

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA Nos. 932 & 933/Bang/2023
Assessment Years: 2017-18 & 2018-19

M/s SLK Software Pvt. Ltd., No. 40/A, KHB Industrial Area, Yelahanka New Town, Bengaluru – 560 064. <b>PAN – AAEC5 7548 E</b>	Vs.	The Asst. Commissioner of Income Tax, Special Range – 6, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Bharath L, C.A
Revenue by	:	Ms. Neera Malhotra, CIT (DR)

Date of hearing	:	19.11.2024
Date of Pronouncement	:	31.01.2025

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

These appeals filed by the assessee are against the order passed by the NFAC, Delhi dated 30/09/2023 and 06/10/2023 respectively for the assessment years 2017-18 and 2018-19.

**First, we take up ITA No. 932/Bang/2023, an appeal by the assessee for the AY 2017-18.**

2. The issue raised by the assessee in ground No. 1 of its appeal is general in nature and does not require separate adjudication. Likewise, the issue raised by the assessee in ground no. 27 of its appeal pertains to the levy of interest under sections 234A and 234B of the Act, which is consequential in nature and does not require separate adjudication. Hence, both grounds raised by the assessee are dismissed as infructuous.

**3.** The interconnected issue raised by the assessee in ground Nos. 2 to 5 is that the Ld. CIT(A) erred in confirming the addition under section 14A of the Act, read with Rule 8D of the Income Tax Rules, to the extent of ₹ 19,77,142 only.

4. In the present case, the assessee, a private limited company engaged, is in the business of providing technological solutions and services, including consulting, architecture, package implementation, application engineering, testing, infrastructure management, and IT process optimization. The assessee company offers these technological services to the customers across various domains such as banking, manufacturing, and financial services.

4.1 During the year under consideration, the assessee company earned an exempt income in the form of dividends amounting to ₹ 1,15,60,948.00. The assessee company adheres to the provision of section 14A of the Act made suo-motu disallowance amounting to ₹ 8,04,994.00 only.

4.2 During the assessment proceedings, the AO observed a significant increase in the investments made by the assessee. For instance, the investment in mutual funds increased from ₹ 4.75 crores to ₹ 8.57 crores, and non-current investments increased from ₹ 50.18 crores to ₹ 173.48 crores. Considering the high volume of investments, the AO held that the suo-motu disallowance made by the assessee was insufficient. Furthermore, noting that the assessee had not maintained separate books for investments, the AO invoked the provisions of Rule 8D of the Income Tax Rules and computed the disallowance as follows:

Particulars	Index	Amount in INR
Expenditure by way of interest	A	2,42,79,806
Average value of investments	B	178,46,97,032
Average of total assets as appearing in balance sheets	C	469,24,05,408

Computation of relatable interest expense ( $A \times B/C$ )	$\alpha$	92,34,517
0.5% of average value of investments	$\beta$	89,23,485
Total disallowance u/s. 14A ( $\alpha + \beta$ )		1,81,58,002
Less: Disallowed by assessee		8,04,994
Net disallowance u/s. 14A		1,73,53,008

5. Aggrieved assessee preferred an appeal before the learned CIT(A) and made various contention against the addition made by the AO.

6. The Ld. CIT(A) after considering the submission of the assessee deleted the disallowances of interest expenses for Rs. 92,34,517/- by holding that assessee has sufficient own fund. The learned CIT(A) further held that the provision of rule 8D of IT Rule was amended and amended provision were applicable for the year under consideration therefore disallowances shall be computed as per amended rule. The learned CIT(A) found that the assessee has filed computation of disallowance as per amended provision of rule 8D and accordingly directed the AO to verify the assessee computation. The relevant observation of learned CIT(A) is extracted as under:

*5.2.3 I have gone through the findings of AO, submissions of the appellant and judicial pronouncements in this regard. It is seen that the appellant had own funds which were largely sufficient to meet the investments. The AO has failed to point out any specific instance to establish the fact that the borrowed funds were directed for making investments yielding exempt income. It is further important to note that rule 8D(2) was amended w.e.f. 02.16.2016. The amended Rule as applicable to the instant year is reproduced hereunder for ready reference:-*

*"(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:-*

*(i) the amount of expenditure directly relating to income which does not form part of total income; and*

*(ii) an amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:*

*Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee."*

*5.2.4 In this backdrop, the computation of relatable interest expense at Rs.92,34,517/- made by the AO by invoking the pre amended clause (ii) of sub rule*

*==*

*(2) of rule 8D is not justified. Hence, the said addition of Rs.92,34,517/- is deleted.*

*5.2.5 Now coming to the application of clause (iii) of pre amended sub rule (2) of rule 8D. The AO has disallowed 0.5% of average value of investments*

of Rs.89,23,485/-. The said clause has been amended to state that the disallowance shall be @ 1 percent of average of average monthly investments. The appellant vide its reply dated 04.02.2021 has furnished the calculation of disallowance under section 14A read with the amended Rule 8D(2) which is reproduced here under:

Sr. No.	Particulars	Amount (in INR)
1	Amount of expenditure directly relating to income which does not form part of total income	804,994
2	Amount equal to one per cent of the annual average of the monthly average of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income (Refer Appendix 1)	1,977,142
A	Total disallowance under Section 14A of the Act read with Rule 8D of the Rules	2,782,136
B	Less: Amount already disallowed in the return of income	804,994
C	Net disallowance under Section 14A of the Act (A-B)	1,977,142

The calculation of monthly investment has been given by the appellant in Appendix to the above computation The AO is directed to verify the said amounts and make disallowance under the amended rule 8D(2) as per the detailed discussion in aforesaid paras. The ground appeal raised is partly allowed on above terms subject to verification of amount by the AO."

7. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

8. The Ld. AR before us contended that the AO has invoked the provisions of Rule 8D of the Income Tax Rules without recording any dissatisfaction regarding the computation of the suo-motu disallowance made by the assessee. This action is in direct violation of section 14A(2) of the Act, which mandates that the AO must first be dissatisfied with the correctness of the assessee's claim regarding the expenditure

incurred in relation to exempt income before applying Rule 8D. The failure to record such dissatisfaction renders the invocation of Rule 8D arbitrary and legally unsustainable.

8.1 The learned AR further contended that the assessee had already made a suo motu disallowance of ₹ 8,04,994 in compliance with Section 14A of the Act. However, instead of evaluating the correctness of this disallowance, the AO applied Rule 8D merely on the basis that the assessee's investments had increased. There was no reasoning or analysis provided to justify why the assessee's computation was deemed insufficient. Moreover, the fact that the assessee had not maintained separate books for investment does not, by itself, warrant the automatic application of Rule 8D without first recording dissatisfaction.

8.2 The learned CIT(A), while considering the appeal, upheld the AO's invocation of Rule 8D without addressing the fundamental issue of whether the AO had complied with the statutory requirement of recording dissatisfaction. Further, the CIT(A) directed the computation as per the amended Rule 8D without first verifying whether the AO's invocation of Rule 8D was legally justified in the first place. This approach disregards the settled legal principle that Rule 8D cannot be applied in a mechanical manner.

8.3 Based on above the learned AR pleaded that the action of the AO in invoking Rule 8D without recording dissatisfaction is legally untenable and should be set aside. The confirmation of the disallowance by the learned CIT(A) is also unjustified.

9. On the other hand, the Ld. DR before us vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on records. From the preceding discussion, we note that during the year under consideration, the assessee declared exempt income in the form of dividends amounting to ₹ 1,15,60,948, against which the assessee also made a suo motu disallowance of ₹ 8,04,994 under section 14A of the Act.

10.1 However, the Ld. AO, considering that the assessee's investment portfolio had increased significantly, assumed that the assessee must have a dedicated workforce for carrying out investment activities. The AO further presumed that since the assessee had not maintained separate books of account, interest-bearing funds must have been utilized for making investments. Based on these assumptions, the AO invoked the provisions of Rule 8D of the Income Tax Rules. However, we note that before invoking Rule 8D, the AO did not record any dissatisfaction regarding the correctness of the assessee's suo motu disallowance of expenditure incurred in relation to exempt income.

10.2 The provisions of Section 14A(2) of the Act are explicit and mandate that the AO must first be dissatisfied with the correctness of the assessee's claim before invoking Rule 8D to compute the expenditure incurred in relation to exempt income. In such circumstances, it is relevant to refer to the judgment of the Hon'ble

Bombay High Court in the case of **PCIT vs. Reliance Capital Asset Management Ltd.** [86 taxmann.com 200], wherein it was held that the AO's action of invoking Rule 8D without recording dissatisfaction regarding the suo motu disallowance made by the assessee is not in accordance with the provisions of section 14A(2) of the Act. The relevant portion of the judgment is extracted below:

*With the assistance of Mr. Suresh Kumar and Mr. Murlidhar, we have perused the order of the Assessing Officer, that of the First Appellate Authority and the Tribunal. We have perused Chapter IV of the Income Tax Act which contains Section 14A. The relevant part of Section 14A reads thus:—*

*"(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act."*

***19.** The Assessing Officer did not specifically record that he is not satisfied with the correctness of the claim of the assessee in respect of the expenditure in relation to the income which does not form part of the total income under the Act. However, he felt obliged and going by the presence of Rule 8D that once Section 14A is attracted, the disallowance is to be made as per Rule 8D only which has been prescribed by the Legislature. The Assessing Officer has not adverted to the plain language of sub-section (2) of Section 14A.*

10.3 In view of the above, we hold that, in the absence of any dissatisfaction recorded by the AO regarding the suo motu disallowance made by the assessee, the provisions of Rule 8D cannot be invoked. In the present case, there is no dissatisfaction recorded by the AO with respect to the suo motu disallowance made by the assessee. Therefore, we are of the view that the ratio laid down by the Hon'ble Bombay High Court in the case cited above is squarely applicable to the given set of facts.

10.4 Accordingly, we are inclined to delete the addition made by the AO, which was subsequently confirmed by the Ld. CIT(A). Hence, we set aside the findings of the Ld. CIT(A) and direct the AO to delete the addition made by him. Consequently, the ground of appeal raised by the assessee is hereby allowed.

11. The next interconnected issue raised by the assessee in ground Nos. 6 to 23 is that the Ld. CIT(A) erred in confirming the addition made by the AO on account of non-deduction of TDS on the payment made to overseas parties.

12. During the year under consideration, the assessee has made payment of Rs 4,27,90,500.00 to the foreign parties against the receipt of certain services which are as detailed below:

Name of Entity	Amount Remitted	Service Type
Ensoft Consulting Pvt Ltd	10,35,649	Service Fee
Shanghai Foreign Service Co Ltd	9,16,977	Service Fee
The National Concrete Company	20,55,379	Service Fee
SLK UK Pvt Ltd	41,12,330	Service Fee
SLK America INC	3,31,84,265	Marketing Fees
SLK Software Netherlands BV	14,85,450	Service Fee
<b>Total</b>	<b>4,27,90,050</b>	

12.1 The AO based on analysis of agreement, scope of work and the nature of the assessee's business for which services availed alleged that payment made to above mentioned foreign parties were in the nature of fee for technical services in accordance with provision of section 9 (1)(vii) of the Act and in accordance with the provision of DTTA with respective countries. Accordingly, the AO was of the view that the assessee was required to deduct withholding tax as per the provisions of section 195 of the Act. However, the assessee failed to deduct withholding tax on such payment to the foreign parties. Hence, the AO, by invoking the provision of section 40(a)(i) of the Act disallowed the payment of Rs. 4,27,90,500.00 and added to the total income of the assessee.

13. Aggrieved assessee preferred an appeal before the learned CIT(A). The assessee before the learned CIT(A) made detailed submission against the disallowances made by the AO. However, the Ld. CIT(A), has confirmed the addition made by Ld. AO.

14. Being aggrieved by the order of the Ld. CIT(A), the assessee is an appeal before us.

15. The Id. AR before us filed the synopsis of submission, along with the paper book which are available on record. The Id. AR before us fairly submitted that the order passed by the Id. CIT-A is non-speaking and non-reasoned order and therefore, the matter should be remitted back

to the file of the learned CIT-A fresh adjudication as per the provisions of law.

16. On the other hand, the Ld. DR before us also filed a report from the AO contending that the additional documents filed by the assessee before the Tribunal should not be admitted. Furthermore, the learned DR vehemently supported the order of the authorities below.

17. We have heard rival contention of both the parties and perused the material available on record. We note that the assessee during the appellate proceedings before the learned CIT(A) has made detailed submission against the disallowances made under section 40(a)(i). However, the Ld. CIT(A) without considering the argument forwarded by the assessee proceeded to dismiss the appeal of the assessee without assigning any reasoning. The relevant findings of the Id. CIT-A is reproduced as under:

*"5.3.3 The facts of the case, assessment order and submissions of the appellant have been considered. The appellant is an Indian Company and it is engaging the service of a non-resident for acquiring skilled manpower for executing its various contracts. It is observed that the appellant has complete control over all stages of work relating to the contract awarded to it by the client right from initial stages of negotiation with the client till the conclusion of software development and is responsible for all the risk and control over the contract. The appellant takes the decision of engaging services of foreign entities and directs them to do onsite software development work. Therefore, it cannot be held that the business of the appellant is carried out outside India. Further, the services rendered by the AE are utilized in India by assessee in order to execute its contract for the client. In view of the said facts and considering the judicial pronouncements it is held that the appellant is liable to deduct the tax at source on the transactions under consideration. Accordingly, the grounds of appeal raised dismissed and addition made by the AO u/s 40(a)(i) of the Act of Rs.4,27,90,050/- is confirmed."*

17.1 From the extract of the order passed by the Learned CIT(A), it appears that the appellate authority has not provided a detailed reasoning while addressing the assessee's arguments or the findings of the AO regarding the provisions of the Double Taxation Avoidance Agreement (DTAA) and the applicability of section 195 and Section 9 of the Income Tax Act, 1961. Instead, the CIT(A) has passed an order under Section 260 of the Act without adequately analyzing the crucial issues raised by the assessee. Such an approach is in clear violation of Section 250(6) of the Act, which explicitly mandates that an order passed by the CIT(A) must:

- Be in writing,
- State the points for determination,
- Provide a decision on those points, and
- Record the reasoning behind such a decision.

17.2 This statutory requirement ensures that an appellate order shall be a "speaking order", reflecting due consideration of the issues raised and providing clarity on the conclusions drawn. In holding so, we draw support and guidance from the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Premkumar Arjundas Luthra (HUF) [(2017) 297 CTR 614 (Bom)] wherein it was held as under:

*"From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of*

*Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."*

**7.** Further, the Income Tax Appellate Tribunal, Ahmedabad Bench, in *Babubhai Ramanbhai Patel vs. DCIT* [ITA No. 1234/Ahd/2023], emphasized that the CIT(A) cannot summarily dismiss an appeal without discussing the merits, even in the absence of the assessee. The CIT(A) is expected to adjudicate the issues based on the material available on record and provide a reasoned order. the relevant portion of the Judgment is reproduced as under:

*"In view of the above facts and legal ratio laid by the Hon'ble Mumbai High Court and various Tribunals, we are of the considered view that the orders passed by Ld. CIT(A) is in contravention of provisions of Section 250(6) of the Act. We are of the considered view that the Ld. CIT(A) has erred in facts and in law in summarily dismissing the assessee's appeals for the assessment years under consideration, by passing a non-speaking order, without mentioning the various grounds of appeal raised by the assessee in his appellate order and without discussing the merits of the case. Therefore, in the interests of justice, we are setting aside the cases to the file of Ld. CIT(A) for fresh adjudication on merits, for both the assessment years, after giving due opportunity of hearing to the assessee to present his case on merits. It may be mentioned that since the assessee did not cause appearance either before Ld. Assessing Officer nor Ld. CIT(A), the assessee is directly to promptly comply with all notices of hearing and in case of any further default on part of the assessee to cause appearance, Ld. CIT(A) would be at liberty to pass orders on the basis of materials available on record, in accordance with law."*

17.3 This ruling reinforces the principle that appellate authorities cannot dismiss or decide appeals arbitrarily but must provide a reasoned

decision. Even in cases where the assessee is not present, the CIT(A) must analyze the material on record and decide the matter based on its merits. Given the legal framework under Section 250(6) of the Act and the ratio of the Bombay High Court, it is evident that the order of the CIT(A), in the present case, does not satisfy the requirements of a reasoned and speaking order. The failure to record proper reasoning amounts to a violation of the principles of natural justice, rendering the order unsustainable in law. Accordingly, the order passed by the CIT(A) may require reconsideration in light of the statutory provisions and judicial pronouncements to ensure compliance with due process. At the time of hearing, both the Id. AR and the DR also raised no objection if the matter is set aside to the Id. CIT-A for fresh adjudication as per the provisions of law. In view of the above, we set aside the issue to the file of the Id. CIT-A for fresh adjudication as per the provisions of law. Hence, the ground of appeal of the assessee is hereby allowed for statistical purposes.

18. The next interconnected issue raised by the assessee in ground Nos. 24 to 26 is that the Id. CIT(A) erred in confirming the addition made by the AO towards the payment of Rs. 26,80,200.00 made to AITE Group LLS USA.

19. At the outset, we note that in the identical facts and circumstances, we have decided the relevant/ similar ground of appeal of the assessee in paragraph Nos. 17 of this order wherein the issue has been set aside to the file of the Id. CIT-A for fresh adjudication as per the provisions of law. At the time of hearing, the learned AR and the DR also requested for the similar direction for the issue on hand.

Accordingly, and in view of the above, we set aside the issue to the file of the Id. CIT-A for fresh adjudication as per the provisions of law. Hence, the ground of appeal of the assessee is hereby allowed for statistical purposes.

20. In the result, the appeal filed by the assessee is allowed partly for statistical purposes.

***Coming to ITA No. 933/Bang/2023 for asst. year 2018-19***

21. The issue raised by the assessee in ground Nos. 1 & 2 of its appeal is general in nature and does not require any separate adjudication. Likewise, the issue raised by the assessee in ground No. 30 of its appeal pertains to the levy of interest under sections 234A and 234B of the Act, which is consequential in nature and does not require separate adjudication. Hence, ground nos. 1, 2 & 30 raised by the assessee are dismissed as infructuous.

22. The interconnected issue raised by the assessee in ground Nos. 3 to 6 is that the Ld. CIT(A) erred in confirming the addition under section 14A of the Act, read with Rule 8D of the Income Tax Rules, to the extent of ₹ 9,00,606 only.

23. At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2018-19 is identical to the issue raised by the assessee in ITA No. 932/Bang/2013 for the assessment year 2017-18. Therefore, the findings given in ITA No. 932/Bang/2023 shall also be applicable for the assessment years 2018-19. The appeal of the assessee for the A.Y. 2017-18 has been decided by us vide paragraph

No. 10 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2017-18 shall also be applied for the assessment year 2018-19. Hence, the ground of appeal filed by the assessee is hereby allowed.

24. The next interconnected issue raised by the assessee in ground Nos. 7 to 29 is that the Ld. CIT(A) erred in confirming the addition made by the AO on account of non-deduction of TDS on the payment made to overseas parties.

25. At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2018-19 is identical to the issue raised by the assessee in ITA No. 932/Bang/2013 for the assessment year 2017-18. Therefore, the findings given in ITA No. 932/Bang/2023 shall also be applicable for the assessment years 2018-19. The appeal of the assessee for the A.Y. 2017-18 has been decided by us vide paragraph No. 17 of this order where we have set aside the issue to the file of the learned CIT(A) for fresh adjudication. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2017-18 shall also be applied for the assessment years 2018-19. Hence, the ground of appeal filed by the assessee is hereby allowed for statistical purposes.

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

27. In the combined result, both the appeal of the assessee are partly allowed for statistical purposes.

Order pronounced in court on 31<sup>st</sup> day of January, 2025

Sd/-

**(KESHAV DUBEY)**  
Judicial Member

Sd/-

**(WASEEM AHMED)**  
Accountant Member

Bangalore  
Dated, 31<sup>st</sup> January, 2025  
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,  
ITAT, Bangalore