

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT
MEMBER AND
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA No.1935/Bang/2024
Assessment Year : 2017-18

Bioplus Life Sciences Pvt. Ltd., No.10-1A, KR Puram Hobli, Hoodi Village, Bengaluru - 560 048. PAN - AACCB 3621 R	Vs.	The Asst. Commissioner of Income Tax, Circle-1(1)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Helga Sequeria, C.A
Revenue by	:	Smt. Neha Sahay, JCIT(DR)

Date of hearing	:	10.02.2025
Date of Pronouncement	:	27.03.2025

ORDER

PER SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi on 07/08/2024 in DIN No.ITBA/NFAC/S/250/2024-25/1067406998(1) for the assessment year 2017-18 on the following grounds:

“The learned CIT (A) has grossly erred in confirming the disallowance of Rs.35,60,509/- made by the Learned Assessing officer u/s 14A of the Income tax Act.

2. The learned CIT (A) erred in arriving at the conclusion that stamp duty payment of Rs. 3,21,000/- is disallowed considering it as capital in nature

3. The order passed by the Assessing Officer is as not as per the provisions of the Income Tax Act and illegal and bad in law.

4. The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.”

2. The brief facts of the case are that the assessee filed return of income on 29/11/2017 declaring total income of Rs.3,25,15,680/-. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessee is engaged in the business of pharmaceuticals. During the course of assessment proceedings, other statutory notices were issued to the assessee and assessee filed reply and assessee was asked to file details. From the details filed, it was observed that the assessee has received exempt income but there is no disallowance made by the assessee u/s 14A of the Act. The assessee filed detailed reply on 06/12/2019 and the assessee has made investment of Rs.35,60,50,940/- during the financial year 2016-17. The AO referred to Circular No.51 2014 and further Circular issued by the CBDT No.3/2018 dated 11/07/2018 and, he also relied on the judgment of Hon'ble Apex Court in the case of Maxopp Investment Limited of Hon'ble Apex Court and he also relied on the judgment of VM Salagovkar reported in 243 ITR 384.

3. Considering the judgments as noted by the AO, he computed the disallowance on the total average monthly investments made by assessee of Rs.35,60,50,940/-. Accordingly, he disallowed 1% of the average of total investment made of Rs.35,60,509/- under Rule 8D r.w. sec 14A of the Act. The AO has further disallowed Rs.3,21,000/- and held that it was capital in nature.

4. The AO completed the assessment on 28/12/2019 by assessing the total income at Rs.5,72,28,682/-.

5. Aggrieved from the above order, the assessee filed appeal before the NFAC Delhi during the appellate proceedings, the assessee filed details in regard to disallowance u/s 14A of the Act and also for the disallowance made u/s 35D of the Act and both the issues were dismissed by the NFSC, Delhi.

6. Aggrieved from the above order, the assessee filed appeal before the ITAT.

7. During the course of hearing, the ld. Counsel for the assessee contested only on the issue of disallowance u/s 14A of the Act and he did not argue on the addition of Rs.3,21,000/-. However, the assessee has raised this issue

in its grounds of appeal but it was not argued by the ld. Counsel of the assessee, which relates to ground No.2 therefore, this ground No.2 is dismissed as not pressed.

8. The ld. AR reiterated the submissions made before the lower authorities and submitted that the AO has not followed the mandatory requirement of sec. 14A for making disallowance. He further submitted that the calculation made by the assessee for making disallowance is also wrong, therefore, he requested that the disallowance should have been recalculated in terms of Rule 8D(2) of the Income-tax Rules.

9. On the other hand, the ld. DR relied on the lower authorities and submitted that as per the decision for Hon'ble Apex Court and Circular issued by the CBDT, the assessee has suo moto disallowance u/s 14A towards earning of the exempt income. The assessee has made huge investment and out of the investments income received by the assessee are exempt, therefore sec. 14A is clearly applicable to the assessee.

10. Considering the rival submission, we note that the assessee has made investments in equity share and the income from equity shares are exempt from tax. The

assessee has also received exempt income during the impugned assessment year. As per the oral submissions made by the ld. Assessee counsel from the submissions, we note that the total investments made in shares and mutual funds as enclosed from sum of Rs.15,46,883/- and the assessee has sold investment worth of Rs.6,08,42,476/-. The assessee has sufficient accumulated profit of Rs.79,52,15,685/-. The AO has invoked Rule 8D(2) for disallowance u/s 14A of the Act and calculated total disallowance of Rs.35,60,509/-. We note that the calculation of disallowance under Rule 8D(2) is mandatory as per Income Tax Rule 1962. From the order of the lower authorities and as per our opinion, the Rule 8D is mandatory and it would be evident from plain reading of 14A(2) of the Act. Section 14A(2) provides that the AO shall determine the amount of expenditure incurred in relation to exempt income in accordance and such method as may be prescribed. The legislature has prescribed Rule 8D w.e.f from March 24, 2008 as omitted method for determination of amount of expenditure incurred in relation to earning of exempt income. By perusing the word shall in sub sec. (2) of sec. 14A the legislature has made it mandatory for the AO to determine the amount of expenditure incurred in relation to earn exempt income as per the prescribed method before the insertion of Rule 8D the AO described to

determine such expenditure but the when the legislature has provided Rules, the method for calculation of disallowance of expenditure between the exempt income and taxable income, in our opinion, the AO as well as the other statutory authorities under the Income Tax Rule are also suppose to determine the amount of expenditure in relation to earning of exempt income as per the method prescribed under the Rule. While taking this view, we derive support from the decision of the Apex Court in the case of Bharat Hari Singhlyasis Vs. CWS (1994) 207 ITR 1/73 Taxmann.com 3. Accordingly, the ground on this issue raised by the assessee is rejected.

11. While applying Rule 8D of the Income Tax Rule, we note that the AO has considered 1% disallowance on the average monthly investment made by the assessee at flat rate. However, the Mechanism for equation under Rule 8D(2), which is as under:-

1. Rule 8D(2)(i): Under this first limb, all direct expenditure which have been incurred for earning tax exempt income are disallowed. For example, if salary is paid (direct expenditure) to a staff member who works to earn exempt income for the company, in that case the company shall disallow this amount itself in the return.

12. From the above section, it is clear that the AO has to consider only those investments in which the assessee has received exempt income which is not part of the total taxable income. However, the AO has considered the entire

investments. Therefore, considering the matter, we are remitting this issue to the file of AO for fresh calculation in the light of the above findings.

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

Order pronounced in court on 27th March, 2025 as per the Income Tax Appellate Tribunal Rule 34.

Sd/-
(SOUNDARARAJAN K)
Judicial Member
Bangalore,
Dated : 27.03.2025
Vms

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore