

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER
ITA No.4046/M/2024
Assessment Year: 2017-18

DSP HMK Holdings Pvt. Ltd. 11 th Floor, Mafatlal Centre, Nariman point, Mumbai- 400021. PAN: AAACH1037K	Vs.	Dy. CIT- Circle 2(1)(2) Aayakar Bhavan, M. K. Marg, Mumbai- 400020.
Appellant	:	Respondent

Present for:

Assessee by

: Shri Madhur Agrawal & Fenil Bhatt

Revenue by

: Shri R. R. Makwana, Sr. D.R.

Date of Hearing

: 13.11.2024

Date of Pronouncement

: 29.11.2024

O R D E R

Per Beena Pillai, JM:

Present appeal filed by the assessee arises out of order dated 28/06/2024 passed by NFAC Delhi/ Ld. CIT(A) for assessment year 2017-18 on following grounds of appeal:

“1 (a) On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) has erred in upholding the disallowance made by the learned Assessing Officer by applying the provisions of section 14A read with Rule 8D of the Act.



b) On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the appellant has disallowed expenditure of Rs.4,53,034/- u/s 14A on proportionate basis which is reasonable as held by the Hon'ble ITAT 'D' Bench in Appeal No. ITA 7623/Mum/2011 dt. 22/01/2014 in the appellant's own case for A.Y. 2008-09 as well as the subsequent AY 's on an identical issue and jurisdictional High Court in Appeal No. 490, 492 & 514 of 2017 dt. 03/06/2019 and ought to have accepted the said disallowance.

c) The learned Commissioner of Income Tax (Appeals) has erred in upholding the additional disallowance under section 14A at Rs. 9,79,36,390/- as determined by the learned Assessing Officer in as much as the learned Assessing Officer has misconstrued the provisions of the Income Tax Act by considering the total investments instead of only those investments in relation to income which does not form part of total income viz. tax free investments to ascertain the disallowance under section 14A read with Rule 8D.

d) The learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance under section 14A read with Rule 8D as computed by the learned Assessing Officer wherein investments on which taxable income is earned is also considered while computing the said disallowance.

e) The learned CIT(A) has failed to appreciate that the objective satisfaction as required under section 14A(2) of the Act, has not been recorded by the Assessing Officer and, therefore, Rule 8D is not applicable.

f) Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) has failed to consider and appreciate the jurisdictional High Court and ITAT 'D' Bench decisions in the appellant's own case in the earlier years on an identical issue which is decided in favour of the appellant.

g) Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) has failed to consider that the appellant had disallowed Rs.10,66,18,963/- (excluding disallowance u/s 14A Rs.4,53,034/-) in its computation of income and has overlooked and erroneously upheld the order of the Assessing Officer in further disallowing Rs.9,79,36,392/-

h) Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) order is bad in law and against the facts and circumstances of the case as he has erred in holding the action of the Assessing Officer in disallowing an additional amount of Rs.9,79,36,392/ under section 14A read with Rule 8D attributable to the earning of exempted income in as much as it exceeds the total expenditure incurred by the appellant and ought to have restricted the

disallowance under section 14A to a sum of Rs.52,67,000/- (including disallowance of Rs.4,53,034/ made by the appellant) being the balance of the total expenditure.

i) Without prejudice to the above, on the facts and circumstances of the case as well as in law, the Learned Commissioner of Income Tax (Appeals) has erred in holding that the action of the A.O. is upheld on account of disallowance u/s.14A of Rs. 9,79,36,392/- determined as per rule 8D, while computing the Book Profit u/s.115JB of the Income Tax Act, without appreciating the fact that rule 8D applies only to section 14A and not to section 115JB of the Income Tax Act.

2. The appellant prays for leave to add to or delete or amend any of the grounds of appeal.

3. Each of the above ground of appeal is independent of the others and without prejudice to the other grounds of appeal.

4. The appellant prays that:-

- the reasonable method of apportioning the expenditure inadmissible under section 14A as determined by the appellant be accepted

and

- that the additional disallowance of Rs.9,79,36,392/- under section 14A read with Rule 8D be deleted.
- without prejudice to what is stated above, that the disallowance u/s 14A applies only to section 14A and not to section 115JB and be deleted to modify the assessment in accordance with the provisions of law.”

Brief facts of the case are as under:

2. The assessee is a company registered as a Non Banking Financial Company (NBFC) with Reserve Bank of India. It derives its income by way of interest, dividend and capital gain on sale of investment for the year under consideration. It filed its return of income declaring net taxable income under normal provisions of Act at Rs.40,51,29,640/- and u/s. 115JB at Rs.70,67,99,534/-. Subsequently, the assessee filed revised return of income



returning net taxable income under normal provisions at Rs. 35,76,29,640/- and u/s. 115JB Rs. 70,67,99,534/-.

2.1. The case was selection for scrutiny and statutory notice u/s. 143(2) of the Act along with 142(1) of the Act was issued to the assessee in respect of the notices, representative of assessee appeared before the Ld.AO and filed requisite details as called for.

2.2. The Ld.AO noted that, the assessee earned Rs.4,55,75,508/- as exempt income being dividends and Long Term Capital Gain which was exempt u/s. 10(38) of the Act amounting to Rs.10,73,18,111/-. the Ld.AO further noted that assessee had also earned exempt income being distribution income from venture capital fund of Rs.4,25,29,575/- and interest on tax free bond of Rs.1,58,93,060/- resulting in total exempt income of Rs.21,13,16,254/-. It was noted that the assessee had “*suo moto*” disallowed Rs.4,53,034/- while computing income u/s. 14A of the Act.

2.4. The Ld.AO was dissatisfied with the disallowance made by the assessee u/s. 14A of the Act, having regards to the investments made by the assessee in its subsidiaries, joint venture investments, investments in associates, other equity shares and mutual funds.

2.5. The Ld.AO called upon the assessee to show cause as to why disallowance of expenses incurred in realization of investments that yielded exempt income should not be

recomputed in accordance with provision of section 14A r.w.r.8D. The Ld.AO also called upon assessee to furnish monthly averages of current and non-current investments in accordance with Rule 8D of the Income Tax Rules. On perusal of the reply by the assessee dated 05/12/2019, the Ld.AO recomputed the disallowance u/s. 14A at Rs.9,79,36,392/-. The Ld.AO also disallowed the business loss claimed by the assessee on the loans given to one Mr. Ramalinga Raju.

Aggrieved by the order of the Ld.AO assessee preferred appeal before Ld. CIT(A).

3. The Ld. CIT(A) deleted the addition made in respect of the business loans advanced by the assessee. However, on the issue of disallowance u/s. 14A r.w.r.8D of the Act, the Ld. CIT(A) observed and held as under:-

“6.3. During the year, appellant had earned Rs.4,55,75,508/- as exempt dividend, long term capital gain exempt u/s 10(38) of the Act of Rs. 10,73,18,111/-, exempt distribution income from venture capital fund of Rs.4,25,29,575/- and interest on tax-free bonds of Rs. 1,58,93,060/- resulting in total exempt income of Rs.21,13,16,254/-.

6.4. Appellant had suo-moto disallowed Rs.4,53,034/- in the computation of income u/s 14A of the I.T. Act. From the audited financials of F.Y. 2016-17 it was seen that the appellant had quoted bonds of Rs. 19,91,64,000/-, equity shares of Rs.22,87,07,789/-, investment in subsidiaries of Rs. 5,62,31,454/-, JV Investment of Rs. 27,11,25,000/-, Investment in associates of Rs.44,10,39,146/-, preference shares of Rs. 69,06,025/-, other equity shares of Rs.5,12,30,792/-, Mutual Funds of Rs.368,98,35,980/- and Venture Capital and Investment Funds of Rs.25,33,47,857/- as non-current investments and unquoted mutual funds of Rs.4,70,23,15,876/- as current investments as on 31.03.2017.

6.5 The Ld. AO observed that the working of disallowance of expense related to earning such income made by the appellant is not computed as per Rule 8D. The Ld AO held that The disallowance is to be made even if the appellant contends that no expenditure has been incurred in

earning exempt income. The investments cannot be managed without inherent expenses since no investments can be made without market analysis and expertise. The expenses disallowed u/s 14A by the appellant is Rs.4,53,034/-, which is only 0.40% of the total expenses seen in the P&L of the appellant.

6.6 The appellant during the appellate proceedings submitted that it has carried out reasonable disallowance of Rs.4,53,034/-. But the appellant did not file the basis of computing said disallowances. Apart from this, the appellant did not file any justification.

6.7 The contention of appellant are considered but not found to be acceptable. The disallowance as per section 14A are mandatory in nature even if the appellant has not earned any exempt income during the year. In this regard It is worth noting the after introduction of Rule 8D, there is no choice left for quantification n of the disallowance. Rule 8D has prescribed a formula for calculation of disallowance U/S.14A and the same is binding in nature. As held by the jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd. vs. DCIT [ITXA 626 of 2010] dated 12.08.2010, Rule 8D is applicable from A.Y. 2008-09 onwards, thus, the disallowance are supposed to be computed as per Rule 8D only.

6.8 In view of the above, I am of the considerate opinion that, in absence of any justification regarding methodology adopted by the appellant, the disallowance carried by the Ld AO are found to be appropriate. Thus, the addition carried out by the Ld. AO is liable to be upheld.”

Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before this *Tribunal*.

4. The Ld.AR submitted that all the grounds raised by the assessee in present appeal are only one issue of disallowance u/s. 14A r.w.r.8D upheld by the Ld. CIT(A).

4.1. The Ld.AR submitted that, the income of the assessee comprised of interest income, profit on sale of investments, income from venture capital, income from mutual funds and dividend income on shares. He submitted that, the expenditure



for the year under consideration claimed by the assessee are as under:-

Particulars	Rs.
Electricity Expenses	2,01,998
Auditor's Remuneration	6,21,320
Security charges	11,649
Vehicle Expenses	94,119
CSGL Charges	16,737
Compensation for office expenses	19,00,113
Demat charges	52,695
Profession Tax	2,500
S.T.T.	90,799
Legal & Professional fees	20,62,994
Donation	10,50,00,000
Property, Plant and Equipments Written off	16,18,963
Miscellaneous Expenses	1,49,631
Rates & Taxes	62,445
Total Expenditure	11,18,85,962

4.2. The Ld.AR submitted that out of the above expenditure, assessee while computing taxable income has already added back the following:-

	Rs.
Donation	10,50,00,000
Property, Plant and Equipments written off	16,18,963
	10,66,18,963
Amount inadmissible u/s 14A	4,53,034
Total Disallowance	10,70,71,997

4.3. The Ld.AR submitted that, while computing the disallowance u/s. 14A, the assessee took into consideration the direct expenditure of Rs.1,43,493/- incurred in realization to earning of exempt income. Further he submitted that in respect of every indirect expenses, the assessee apportioned all other expenses in ratio of exempt income to total income that was computed at Rs.3,09,541/-. He submitted that, the assessee has been following similar methodology in all the preceding years for computing the disallowance u/s. 14A. The Ld.AR also submitted that, on identical facts coordinate bench of this *Tribunal* in assessee's own case for assessment year 2008-09 to 2012-13 allowed the claim of assessee. He placed heavy reliance on the orders passed by this *Tribunal* in assessee's own case.

4.4. The Ld.AR submitted that, the first appellate authority for assessment year 2014-15 allowed the claim of assessee which is reproduced in order dated 06/07/2020 of this *Tribunal* for assessment year 2014-15 in *ITA No. 484/M/2019*. The Ld.AR thus submitted that, the issue under consideration is a covered issue in assessee's own case by order passed by coordinate bench of this *Tribunal* in the preceding assessment years.

4.5. On the contrary, Ld.DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both the sides in light of records placed before us.

5. It is noted that for assessment year 2008-09 assessee earned dividend income of Rs.12.07 crores approximately and the expenditure disallowed u/s. 14A by the assessee *suo-moto* was Rs. 4,77,890/-. Even during those periods, the assessee provide services on sale of investments, bank receipt, dividend on units of mutual funds, dividends on shares, etc. The decision of the *Tribunal* in assessee's own case in *ITA No.7623/M/2011* dated 22/01/2014 (*supra*) was appealed by the revenue before *Hon'ble High Court* in *ITA No. 490/M/2017, 492/M/2017 & 514/M/2017*. *Hon'ble High Court* categorically observed as under:-

"In the present case, as noted, the assessee's entire claim of expenditure in relation to its business activities was Rs. 24.19 Lakhs out of which, the assessee had voluntarily reduced sum of Rs. 7.79 Lakhs in relation to income not forming part of the total income. The Tribunal accepted such working out. Quite apart the correctness of the approach of the Tribunal, accepting stand of the Assessing Officer would lead to disallowance of expenditure far in excess of what is claimed by the assessee itself."

5.1. Further, the observations of Ld. CIT(A) for assessment year 2014-15 has been categorically noted in the order of coordinate bench of this *Tribunal* in *ITA No. 484/M/2019 (supra)* while considering identical issues. The relevant observations of the Ld. CIT(A) therein reads as under:-

"6.2 Ground No. 7 vide this ground appellant has agitated against 2 & additional disallowance of an amount of Rs.3,49,64,447/- u/s 14A read with Rule 8D. In para 5 of the assessment order the Ld. AO had mentioned that the assessee company had claimed exempt income amounting to Rs.4,28,42,975/- against which the appellant had suo-moto disallowed a sum of Rs.5,72,785/- as expenditure u/s 14A read



with Rule 8D. Since the appellant had earned exempt income and according to the Ld. AO the assessee company did not maintained separate accounts for investments, therefore, he applied the provisions of Section 14A read with Rule 8D and worked out a disallowance of Rs.3,55,37,232/-. After giving credit of disallowance made by the appellant itself for an amount of Rs.5,72,785/- the net disallowance made by the AO comes to Rs.3,49,64,447/-. During the course of appellate proceedings, a written submission was filed which find place in para 5 of this order. The appellant submitted that similar type of disallowances were made in appellant's own case for assessment years 2008-09,2009-10. 2010-11, 2011-12 and 2012-13. According to the appellant, the appeal of the assessee on these grounds has been decided by Hon'ble Tribunal. I have considered the submission of the appellant, the Hon'ble Tribunal in appellant's own case has held as under:

The Hon'ble ITAT during A.Y. 2008-09, in ITA No. 7598/Mum/2011 dated 22.01.2014 has held as under:

We are of the considered view that a reasonable allocation of expenditure has to be made which can be attributed to the income which is chargeable to tax. Considering the facts and circumstances of the case, we are of the considered view that expenditure of As. 4,77,890/- as worked out by the assessee, the details of which are mentioned by AO at pg. 2 of the order, is reasonable to make disallowance u/s 14A with Rule 80. Accordingly, we restrict the disallowance of R5.4,77,890/- by reversing the orders of the lower authorities below and thus allow the grounds of appeal taken by assessee.

In A.Y. 2009-10, in ITA No. 6780/Mum/2012 dated 31.03.2016

On perusal of the above decision of the Tribunal, we agree with the Id. Counsel's argument and remand the matter to the file of the AO. We direct the AO to apply the said ratio to the facts of the present case and other decisions, if any, in force and decide the issue in accordance with law.

(Appeal effect given by AO accepting assessee's disallowance vide order dt. 30/06/2017)

In A.Y. 2010-11, in ITA No. 7135/MUM/2013 dated 22.04.2016

8 As could be seen, in this case also, the assessee has made disallowance under section 14A which is more than reasonable considering the exempt income earned by the assessee in comparison to the taxable income. Moreover in this case also, the Tribunal has decided the issue in the AY 2008-09 vide ITA No.7623/Mum/2011 dt.22/01/2014.

9 That being the case, respectfully following the order of the co-ordinate bench of the Tribunal, we restrict the disallowance u/s 14A of



the Act As. 23,08,853/-, as offered by the assessee. Accordingly, ground raised by the assessee is allowed and ground raised by the department is dismissed.

In A.Y. 2011-12, in ITA No. 5484/M/2014 dated 17.03.2016

On perusal of the above decision of the Tribunal, we agree with the Id. Counsel's argument and remand the matter to the file of the AO. We direct the AO to apply the said ratio to the facts of the present case and other decisions, if any, in force and decide the issue in accordance with law.

(Appeal effect given by AO accepting assessee's disallowance vide order dt. 30/06/2017)

In A.Y. 2012-13, in ITA No. 1159/MUM/2017 dated 25.07.2018

9- Upon further appeal, the Id. CIT(A) has restricted the same to Rs. 6.48 lacs on similar reasoning and by placing reliance on the stand of this Tribunal for earlier years.

10-Facts being identical, taking the same stand, we confirm the action of Id. CIT(A).

Since there is neither any legal change nor any factual change therefore, respectfully following judgement of Hon'ble ITAT in appellant's own case for assessment year 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, AD is directed to work out the disallowance as per the criteria decided by Hon'ble ITAT in appellant's own case in earlier years. Hence appeal is partly allowed."

5.2. This Tribunal for A.Y. 2014-15 considering the observation of the Ld. CIT(A) observed as under:-

"5. On appraisal of the above mentioned order, we find that the claim of the assessee was allowed on the basis of the decision of the Hon'ble ITAT in the assessee's own case for the A.Y.2008-09, 2009-10, 2010-11, 2011-12 & 2012-13. The details of decisions have been mentioned in the order reproduced above. There is no factual change. The issue has already been allowed by the Hon'ble ITAT in the assessee's own case. No law contrary to the law relied by the Hon'ble ITAT as well as by the CIT(A) in his order has been produced before us. We nowhere found any material to interfere with the finding of the CIT(A). We are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, we upheld the finding of the CIT(A) on these issues and decide these issues in favour of the assessee against the revenue."



5.3. Considering the above observation of coordinate bench of this *Tribunal* for the proceedings years in assessee's own case, as well as the observations of *Hon'ble High Court* in assessee's own case, we do not find any reason to uphold the disallowance computed by the Ld.AO. We also note that in the present facts the total expenditure claimed by the assessee was Rs.11,18,85,962/-, out of which the assessee "*suo-moto*" disallowed Rs.10,70,71,997/- that includes Rs.4,53,034/- as disallowance u/s. 14A r.w.r.8D of the Act.

5.4. We note that the disallowance in any manner cannot exceed the total expenditure claimed by the assessee. There is nothing contrary brought on record by revenue regarding the total expenditure, to deviate with the observations and the view taken by coordinate bench of this *Tribunal* as well as *Hon'ble High Court* in assessee's own case.

Respectfully following the same we delete the disallowance made by the Ld.AO.

Accordingly the grounds raised by the assessee stands allowed.

In the result the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 29-11-2024.

Sd/-
PRABHASH SHANKAR
ACCOUNTANT MEMBER

Sd/-
BEENA PILLAI
JUDICIAL MEMBER



Place: Mumbai,

Dated: 29.11.2024

Snehal C. Ayare, Stenographer/ Dragon

Copy of the order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai