IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER

AND

SMT RENU JAUHRI, ACCOUNTANT MEMBER

ITA No.6290/M/2012
Assessment Year: 2009-10

M/s. Bennett, Coleman & Co. Ltd. The Times of India Building, Dr. D. N. Road, Fort, Mumbai- 400001. **PAN: AAACB4373Q**	Vs.	**Addl. Commissioner of Income Tax Range- 1(1)** Office of the Addl. CIT Range- 1(1), Room No. 538, Aayakar Bhavan, M. K. Marg, Mumbai- 400020.
Appellant	:	**Respondent**

ITA No.6538/M/2012
Assessment Year: 2009-10

Addl. Commissioner of Income Tax Range- 1(1) Office of the Addl. CIT Range- 1(1), Room No. 538, Aayakar Bhavan, M. K. Marg, Mumbai- 400020.	Vs.	**M/s. Bennett, Coleman & Co. Ltd.** The Times of India Building, Dr. D. N. Road, Fort, Mumbai- 400001. **PAN: AAACB4373Q**
Appellant	:	**Respondent**

Present for :
Assessee by : Shri Madhur Agarwal & Yash Prakash

Revenue by : Shri Kailash C. Kanojiya, CIT DR

Date of Hearing : 17.10.2024
Date of Pronouncement : 17.12.2024

O R D E R

Per Beena Pillai, JM:

Present cross appeals filed by the assessee and revenue against order dated 10.08.2012 passed by Ld. CIT(A)-1, Mumbai for assessment year 2011-12 on following grounds of appeal:

Assessee's grounds

1. *"On the facts and in the circumstances of the case and in law, the Learned CIT(A) has failed to appreciate that in absence of any direct and proximate nexus between the expenditure incurred and the tax free income earned by the Appellant, the provisions of section 14A(1) of the Income Tax Act, 1961 ("the Act") are not attracted.*
2. *On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in upholding that Rule 8D is applicable without taking into consideration the disallowance worked out by the Appellant which has also not been found to be incorrect by the Assessing Officer under section 14A(2) of the Act.*
3. *On the facts and circumstances of the case and in law since the assessee had sufficient funds of its own, no borrowings were used for the purpose of any investment and consequently no interest is disallowable under section 14A of the Act.*
4. *On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in completely ignoring the fact that prior to August 2006, the Company did not resort to any borrowings and hence investments made prior to August 2006 amounting to Rs.1,391.26 crores ought to be excluded while computing the disallowance under Section 14A of the Act.*

5. *On the facts and in the circumstances of the case and in law, the Learned CIT (A) has erred in not relying on the auditor of the Appellant who, after due verification, have certified that the loans were used for the purposes for which they were obtained.*
6. *On the facts and in the circumstances of the case and in law, the Learned CIT (A) has failed to appreciate that interest paid on borrowed funds (i.e. working capital demand loan, buyers credit, etc. which are used for bridging temporary gaps in working capital requirements of the company) as well as interest paid on security deposits and dealers deposits should be excluded while computing the disallowance under Rule 8D since such interest expense is incurred by the Appellant in the course of normal business activities and not for making investments.*
7. *The assessee may be permitted to add, alter, amend or delete any of the grounds at the time of, or before the hearing."*

Department's Grounds:

1. *"Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in allowing software expenses related to website / portal to assessee amounting to Rs.58,68,459/- as revenue expenditure?*
2. *"Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.57,02,96,000/- on valuation of inventory using FIFO method?*
3. *The appellant craves leave to add to, amend or withdraw the aforesaid grounds of appeal."*

Brief facts of the case are as under:

2. The assessee is a company and filed its return of income 29.09.2009 declaring total income of Rs.605,80,58,129/-. The return was processed and the case was selected for scrutiny. Notice u/s. 143(2) and 142(1) of the act were issued to the assesse, in response to which, the assessee filed requisite details as called for.

2.1. The Ld.AO after considering all the details completed the assessment by making following additions:

Disallowance of payment to clubs- Rs.500000/-
Disallowance of absolute stock written off- Rs. 4,57,54,188/-
Software charges treated as capital expenditure- Rs.26,74,76,187/-
Disallowance of website registration expenses- Rs.58,68,459/-
Addition of closing stock- Rs.57,02,96,000/-
And disallowance u/s. 14A – Rs.60,22,26,504/-

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

3. The Ld. CIT(A) after considering the submissions of the assessee upheld the disallowance made by the Ld.AO in respect of 14A in the hands of the assessee and other disallowances were deleted.
Aggrieved by the order of the Ld.AO, assessee as well as revenue are in appeal before this *Tribunal.*

Departmental Appeal:

4. The revenue has challenged in its appeal the deleting of addition pertaining to software expenses related to the website portal amounting to Rs.58,68,459/- and deleting the addition of Rs.57,02,96,000/- on valuation of inventory using FIFO method.

4.1. At the outset, the Ld.AR submitted that both these issues raised by the revenue are held in the favour of the assessee by coordinate bench of this *Tribunal* in assessee's own case as well as decision of *Hon'ble Bombay High Court in ITA No. 1686 of 2019* dated *17.02.2012.*

4.2. Ground No. 1 raised by the revenue is in allowing the software expenses related to website/portal. It is submitted that, for A.Y. 2008-09 revenue was in appeal before this *Tribunal* in ITA No. 3537/M/2012 on identical issue. This *Tribunal* vide order dated 08.01.2018 considered the issue by observing as under:

> *"23. The only issue raised by the revenue in this appeal is against the deletion of the disallowance of Rs.50,64,781/- by the Ld. CIT(A) as made by the Ld.AO by disallowing software expenses relating to website portal as capital in nature.*
> *24. The facts in brief are that the assessee is in the business of printing and publishing of newspapers and periodicals on various online additions of Times of India, Economic Times, Mahabharat Times, Navbharat Times as well as various portals viz. Property Times, Education Times, etc. The assessee incurred various expenses during the year in order to maintain its online portals. During the course of assessment proceedings, the Ld.AO called for the details of these expenses which was accordingly submitted. During the year the assessee incurred a total expenditure of Rs.74,73,026/- being software application expenses incurred in relation to website/portals out of which Rs.50,64,781/- was treated a capital expenditure by the Ld.AO and consequently disallowed on the ground that Rs.50,64,781/- related to development of website yielding benefit of enduring nature. The details of the said expenditure is given in the assessment order in para 10.2. In the appellant proceedings the Ld. CIT(A) allowed the appeal of the assessee by following the order of his predecessor for A.Y. 2007-08 which was decided in favour of the assessee.*
> *25. We have heard the rival contentions and perused the material on record including the impugned order. We find that the Ld. A the appeal of the assessee by following the earlier allowed A order for A.K. 2007-08 which has attained finality. We have observed that order of Ld. CIT(A) is correct and does not suffer from any infirmity as it has been passed after considering the facts of the case in the light of the similar issue decided in A.Y. 2007-08 which attained finality. Also on merit the issue has been correctly decided as the expenses are of revenue nature and therefore we are inclined to uphold the same."*

4.3. The Ld.DR on the contrary relied on the orders passed by the Ld.AO.

We have perused the submission advanced by both sides in lights of records placed before us.

5. It is noted from the order of the Ld. CIT(A) that this issue was considered by the authorities in favour of assessee for A.Y. 2007-08 and 2008-09. Nothing contrary to the above reproduced observation by this *Tribunal* is brought to our notice.

5.1. We therefore do not find any reason to interfere with a view to taken by Ld. CIT(A). Respectfully following view taken by coordinate bench of this *Tribunal* in assessee's own case (supra), we uphold the view taken by the Ld. CIT(A).

Accordingly Ground No. 1 raised by the appellant stands dismissed.

Ground No. 2 raised by the revenue is against deleting the addition on valuation of inventory by accepting the LIFO method followed by the assessee.

6. Ld.AR submitted that, this issue stands covered by the decision of *Hon'ble High Court* in assessee's own case in *ITA No. 1686/2009 vide order dated 17.02.2012* that was rendered for *A.Y. 1997-98. Hon'ble High Court* after considering the fact that LIFO method was consistently upheld by this *Tribunal* from A.Y. 1982-83, onwards observed as under:

> 3. *"As regards question (i), the Tribunal has observed that the LIFO method of accounting of the closing stock was followed by the Assessee right from Assessment Year 1987-88. The Tribunal, following the*

decision of its coordinate bench, directed the Assessing Officer to value the closing stock in accordance with the LIFO method and further directed that if on verification it is found that duty bearing stock has been fully consumed in the year, no addition should be made.

4. *The attention of the Court has also been drawn to an affidavit filed by the Assessee on 15 July 2009 in a companion Income Tax Appeal No.1904/2009. The Affidavit states that in the Assessment Year 1982-83, the Tribunal had, by its order dated 23 October 1991, held that the change in the method of valuing the closing stock from FIFO to LIFO method was bona fide and accordingly, accepted the change. The Tribunal, by its order dated 8 October 1993, rejected an application filed under Section 256(1) which is accepted by the Revenue. Further, for Assessment Years 1983-84 and 1984-85, the Assessing Officer by his orders dated 4 March 1986 and 23 March 1987 accepted the value of the closing stock as per the LIFO method and the assessments were completed under Section 143(3). Those assessment orders have attained finality. For Assessment Years 1985-86 and 1986-87, the Revenue did not dispute the value of the closing stock adopted by the Respondent on the basis of the LIFO method. For Assessment Years 1987-88 to 1992-93, the Tribunal by its diverse orders held that the value of the closing stock is to be adopted on the basis of LIFO method. For Assessment Year 1993-94, the Tribunal held that the value of the closing stock is to be adopted on the LIFO method. Though for this Assessment Year the Revenue filed an appeal, there was no challenge to the valuation of the closing stock on the LIFO basis. For Assessment Years 1994-95 and 1995-96, the Tribunal held that the value of the closing stock is to be adopted on the LIFO method. The Revenue has filed appeals in this Court in relation to Assessment Years 1996-97 to 2000-01. For Assessment Year 2001-02, the order of the Tribunal dated 16 February 2004 holding that the value of the closing stock is the correct value on the LIFO method, has been accepted by the Revenue.*
5. *The affidavit in reply has not been controverted. The consistent view which has been taken by the Tribunal is to accept the LIFO method. This is an accepted method for valuation of stock. The method has been regularly followed by the Assessee. This is not a case where the Assessing Officer was not satisfied with the completeness of the accounts of the Assessee or where the method of accounting has not been regularly followed or does not comply with the accounting standards. In this view of the matter, we do not consider it appropriate to entertain the Appeal on question (i).”*

6.1. The Ld.DR on the contrary relied on orders passed by Ld.AO.

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

7. It is noted that the Ld. CIT(A) accepted the LIFO method for valuing stock by observing as under:

> *"6.3.I have considered the facts of the case, submissions of the appellant and assessment order. It is observed that identical issue has been decided by Hon'ble High Court, Mumbai in assessment years AY 1997-98 and by CIT(A) in A.Y. 2006-07 in favour of the appellant by holding that LIFO is an accepted method for valuation of stock and this method has been regularly followed by the assessee. This is not a case where the Assessing Officer was not satisfied with the completeness of the accounts of the assessee or where the method of accounting has not been regularly followed or does not comply with the accounting standards. Respectfully following the earlier years order, the AO is not justified in applying FIFO method for valuation of inventory. Ground is allowed. As observed by Hon'ble High Court LIFO method is consistent approach adopted by assessee and has been accepted by the authorities in the past. Respectfully following the same we do not find any infirmity in view taken by Ld. CIT(A) and the same is upheld."*

7.1. Considering the fact that the Ld. CIT(A) rely on the view of Hon'ble High Court in assessee's own case. On this issue we do not find any infirmity in the view taken by the Ld. CIT(A) and the same is upheld.

Accordingly Ground No 2 raised by the revenue stands dismissed.

Assessee's appeal

8. The only issue challenged by the assessee in its appeal is regarding the disallowance upheld by the Ld. CIT(A) u/s. 14A r.w.r. 8D of the rules.

8.1. The Ld.AR submitted that, the assessee earned exempt income being dividend from mutual funds/investment in shares amounting to Rs.20,80,14,971/- and Long Term Capital Gain on sale of investment that was treated as exempt u/s. 10(38) of the act at Rs.767,25,88,926/-. The Ld.AO called upon assessee to show cause as to why expenses towards earning of exempt income may not be disallowed as per section 14A r.w.r. 8D of the act. In response, it was submitted that, the assessee allocated sum of Rs.74,20,082/- from common expenses in the ratio of exempt income earned to the total income as a disallowance u/s. 14A of the act.

8.2. The Ld.AR submitted that, the assessee is primarily engaged in the business of publishing and printing of newspapers, music, multi media etc. and his not in the business of borrowing and deploying borrowed funds for investments in shares, securities of other body corporates, units of MF etc. he submitted that to earn the exempt income assessee has not incurred any direct or indirect expenses however it had *suo moto* disallowed sum of Rs.,74,20,082/- as inadmissible expenses within the meaning section 14A r.w.r.8D of the Income tax Rule.

8.3. The Ld.AR submitted that any interest expenditure made by the assessee cannot be attributed towards the earning of exempt income as assessee has surplus funds in the form of share capital, reserve and surplus and depreciation result amounting to 3,180 crores which is more than the investments made. He refered to

relevant extract of the balance sheet for year ended 31/03/2008 and 31.03.2009 placed at page 47-48 and 49-50 of the paper book. The Ld.AR also relied on the decision of *Hon'ble Bombay High Court* in case of *CIT vs. Reliance Utilities and Power Ltd. reported in 313 ITR 340.* Ld.AR thus submitted that no disallowance under Rule 8D (2) (ii) of the Income tax Rules can be made.

8.4. The Ld.AR further argued that while computing disallowance under Rule 8D (2)(iii), the Ld.AO treated 0.5% of the average investments. The Ld.AR placed reliance on the coordinate bench of this *Tribunal* in assessee's own case for *A.Y. 2014-15* wherein the argument regarding non satisfaction by the Ld.AO with respect to disallowance offered by the assessee having regards to the accounts submitted by the assessee was accepted. He placed reliance on the observations of coordinate bench of this *Tribunal* for *A.Y. 2012-13 to 2014-15* in *ITA Nos. 2166-2168/mum/2024* vide *order dated 30/09/2024* as under:

> *"10. We have given thoughtful consideration to the rival submissions and perused the material on record.*
> *11. It is settled legal position that it was only after the Assessing Officer had recorded his dissatisfaction as regards the correctness of the voluntary disallowance made by an assessee under Section 14A of the Act that the provisions contained in Rule SD of the IT Rules can be invoked. Relevant observations of the Hon'ble Supreme Court in the case of Godrej & Boyce Mfg. Co. Ltd. v. DCIT: 394 ITR 449, in this regard, are as under*
> *"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule*

8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable." (Emphasis Supplied).

12. Similar view was expressed by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT: 347 ITR 272:

"41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO." (Emphasis Supplied)

13. Thus, before proceeding to invoke provisions of Rule 8D of the IT Rules for computing disallowance under Section 14A of the Act the Assessing Officer was required to express his dissatisfaction regarding the computation of disallowance made by the Assessee.

14. In the present case the Appellant had not claimed that no expenses were incurred for earning exempt income. To the contrary, the Appellant had made suo-moto disallowance under Section 14A of the Act and had furnished the computation and the basis of making such computation during the assessment proceedings. The Appellant disallowed the Securities Transaction Tax Expenses of INR 1,26,808/- as expenses directly connected to earning of exempt income. In addition, the Appellant had claimed that only common expenses aggregating to INR 86,88,906/- could be said to have been incurred for earning both exempt and taxable income; and in respect of the same the quantum of disallowance under Section 14A was computed at INR.4,16,898/- on proportionate basis (Exempt Income/Total Revenue). While rejecting the suo-moto disallowance made by the Appellant under Section 14A of the Act, the Assessing Officer neither made reference to nor alluded to either the accounts of the Appellant or the expenditure debited by the Appellant to the Profit & Loss Account for the relevant previous year. On perusal of paragraph 3.3 to 3.7 of the Assessment Order, we find merit in the contention advanced on behalf of the Appellant that the Assessing Officer has failed to record requisite dissatisfaction before invoking Rule 8D of IT Rules. During the course of hearing it was contended on behalf of the Revenue that the Assessing Officer has recorded that the voluntary disallowance computed by the Appellant was not as per provision of Rule 8D of the IT Rules and

the same constituted requisite satisfaction. We note that the aforesaid contention of the Revenue was rejected by the Hon'ble Bombay High Court in the case of Principal Commissioner of Income Tax-2 Vs. Bombay Stock Exchange Ltd: [2020] 113 taxmann.com 303 (Bombay) [15-10-2019] holding as under:

"9. We note that it is evident from the extracted part of the assessment order referred to hereinabove that the Assessing Officer has come to the conclusion that the disallowance claimed by the Respondent was not consistent with Rule SD of the said Rules. It is only in view of the disallowances not being worked out as per Rule 8D of the Rules, that the Assessing Officer is not satisfied with the disallowance offered by the Respondent. This, to our mind, is putting the cart before the horse. The Assessing Officer must first record a conclusion that having regard to the accounts of the assessee, he is not satisfied with the disallowance offered by the Respondent in terms of section 14A(2) of the Act. It only on being dissatisfied with the above, does Rule 8D of the Rules can be invoked to compute the disallowance.

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11. Non-satisfaction with the disallowance offered by the assessee has to be arrived at on the basis of the accounts submitted by the assessee. In this case, the Assessing Officer had not carried out the aforesaid exercise but rejected the disallowance claimed by the assessee only on the ground that it was not in accordance with Rule 8D of the Rules. The application of Rule 8D of the Rules would only arise once the Assessing Officer is not satisfied on an objective criteria in the context of its accounts, that suo motu disallowance claimed by the assessee is not proper.

12. In fact, the Supreme Court in the case of Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154/254 Taxman 325/402 ITR 640 while upholding the view of the Delhi High Court has held that the Assessing Officer needs to record his non-satisfaction having regard to the sou motu disallowances claimed by the assessee in the context of its accounts. It is only thereafter, the occasion to apply rule SD of the Rules for apportionment of expenses can arise

13. In the present facts, the Tribunal has correctly come to the conclusion that non-satisfaction as recorded by the Assessing Officer for rejecting the sou motu disallowances claimed by the assessee is not done as required under section 14A(2) of the Act. On facts, the view taken by the Tribunal is a possible view and calls for no interference.

14. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

15. Accordingly, appeal is dismissed." (Emphasis Supplied)

15. In view of the above, we hold that the Assessing Officer has failed to record requisite dissatisfaction in terms of Section 14A(2) of the Act before invoking the provisions contained in Rule 8D of the IT Rules. Therefore, the additional disallowance of INR.1,43,83,306/- made by the Assessing Officer as per Section 14A of the Act read with Rule 8D of the IT Rules cannot be sustained and is, therefore, deleted. Thus, Ground No. 2.1, 2.2 and 2.5 raised by the Appellant are allowed while Ground 2.3, 2.4 and 3 are dismissed as being infructuous."

8.5. He thus submitted that, rejecting disallowance computed by the assessee was not in accordance with Rule 8D would only arise once the Ld.AO is not satisfied of the *suo moto* disallowance made by the assessee having regards to the accounts of the assessee. The Ld.AR contended that once the assessee makes the *suo moto* disallowance tinkering can be made to the disallowance by the Ld.AO only after recording satisfaction that such a disallowance was not in consonance with the accounts of the assessee. He submitted that in present facts of the case the *suo moto* disallowance was tinkered by the Ld.AO merely by observing that it was not as per Rule 8 D, r.w.s. 14A of the act. He thus relied on the observations of Coordinate Bench in assessee's own case to support his argument.

8.6. On the contrary, the Ld.DR referred to the observations of the Ld.AO in para 11.1 of assessment order, wherein it is noted that the assessee admitted in the preceding assessment years for disallowance u/s. 14A to the extent of 1% of the dividend income earned. The Ld.DR relied on the following observations of the Ld. CIT(A) in support of the disallowance computed by the Ld.AO.

> *"7.3 I have considered the facts of the case, submissions of the appellant and assessment order. It is an admitted fact that the appellant has full-fledged treasury department which is associated with investment decisions. But it is not established by the appellant by facts and figures that at each instance of investment there was sufficient cash balance available and that no working capital or other loans were utilized for each investment. It is not sufficient merely to say that the auditor has certified that the loans were used for the purposes for which they were obtained and that short term*

funds were not used for long term purposes. The assertion has to be supported by actual evidence.

7.4 The A.O. at para 11.1 has mentioned that the assessee has incurred expenditure and has not given exact details of source of investment and thus he was not satisfied with the claim made by the assessee about the expenditure incurred in relation to investments. Thus, the satisfaction of A.O for invoking Rule 8D is apparent from the assessment order.

7.5 The other plea of the learned AR that its own funds viz. Capital and Reserves exceeded the amount of investment in shares and bonds yielding tax free income a d so, it can be presumed that no part of the borrowing has been used for the purpose of investment in the shares and bonds yielding tax free income is not acceptable. All the funds of the appellant are in common hotch potch and no direct nexus could be established between the interest free funds and the investments. The argument that since the share capital and reserves are more the investments in various years thus it should be presumed that there is no indirect interest cost associated with the investment does not appear to be correct as investments are made at different points of time and for each transaction the appellant needs to establish that no interest bearing funds/O.D. limits were utilized. This could be only possible if appellant had produced the day to day cash flow statement of not only the previous year but also of past years when the investments were made. It is very much possible that an assessee may have say Rs. 10 Cr. of share capital and reserves but no cash balance to invest and that he utilizes the O.D. a/c for making the investments. Thus, the comparison of share capital plus reserves vis-à-vis investment cannot lead to conclusion that investment was made out of interest free funds. It is also banai that interest is paid on outstanding balances and these could be continuing from past many years. In fact to overcome such complications and differences Rule 8D was brought in statute and onus is on the appellant to establish with cash flows that there was no interest bearing funds employed for making the investments and there was no indirect expenses relatable to such investments. In the case of Reliance Utilities and Power Ltd cited by the appellant there was a clear finding of fact that that assessee had interest-free funds of its own which had been generated in the course of year. There is no such confirmed finding in the present case.

7.6 In view of above, I am of the considered view that Rule 8D is applicable for instant assessment year. As regards, correctness of the disallowance under Rules 8D, I am partly in agreement with the

appellant that only the investments which have generated or could generate tax exempt income alone should be considered. The said figure of average investment according to the appellant is Rs.2063.41 crores and the disallowance on the said basis comes to Rs.44.90 crores (furnished by the appellant in annexure 25 during appellate proceedings). The disallowance is thus sustained to the extent of Rs.44.90 crores subject to verification of figure by AO. Ground No. 5-7 are partly allowed."

8.7. He thus placed reliance on the view expressed by the authorities below to support the disallowance computed by the Ld.AO.

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

9. There is no dispute that the assessee made *suo moto* disallowance of Rs.74,20,082/- in respect of the exempt income earned during the year under consideration. We have also considered the argument raised by the Ld.AR regarding no satisfaction recorded by Ld.AO in respect of the *suo moto* disallowance made by the assessee as not acceptable. On perusal of the assessment order the observations of the Ld.AO in para 11.1 categorically reveals that, disallowance under Rule 8D was computed without analyzing as to how *suo moto* disallowance made by the assessee is not acceptable. Such satisfaction is not recorded by the Ld.AO having regard to the accounts of the assesse.

9.1. In the present facts of the case, the Ld.AO computed disallowance under the second and third limb of Rule 8D (2) from the submissions made by the assessee before the authorities below.

Assessee had categorically submitted in response to the notice issued by the Ld.AO that though assessee maintains mix funds and all the funds are in the common hotch potch and that, difference between the interest free funds and interest bearing funds cannot be established, assessee has sufficient surplus funds in order to make investments. The assessee had also relied on the decision of *Hon'ble jurisdiction High Court in case CIT vs. Reliance Utilities and Power Ltd. (supra)* in support of these contentions. We therefore agree with the Ld.AR that the Ld.AO has not considered these submissions and the disallowance under Rule 8D (2) (ii) was made without having regards to the accounts of the assessee for the year under consideration. The disallowance therefore recomputed by the Ld.AO under Rule 8D (2)(ii) deserves to be deleted respectfully following the decision of *Hon'ble Bombay High Court* in case of *CIT vs. Reliance Utilities Pvt. Ltd. (Supra).*

9.2. Coming to the disallowance made under the third limb of Rule 8D (2), section 14A (2) makes it a mandate to apply the formula as per rule 8D for the year under consideration. Ld.AO disallowed 0.5% of investment. However considering various jurisdictional pronouncement on this aspect, we restrict the disallowance under the third limb of Rule 8D (2) to such investments that yielded exempt income for the year under consideration. In support of this we refer to decision of *Delhi High Court Cheminvest Ltd. Vs. CIT reported in (2015) 378 ITR 33* and the decision of *Hon'ble Gujrat High Court in case CIT vs Corrrtech Energy Ltd. (2015) 372 ITR 97.*

We also direct the Ld.AO to consider the fact that, in the event the disallowance computed as per the directions herein above is less than the disallowance u/s. 14A may be restricted to the *suo moto* disallowance made by the assesse.

Accordingly, the Grounds raised by the assessee in its appeal stands partly allowed for statistical purpose.

In the result, the appeal filed by the assessee stands partly allowed for statistical purposes and the appeal filed by the revenue stands dismissed.

Order pronounced in the open court on 17-12-2024.

Sd/-	**Sd/-**
RENU JAUHRI	**BEENA PILLAI**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Place: Mumbai,
Dated: 17.12.2024
Snehal C. Ayare, Stenographer

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