

(b) The ld. CIT(A) erred in confirming the disallowance under Rule 8D when there was no part of interest expense claimed against exempt income.

(c) The CIT(A) erred in holding that whether interest income is earned on current account or capital account is the same and disallowance u/s 14A is applicable towards interest earned on current account too.”

2. Fact in brief is that return of income declaring total income of Rs. 83,86,110/- was filed on 25.01.2021. The case was subject to scrutiny assessment and assessment u/s 143(3) r.w.s. 144B of the Act was finalized on 13.09.2022. At the time of assessment, the assessing officer observed that assessee had earned gross income from investment made in firms/entities aggregating to Rs. 46,58,393/-. Out of this income share of profit received from the partnership firm of Rs. 31,78,502/- was claimed as exempt u/s 10(2A) of the Act, therefore, the assessing officer had computed disallowance as per the provision of section 14A r.w. Rule 8D of the Act to the amount of Rs. 24,51,171/- and added to the total income of the assessee.

3. Assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. Heard both the sides and perused the material on record. The AO noticed that assessee had made investment in various firms from which the assessee earned the following income:

*i. Share of profit from firms Rs. 31,78,502/-
ii. Interest income from firms Rs. 41,79,891/-”*

5. The AO stated that share of profit from firms received at Rs. 31,78,502/- is exempt u/s 10(2A) of the Act. Therefore, the AO has determined the interest expenditure of Rs. 24,51,171/- relating to

the income claimed as exempt u/s 10(2A) and added to the total income of the assessee. The assessee had made investment as fixed capital in the partnership firms from which exempt income earned was only Rs. 1,56,700/- whereas assessee's own capital as on 01.04.2019 was to the amount of Rs. 2,58,12,759/- which demonstrate that assessee had not used borrowed funds for making investment in the fixed capital of the various partnership firms. Further, the assessee had made investment in the current account with the various partnership firms to the amount of Rs. 1,19,40,503/-from which it had earned interest income which had already been offered for tax without claiming as exempt income.

6. The ld. Counsel has also referred the decision of Cyquator Media Services Pvt. Ltd. vs DCIT vide ITA No. 1209/M/2023 dated 19.07.2023 of ITAT, Mumbai wherein after following the decision of Hon'ble Jurisdictional High Court in the case of CIT vs HDFC Bank Ltd. (2014) 366 ITR 505 (Bom) and decision of the Hon'ble Supreme Court in South India Bank Ltd. vs CIT (2021) 438 ITR 001 (SC) held that where assessee's own funds and other non-interest bearing funds were more than the investment in tax free securities no disallowance u/s 14A can be made.

7. The ld. Counsel also referred the decision of the ITAT Mumbai in the case of ACIT vs Ankit Arunbhai Shah vide ITA No. 6539/M/2013 wherein after following the decision of the Co-ordinate Bench in the case of ACIT vs Shri Arunabhai Chimanlal Shah vide ITA No. 5999/M/2013 held that when interest earned from current capital account from partnership firm has been offered for tax then no disallowance can be made.

8. In the light of the aforesaid facts and findings, we consider that the decision of the ld. CIT(A) of confirming the impugned disallowance made u/s 14A is not sustainable in law, therefore, following the decision of the ITAT Mumbai as discussed the disallowance made u/s 14A is deleted. Therefore, ground of appeal of the assessee are allowed.

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

Order pronounced in the open court on 28.11.2024

Sd/-

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai: 28.11.2024
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