

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

**BEFORE SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER
AND SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER**

**ITA No. 2748/Mum/2024 (A.Y. 2017-18)
ITA No. 2750/Mum/2024 (A.Y. 2015-16)
ITA No. 2747/Mum/2024 (A.Y. 2021-21)**

ACIT - 8(2)(1), Mumbai	vs	Oriental Containers Limited Parijat House, 1076 Dr. E. Moses Road, Worli, Mumbai - 400018. PAN: AAAACO 0480 F
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vijay Bhatta.
Revenue by : Shri H.M. Bhatt (Sr. DR)

Date of Hearing : 04.09.2024
Date of Pronouncement : .11.2024

ORDER

PER AMARJIT SINGH, AM:

All these three appeals of the revenue for the A.Y. 2015-16, 2017-18 & 2020-21 are directed against the different order of Id. CIT(A), NFAC passed u/s 250 of the Act. Since solitary issue of disallowance u/s 14A is involved in all the three appeals, therefore, for the sake of convenience of these three appeals are adjudicated together by taking ITA 2748/M/2024 as a lead case and its finding will apply mutatis mutandis wherever it is applicable.

ITA No. 2748/Mum/2024

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing that amounts to be taken for calculating the disallowance u/s 14A should be restricted to fresh investments made during the year for the purpose of computation as per Rule 8D(2)(iii), ignoring the fact that the CBDT Circular No. 5/2014, dated 11.02.2014 does not mention that the disallowance u/s 14A of the IT Act should be

restricted to fresh investments during the year for the purpose of computation as per Rule 8D(2)(iii).

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing that amounts to be taken for calculating the disallowance u/s 14A should be restricted to investments in subsidiaries on which dividend income has been earned during the year for the purpose of computation as per Rule 8D(2)(iii) ignoring the fact that the CBDT Circular No. 5/2014, dated 11.02.2014 does not mention that the disallowance u/s 14A of the IT Act should be restricted to investments in subsidiaries on which dividend has been earned during the year for the purpose of computation as per Rule 8D(2)(iii)."

2 Fact in brief is that return of income declaring total income of Rs. 9,58,75,760/- was filed on 05.11.2017. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 10.09.2018.

3. During the course of assessment, the assessing officer noticed that assessee has made disallowance u/s 14A of the Act of Rs. 1,64,675/- whereas it has received dividend of Rs. 1,51,39,727/- on the investment made of Rs. 417,68,77,176/-. Therefore, assessee was asked to explain why the disallowance should not be made as per the provision of section 14A r.w.s. 8D of the I.T. Rules, 1962. In response, the assessee filed detailed submission and computation of disallowance made u/s 14A of the Act of Rs. 1,64,675/- as reproduced at page no. 2 & 3 of the assessment order. However, the assessing officer has not agreed with the submission of the assessee and stated that disallowance was not made in accordance with Rule 8D of the I.T. Rules, 1962. Therefore, the assessing officer has computed disallowance u/s 14A r.w. Rule 8D equal to 1% annual average of the monthly average of the opening and closing balance of the value of investment at Rs. 4,29,52,148/- and added an amount of Rs. 4,27,87,473/- after reducing the suo moto disallowance of Rs.

1,64,675/- already made by the assessee to the total income of the assessee.

4. Aggrieved assessee filed before the Id. CIT(A). The Id. CIT(A) has allowed appeal of the assessee after following the decisions of the ITAT in the assessee's case itself that assessing officer has not recorded his satisfaction that the suo moto disallowance offered by the assessee u/s 14A is not correct.

5. Heard both the sides and perused the material on record. Without reiterating the facts as discussed above, the assessing officer has computed the disallowance u/s 14A r.w. Rule 8D of the Act to an amount equal to 1% of the annual average of monthly average of the opening and closing balance of the value of investment income from which does not or shall not form part of total income of Rs. 4,29,52,148/-. On perusal of material on record, we find that assessee had made suo moto made disallowance u/s 14A of the Act to the amount of Rs. 1,64,675/- and in response to the query of the assessing officer, the assessee had made detailed submission vide letter dated 12.12.2020 stating computation of disallowance made by the assessee as under:

<i>Sl. No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>	
<i>1</i>	<i>Salary</i>		
	<i>Managing Director</i>	<i>15,00,000</i>	
	<i>Mr. Sanjay Jain (Company Secretary)</i>	<i>26,72,385</i>	
	<i>Mr. R.K. Sharma (Accountant)</i>	<i>3,59,730</i>	
	<i>Directors Sitting fees</i>	<i>3,50,000</i>	
	<i>Salary of OPPL (Now amalgamated with the Oricon Enterprises Ltd.)</i>	<i>3,94,500</i>	
	<i>Total</i>	<i>52,76,615</i>	
	<i>1% of salary i.e. 1% of Rs. 52,76,615/-</i>		<i>52,766</i>
<i>2</i>	<i>Demat Account Maintenance Charges</i>		<i>87,886</i>
<i>3</i>	<i>Share Registrar Expenses (Now amalgamated with Oricon Enterprises</i>		<i>12,023</i>

	<i>Ltd.)</i>		
4	<i>Sundry expenses Rs. 1,000/- per month (1,000*12)</i>		<i>12,000</i>
	<i>Disallowance u/s 14A</i>		<i>1,64,675</i>

However, without pointing out any infirmity in the computation made by the assessee, the assessing officer has determined the disallowance u/s 14A r.w. Rule 8D to the amount of Rs. 4,29,52,148/. We find that AO has not recorded any satisfaction on the submission of the assessee that the other expenditures claimed by the assessee were related to its non-exempt income. Therefore, we consider that ld. CIT(A) has rightly concluded that assessing officer has not recorded the reason to differ from the computation of disallowance made by the assessee. We, further find that similar issue on identical fact in the case of the assessee itself for the A.Y. 2016-17, the ITAT has deleted the addition holding that the assessing officer has not recorded his satisfaction that the suo moto disallowance offered by the assessee u/s 14A was not correct. The ld. CIT(A) has also incorporated the finding of the ITAT in his order. The relevant extract of the decision of ld. CIT(A) is reproduced as under:

"5. I have considered the of well as the contentions of the appellant and also perused the material available on record. The grounds of appeal are adjudicated as under:

Disallowance u/s 14A r.w.r 8D:

6. For the impugned assessment year 2017-18, the assessing officer disallowed Rs. 4,27,87,473 under section 14A r.w.r. 8D of the Act being over and above the suo moto disallowance of Rs. 1,64,675 made by the appellant under section 14A of the Act in its return of income. Grounds of appeal no. 1 to 4 relate to this disallowance.

6.1 In this regard it is seen that the assessing officer had made similar disallowance u/s 14A r.w.r. 8D(2) (iii) of the Act in Assessment Year 2016-17. The reason for the said disallowance in AY 2016-17 was

same as mentioned aforesaid in order under section 143(3) for impugned AY 2017-18. In the said AU 2016-17, Ld. CIT(A) disposed off the appeal vide an order dated 20.06.2019 by awarding part relief to the appellant. Thereafter, Hon'ble ITAT Mumbai vide its order dated 26.10.2021 has set aside the order of Ld. CIT(A) and directed the Ld. AO to restrict the disallowance u/s 14A of the Act to the extent suo moto offered by the appellant in its return of income.

6.2 The matter was decided by Hon'ble ITAT in appellant's own case for the AY 2013-14 also. Relevant extract of the ITAT in ITA No.693/Mum/2018 dated 12/04/2019 is as under:

"4. After hearing both the parties and perused the material on record including the impugned order we observed that the issue raised by the revenue in the present appeal is squarely covered in favour of the assessee by the decision of the Coordinate Bench in assessee's own case in earlier assessment year 2009-10 which has been followed by the CIT(A) in para 5.4 of the appellate order passed by the Ld. CIT(A). The relevant operative part is reproduced as under:

5. The contentions of the assessee have been duly considered. The First Appellate Authority while adjudicating the appeal of the assessee on this issue for AY 2009-10 had held that while computing the disallowance u/s 14A rwr.8D(2) (iii) as well as 8D(2) (iii) the investments which have been acquired on account of mergers / demergers which do not require any cash outflow should be excluded. This decision of the FAA was upheld by the Hon'ble Mumbai. The relevant portion of the order of the Hon'ble Tribunal in the of assessee for AY 2009-10 is reproduced as under:

"9. We have carefully perused the orders of authorities below. We have also carefully perused the balance sheet of the assessee. The undisputed fact is that assessee is having own funds in the form of share capital and reserves and surplus amount in Rs, 101.31.31 crores as against the investments of Rs. 69.08 crores. This clearly shows that the assessee is having sufficient own funds to make the investment Further, we find that out of the total investment of Rs, 69.08 crores are invested in subsidiary/associate companies. Further, we find that loan liability of Rs. 25.25 crores as on 31.03.2008 has come down to Rs. 15.61 crores as on 31.03.2009 i.e. year under consideration. This also proves that there is no fresh borrowing during the year under consideration.

9.1 Considering the above stated facts infertility, we do not Find any reason for the location of interest expenditure toward earning of income However, allocation of administrative and other expenses cannot be ruled out The disallowance as per rule 8D (2) (iii) is computed by branded Commissioner appeal comes to Rs. 2,10,756. In our considered opinion, this disallowance would meet the end of Justice The total disallowance sustained is Rs. 2,10,756/-

10. In the result, the appeal filed by the venue is dismissed and the cross objection filed by the assessee is partly allowed.

5.5 For the subsequent years also, the FAA as well as the Tribunal have followed the decision taken in the case of the assessee-for-AY 2009-10. Respectfully following the decision of the Hon'ble Tribunal and also my Ld. Predecessors, the AO is directed to recompute the disallowance u/s 14A r.w.r 8D(2)(iii) after excluding the said investments which have arisen on account of mergers / demergers. Accordingly, the ground Nos 1 & 2 of the appeal are partly allowed.

5. Since the facts in the present case are identical one as decided by the Coordinate bench in AY 2009-10 which is followed by Ld. CIT(A) as stated hereinabove. Therefore, we are inclined to uphold the order of CIT(A) by dismissing the appeal of the revenue.

6.3 As can be seen from the above, Hon'ble ITAT allowed the matter in appellant's own case for the AY 2013-14. It is further seen that Hon'ble ITAT in appellant's own case for AYs 2008-09, 2009-10, 2011-12 and 2012-13 allowed the matter in favour of the appellant. Further, Hon'ble Bombay High Court in appellant's own case for AY 2009-10 in ITA No. 384 of 2015 dated 12/09/2017 dismissed Revenue's appeal on this issue.

6.4 Hon'ble ITAT for the AY 2016-17 in the appellant's own case, deleted addition on account of section 14A holding that the assessing officer has not recorded his satisfaction that the suo moto disallowance offered by the assessee under section 14A was not correct, not referring to the assessee's accounts whispered a word as to how the other expenditure claimed by the assessee with respect to its non-exempt income were related to its exempt income, therefore, had clearly exceeded his jurisdiction for re-computing the said disallowance in the hands of the appellant. Thus, Hon'ble ITAT deleted the addition for the AY 2016-17 holding that there was invalid assumption of jurisdiction by the assessing officer under 14A r.w. rule 8D. I have carefully considered

the impugned assessment order and found that the assessing officer has not recorded the reasons in the above lines as envisaged by Hon'ble Tribunal for making the disallowance under section 14A r.w. rule 8D. Therefore, the impugned addition is liable to be deleted for 'invalid assumption of jurisdiction by the assessing officer under 14A r.w. rule 8D. I hold so.

6.5 Both the ITAT and High Court have given a finding that rule 8D cannot be invoked in the appellant's case and accordingly, restricted the disallowance to the extent disallowed suo moto by the appellant u/s 14A of the Act in its return of income. Thus, the issue of disallowance u/s 14A r.w.r. 8D(2)(iii) of the Act is now settled in favour of the appellant by the aforementioned decisions of jurisdictional High Court and ITAT Mumbai.

6.6 As the facts for the impugned assessment year are same as in the AY 2016- 17 and other assessment years decided by Hon'ble ITAT Mumbai, respectfully following the above judicial pronouncements, I delete the addition of Rs. 2,22,68,356 made by the assessing officer under section 14A of the Act. The Grounds No. 1 to 4 are allowed.”

6. In the light of the above facts and following of the decision of ITAT in the case of the assessee itself as elaborately discussed in the finding of the ld. CIT(A), we do not find any reason to interfere in the decision of ld. CIT(A), therefore, all the grounds of appeal filed by the Revenue are dismissed. In the result, the appeal of the Revenue is dismissed.

ITA No. 2750/M/2024

7. We have adjudicated the identical issue on similar fact in respect of disallowance made u/s 14A in the case of the assessee for A.Y. 2017-18 vide ITA No. 2748/M/2024 supra wherein the appeal of the revenue is dismissed. Applying the findings of the same mutatis mutandis this appeal of the Revenue for the A.Y. 2015-16 is also stand dismissed.

ITA No. 2747/M/2024

8. Since on similar issue and identical fact, we have dismissed the appeal of the revenue vide ITA No. 2748/M/2024 for A.Y. 2017-18 as supra in this order. Therefore, applying the finding of the same mutatis mutandis this appeal of the Revenue for A.Y. 2020-21 is also dismissed.

9. In the result, all the appeals of Revenue are dismissed.

Order pronounced in the open court on 21.11.2024

Sd/-

Sd/-

(RAHUL CHAUDHARY)
JUDICIAL MEMBER

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai: 21.11.2024
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