

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH MUMBAI

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

ITA No. 5872/MUM/2024

Assessment Year: 2014-15

Deputy Commissioner of Income Tax, Central Circle – 4(2), Mumbai	Vs.	Birla Group Holdings Pvt. Ltd., 1 st Floor, Industry House, 159, Churchgate Reclamation, Churchgate, Mumbai – 400020 (PAN : AABC6755B)
(Appellant)		(Respondent)

Present for:

Assessee : Ms. Jinal Jain, CA
Revenue : Ms. Monika H. Pande, Sr.DR

Date of Hearing : 01.01.2025
Date of Pronouncement : 29.01.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A)-52, Mumbai, vide order no. ITBA/APL/S/250/2024-25/1068873670(1), dated 19.09.2024 passed against the assessment order by the Deputy Commissioner of Income Tax – 5(1)(1), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the “Act”), dated 16.12.2016 for Assessment Year 2014-15.

2. The only issue involved in the present appeal is in respect of disallowance of Rs.1,40,98,698/- u/s.14A whereby the Revenue contends that provisions of Section 14A read with rule 8D(2) which prescribes the methodology for disallowance to be made u/s. 14A has been ignored.

3. Facts of the case are that assessee filed its return of income on 29.11.2014 reporting total loss at Rs.2,22,04,574/-. While computing total income for the year, assessee made a suo moto disallowance of Rs.1,40,98,698/- u/s. 14A comprising of interest expenses of Rs.1,40,73,698/- and other expenses of Rs.25,000/-. On this account, ld. Assessing Officer noted that disallowance made of Rs.25,000/- is worked out without application of parameters prescribed in Rule 8D(2)(iii). Ld. Assessing Officer reworked the disallowance by applying Rule 8D(2)(iii) and made a further disallowance of Rs.2,83,52,513/- (Rs.2,83,77,513 – Rs.25,000/-). Before the ld. Assessing Officer, assessee contended that since it has not received any exempt income during the year, provisions of section 14A does not apply on it to make the said disallowance. Ld. Assessing Officer concluded the assessment by disallowing expenditure attributable to the activity of investments, income from which is not includable in total income for the year, determined in accordance with Rule 8D at Rs.4,24,51,211/-. Since, assessee had suo moto disallowed a sum of Rs.1,40,98,698/-, the balance of Rs.2,83,52,513/- was further disallowed and added to the total income. On appeal before the ld. CIT(A), it was contended that since assessee did not earn any exempt income during the year, no disallowance ought to be made u/s. 14A which was accepted and the appeal of the assessee was allowed. Aggrieved, Revenue is in appeal before the Tribunal.

4. Before us, ld. Counsel for the assessee submitted that it is an undisputed fact of assessee not having earned any exempt income during the year. Pursuant to this fact, he placed reliance on the decision of Hon'ble High Court of Madras in the case of Redington (India) Ltd. vs. ACIT [2017] 392 ITR 633 (Mad), which after considering the CBDT circular No.5 of 2014, dated 11.02.2014, held that where

there is no exempt income in the relevant year, there cannot be disallowance of expenditure u/s. 14A in relation to any assumed income. Further, reliance was placed on the decision of Hon'ble High Court of Delhi in the case of Chem Invest Ltd. vs. CIT [2015] 378 ITR 33 (Del) which held that Section 14A will not apply if no exempt income is received or receivable during the relevant previous year. He also placed reliance on another decision of Hon'ble Delhi High Court in the case of PCIT vs. Sahara India Corporation Ltd. [2024] 168 taxmann.com 165 (Del), wherein also similar view was taken of no disallowance of any expenditure u/s.14A to be made if income of assessee for relevant Assessment Year does not include any income that was exempt from tax. Ld. Counsel also referred to the decision of the Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs. Ballarpur Industries Ltd., in ITA No.51 of 2016, dated 13.10.2016, which held that no substantial question of law arises from the order of Tribunal wherein it is held that no disallowance u/s.14A of the Act can be made since assessee has not earned any exempt income during the year.

4.1. Lastly, Ld. Counsel also referred to the decision of Coordinate Bench in assessee's own case for Assessment Year 2010-11 and 2011-12 in ITA No. 3703, 3704/Mum/2015, dated 03.03.2017 which upheld the findings of the ld. CIT(A) that disallowance made by ld. Assessing Officer u/r. 8D(2)(iii) is to be deleted in absence of any exempt income earned in those years. Para 9 of the said order is extracted below for reference.

"We have gone through the orders passed by the A.O. as well as by the id CITIA) It is noted that td. CIT(A) recorded categorical finding in his order that no exempt income has been received by the assessee in A.Y. 2010-11 & 2011-12 I has been mentioned by ld. CIT(A) that dividend income of Rs.37,83,000/- was received during A.Y. 2008-09, accordingly disallowance made under section 14A was restricted to the extent attributable to said amount. However, in the remaining two years since no income was received, disallowance was deleted fully. It is noted that id. CITIA) has followed various judgments wherein it was

held that in case no exempt has been received by the assessee during year, then no disallowance u/s 14A read with Rule 8D (2) (iii) shall be required to be made. It is further noted that Ld. counsel has also cited various judgments as reproduced in earlier part of order. No contrary judgments have been cited by the Ld. D.R. on this issue. Thus, taking facts and circumstances of the case and well settled legal position into account as has been submitted by the Ld. Counsel of the assessee, we find that no interference is called for in the order of the Ld. CIT(A). Thus, his orders are upheld for all the 3 years.”

5. Per contra, Sr. DR referred to the decision of Coordinate Bench in assessee's own case for Assessment Year 2018-19 in ITA No. 2693/Mum/2023, dated 26.03.2024, wherein it upheld the order of ld. Assessing Officer making further disallowance u/s. 8D(2).

5.1. In this case, the distinguishing fact is that assessee had earned dividend income for which exemption was claimed u/s.10(34/35) against which assessee had made suo moto disallowance.

6. We have heard both the parties and perused the material on record. Admittedly, it is an undisputed fact that assessee had not earned any exempt income during the year. However, assessee had made a suo moto disallowance of Rs.1,40,98,698/- u/s. 14A which was reworked by ld. Assessing Officer by applying provisions of Rule 8D(2)(iii) to enhance the disallowance by Rs.2,83,52,513/-. Ld. CIT(A) deleted the incremental disallowance made by ld. Assessing Officer of Rs.2,83,52,513/- since assessee has not earned any exempt income during the year by following the judicial precedents of the Hon'ble Jurisdictional High Court of Bombay (supra) as well as decisions in the case of assessee's own case given by Coordinate Bench and several other decisions as referred above.

6.1. We find that the issue before us is no longer *res-integra* and has been elaborately and adequately dealt by various judicial forums referred above. Submission made by ld. Sr. DR by referring to

assessee's own case for Assessment Year 2018-19, wherein different view had been taken, we note that fact of the case are different than the present one, since in that year, assessee had earned exempt income against which suo moto disallowance was made by the assessee, hence is of no aid to ld. Sr. DR on his contention. Considering the facts on record and settled position of law in plethora of judicial precedents referred above, we do not find any reason to interfere with the findings arrived at by ld. CIT(A) in deleting the addition of Rs.2,83,52,513/- made by ld. Assessing Officer u/r. 8D(2)(iii). Accordingly, grounds raised by the Revenue are dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order is pronounced in the open court on 29 January, 2025

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 29 January, 2025

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai