s 250 in para 5.2 -5.7 held as under :

*“5.2 This is an admitted position that the appellant had made investments in Mutual Funds and Bonds to the extent of Rs.677,07,80,782/-. The appellant has not submitted any documentary evidence in support of suo moto disallowance u/s.14A, hence the AO was of the opinion that provisions of Section u/s.14A is quite applicable in this case. With these given facts, the AO has applied the provisions of Section 14A and made disallowance of Rs.99,27,035/- by applying the formula given in Rule 8D. Against invocation of provisions of Section 14A, the appellant has mainly raised objection stating that the investments in Growth Scheme cannot be considered while applying formula prescribed under Rule 8D(2)(iii) to calculate disallowance 14A of the Act r.w. rule 8D(2)(iii). It has further argued that the exempt income arises purely from investment of surplus funds representing post tax accumulated profits of the earlier years. It has further stated that the Company had not borrowed any funds for the purpose of investing in securities to earn income, which is exempt from tax. This is an admitted fact that during the year, the appellant earned income, which is exempt from tax and accordingly the assessee company has suo moto made disallowance u/s.14A of the Act of Rs. 16,74,677/- (in the returns of income so filed), which relates to tax exempt income earned by the assessee. Except this, the AO has not pinpointed any other expenses which could possibly have been incurred to earn exempt income and has not recorded his satisfaction before invoking Rule 8D. In support of the same, assessee has placed reliance on the decision of Hon'ble Supreme Court in the case of **Godrej and Boyce Mfg. Co. Ltd vs. Deputy Commissioner of Income Tax. (2017) reported in 81 taxmann.com 111 (SC)**. Here, in this case, in my considered view, the satisfaction is deemed to be recorded if the Assessing Officer rejects the claim of the assessee without showing how assessee's suo moto disallowance of Rs.16,74,677/- is incorrect.*

*There is no clarity from the AO's finding about the satisfaction by which he has disallowed a sum of Rs.99,27,035/- for A.Y. 2016-17.*

*5.3 Now coming to the issue of quantum of disallowance, I have perused the materials on record and Paper Book filed before me. I*



*find there is force in the argument of the appellant that based on the facts of the case, the investments could be deemed to be made out of its own funds and not out of borrowed funds. On perusal of the Audited Financials, it can be seen that assessee has owned surplus funds of Rs.6,77,07,80,782/- which were invested in Mutual Funds and Tax Free Bonds. The only addition pertains to Investment in Mutual funds particularly Liquid funds which comes from the surplus funds available with the company during the year. It has been decided by various Courts that when own funds are more than the investments made to earn exempt income, then presumption has to be drawn that investments were made out of 'own funds' and not out of borrowed funds. This particular points is quite applicable in this case. In support of this point, a reliance placed on decision of jurisdictional High Court in , the case of CIT V/s UTI Bank (2013)32 taxmann. Com 370" (Guj) which reads as under:-*

*“where the assessee<sup>1</sup> had sufficient interest free funds to meet its tax free investments yielding exempt income, it could be presumed that such investments were made from interest free funds and not from Loan Funds, and thus no disallowance under Section 14A being warranted.”*

*5.4 Further reliance has also been placed on the decision of hon'ble ITAT Bangalore Bench in the case of DCIT V/s Subramanya Construction & Development Co Ltd.(2015) 58 taxmann. Com 219 (Bangalore) wherein it was held that:-*

*“It was found from records that interest free funds were available with assessee which was substantially higher than the investments made by it. It is not necessary to draw a one to one nexus between investments and interest free funds. When the funds had gone out of a common pool and the assessee had interest free funds in excess of the investments, it could take a valid plea that such investments were made out of interest free funds. This being the case, question of disallowance of interest under section 14A, do not arise at all. ”*

*5.5 As the assessee has sufficient surplus fund to make major part of investment in interest-free securities in preceding year and there is negligible increase in investment during the relevant year, the*



*impugned disallowance made under Rule 8D deserves to be deleted. I find that the Assessing Officer has also not pointed out any expenditure which could possibly have been incurred in earning the exempt income in this case. The objective of section 14A and Rule 8D stipulates that net income should actually be brought to tax. In my view, this objective should always be kept in mind while computing the disallowance. Rule 8D should not be pressed into service mechanically which may yield absurd or unreasonable results as held by numerous Hon'ble Courts. A reasonable disallowance, if results in more reasonable estimation of such expenditure relating to exempt income should be adopted. Similarly, if the disallowance made by the AO in accordance with Rule 8D results in manifestly, unreasonable, absurd disallowance, then the same should, in my view, be eschewed.*

*5.6 In view of the above, it is settled law that the disallowance itself has been deleted in appellate proceedings when the same is allowed by the Hon'ble ITAT in the favour of the appellant in the appellant's own case for A.Y. 2013-14 as well as A.Y. 2018-19.*

*5.7 In view of the above discussion and the legal citations referred (supra), the suo moto disallowance made by the appellant while filing returns of income is to be treated as disallowance u/s.14A r.w. Rule 8D of the I.T. Rules. Hence, the disallowance as worked out by the AO u/s.14A r.w. Rule 8D is unwarranted and, therefore, requires to be deleted. Hence, these grounds of appeal are allowed.”*

5. Aggrieved by the order of the Ld.CIT(A), the Revenue has filed this appeal before ITAT.

6. On careful reading of the ITAT order in ITA No.499/PUN/2020, we are of the opinion that the ITAT had set aside the impugned issue for a limited purpose for verification of “suo-moto disallowance” claimed to be made by the assessee and



whether the suo-moto disallowance was 0.5% or more. Thus, in our opinion the impugned issue was set aside for a very limited purpose. However, Ld.AR vehemently argued that it was set aside for reworking hence AO had to consider all the things and therefore, Ld.CIT(A) was correct in deleting the disallowance. However, we do not agree with the submission of Ld.AR, we have already stated that the ITAT had set aside the impugned issue for a limited purpose. However, the Ld.CIT(A) had exceeded the jurisdiction and travelled to the area which was already decided by the ITAT. The ITAT had already held that there was proper satisfaction recorded by the AO. Once the ITAT had held that there was satisfaction recorded by the AO the Ld.CIT(A) do not have any jurisdiction to adjudicate that issue again. Therefore, in this case the Ld.CIT(A) has exceeded the jurisdiction. Then the Ld.CIT(A) discussed in Para 5.5 about availability of funds with the Assessee, however, as seen from the order of the ITAT, this was not the ground on which ITAT had set-aside. Therefore, in this aspect also, the Ld.CIT(A) has exceeded his jurisdiction. We again reiterate that the ITAT had set-aside the issue for “a Limited Purpose of Verification of suo-moto disallowance” made by



assessee. Therefore, Id.CIT(A) has no jurisdiction to venture into any other area. Therefore, Id.CIT(A) has erred in deleting the disallowance. The assessee has submitted before us that assessee had made a suo-moto disallowance of Rs.16,74,677/- in the Return of Income. The Assessing Officer(AO) had calculated disallowance under section 14A read with rule 8D of Rs.99,27,035/-, after considering the suo-moto disallowance of Rs.16,74,667/-. Therefore, the AO has already considered the suo-moto disallowance made by AO. Accordingly, disallowance made under section 14A read with rule 8D is upheld. Accordingly, Ground No.1, 2 and 3 raised by the Revenue are Allowed.

7. In the result, appeal of the Revenue in ITA No.590/PUN/2024 is allowed.

**ITA No.595/PUN/2024 & ITA No.1478/PUN/2024 :**

8. In both these cases, facts are identical to A.Y.2016-17 discussed above, except one fact that for both these years assessee had not made any suo-moto disallowance in the Return of Income, as admitted by the Id.AR. During the assessment proceedings, assessee had submitted working of the suo-moto disallowance.



Therefore, AO has not considered the so-called suo-moto disallowance. We agree with this finding of the AO. Since all other facts are identical, the decision for A.Y.2016-17 shall apply *mutatis-mutandis* to A.Y.2015-16 and A.Y.2014-15 in ITA No.595/PUN/2024 and ITA No.1478/PUN/2024. Accordingly, grounds of appeal raised by the Revenue in ITA No.595/PUN/2024 and ITA No.1478/PUN/2024 are allowed.

9. In the result, both appeals of the Revenue in ITA No.595/PUN/2024 and ITA No.1478/PUN/2024 are allowed.

10. To sum up, all three appeals of the Revenue are allowed.

Order pronounced in the open Court on 24<sup>th</sup> October, 2024.

**Sd/-**  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 24<sup>th</sup> Oct, 2024/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.



आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.