

2. *The Learned NFAC erred in confirming addition of interest of Rs. 18,38,657/- u/s 14A r.w. rule 8D(2)(ii) without appreciating that interest bearing funds are not utilized for making investments which has earned tax free income and also the interest free funds available with Assessee are more than interest bearing funds and hence the addition of Rs. 18,38,657/- may be deleted.*

3. *The Learned NFAC erred in confirming addition of indirect expenses of Rs. 5,19,901/- u/s 14A r.w. Rule 8D(2)(iii) without appreciating that Assessee has not incurred any expenses to earn exempt income and assessee was himself handling the investments and exempt income is directly credited to bank account and hence the addition of Rs. 5,19,901/- may be deleted.*

4. *Without prejudice to above, in the facts and circumstances of the case, addition u/s 14A may be restricted to a reasonable amount.”*

2. The assessee is an individual engaged in the business of co-ordination and production of advertising in the name of proprietorship concern M/s Cutting Edge Pictures. The assessee filed the return of income for AY 2016-17 on 17.10.2016 declaring a total income of Rs. 1,98,50,070/-. The return was selected for scrutiny and the statutory notices were duly served on the assessee. The AO noticed that the assessee has shown an investment of Rs. 11,27,79,640/- for the year ended 31.03.2016 as against the investment of Rs. 9,51,80,620/- in the earlier years. The AO further notice that the assessee has shown dividend income of Rs. 10,03,648/- and has claimed exemption under section 10(34) of the Act. Since the assessee has not disallowed any amount incurred towards earning exempt income, the AO invoked the provisions of section 14A r.w.r 8D and made a disallowance of Rs. 23,58,557/- under Rule 8D(2)(ii) and (iii) of the Income Tax Rules. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) passed an ex-parte order by confirming the disallowance made by the AO since the assessee did not file any details or respond to the notices.

3. We heard the parties and perused the material on record. It is submitted that the CIT(A) did not give sufficient time to the assessee to collate the required details and therefore, the order of the CIT(A) is against the principles of natural justice. We notice that before the CIT(A) the assessee did not respond to the notices and nor did file any further details. Further from the perusal of AO's order we notice that the AO while making the disallowance under section 14A r.w.r. 8D has not recorded any findings on merits and has simply made the addition for the reason that the assessee has not made any disallowance towards earning exempt income. Considering the facts and circumstances peculiar to the case in the interest of natural justice and fair play, we are inclined to give one more opportunity to the assessee to contend the issues on merits before the lower authorities. Accordingly, the issues are restored back to the AO for fresh consideration on merits with a direction to call for necessary details and decide in accordance with law. The assessee is directed to submit the details as may be called and cooperate with the assessment proceedings. It is ordered accordingly.

4. In result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 05-11-2024.

Sd/-
(SAKTIJIT DEY)
Vice President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai