आयकर अपीलीय न्यायाधिकरण में, हैदराबाद 'बी' बेंच, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री मधुसूदन सावडिया, माननीय लेखा सदस्य
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आयकरअपीलसं./**I.T.A.No.1296/Hyd/2024**
(निर्धारण वर्ष/ **Assessment Year:2018-19)**

G R N Constructions Private Limited, Nellore. PAN : AADCG1206C		The Deputy Commissioner of Income Tax, Circle 1, Nellore.
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Pawan Kumar Charapani, CA and Shri Santi Pavan Kumar, Advocate.
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr.Sachin Kumar, Sr.DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	16.04.2025
घोषणा की तारीख/Date of Pronouncement	:	23 .04.2025

O R D E R

प्रति रवीश सूद, जे.एम./**PER RAVISH SOOD, J.M.**

The present appeal filed by the assessee company is directed against the order passed by the Commissioner of Income-Tax

(Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 30.11.2024, which in turn arises from the order passed by the Assessing Officer (for short "A.O.") u/s 143(3) r.w.s. 144B of the Income Tax Act, 1961 (for short "the Act") dated 19.04.2021 for A.Y. 2018-19. The assessee company has assailed the impugned order on the following grounds of appeal before us:

> "1. The Impugned order of the learned Authorities below in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.
>
> 2. The Appellant denies himself liable to assessed on a total income of an amount being Rs. 58,93,37,456/-, as against the return income of an amount being Rs. 57,51,82,810/-, under the facts and circumstances of the case.
>
> 3. The learned Authorities below are not justified in disallowing an amount being Rs. 1,41,54,646/-, by invoking the provisions of section 14A r.w.r. 8D of the Act, under the facts and circumstances of the case.
>
> 4. The learned Authorities below are not justified in disallowing the amount of Rs. 1,41,54,646/-, even when the amount of investment is made out of the free funds available with the Appellant, under the facts and circumstances of the case.
>
> 5. Without prejudice to the above, the learned Authorities below are not justified in disallowing an amount being Rs. 1,41,54,646/-, Instead the learned Authorities below ought to have restricted the amount of disallowance to the extent of the dividend amount received an amount being Rs. 1,13,80,540/-, under the facts and circumstances of the case.
>
> 6. The Appellant denies himself liable to be charged to interest under section 234C of the Income-Tax Act, 1961, under the facts and circumstances of the case.
>
> 7. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.
>
> 8. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity."

2. Succinctly stated, the assessee company had filed its return of income for A.Y. 2018-19, declaring an income of Rs.57,51,82,810/-. Subsequently, the case of the assessee company was selected for scrutiny assessment u/s 143(2) of the Act.

3. During the course of assessment proceedings, the A.O. observed that though the assessee had earned exempt income u/s 14A aggregating to Rs.13,33,39,533/- viz., (i). Dividend income: Rs.1,13,80,540/-;(ii). Gain on sale of investment: Rs.9,62,27,995/-; and (iii) Interest on tax free bonds: Rs.2,69,27,264/-, but had not offered any disallowance u/s 14A of the Act. Accordingly, the A.O. based on his deliberations recorded in the assessment order worked out the disallowance u/s 14A r.w.s. Rule 8D(ii) at Rs.1,41,54,646/-, as under :

Workings of disallowance u/s 14A r.w.Rule 8D:		
Rule 8D (i)	the amount of expenditure directly relating	**Nil**

	to income which does not form part of total income; and	
Rule 8D (ii)	an 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 :	**Rs. 1,41,54,646**

The A.O. after working out the aforesaid disallowance u/s 14A of the Act, determined the income of the assessee company vide his order passed u/s 143(3) r.w.s. 144B of the Act on 19.04.2021 at Rs.58,93,37,456/-.

4. Aggrieved, the assessee company carried the matter in appeal before the CIT(A). Ostensibly, the CIT(A) observed that A.O. while triggering the provisions of Section 14A of the Act had failed to record his satisfaction that as to why the assessee's claim that no part of the expenditure claimed as a deduction was attributable to the earning of the exempt income and thus, liable to be disallowed. The CIT(A) referring to the powers vested with him which were co-terminus with that of A.O. had though stated to

undo the aforesaid lapse on the part of the AO, but he had thereafter merely referred to certain judicial pronouncements and approved the disallowance made by the A.O. u/s 14A read with Rule 8D(ii) of Income Tax Rules, 1962. For the sake of clarity, the observations of CIT(A) are culled out as under :

8.1 I have considered the details in the assessment order and details submitted by the appellant so far. There is no dispute that no exempt income was earned by the appellant during the year under consideration from the investments made. The appellant has contested that the AO has not brought up any satisfaction before making the disallowance.

8.2 Examination of books of accounts and other details submitted by the assessee company revealed that exemption of income of Rs. 13,33,39,533/- was claimed as exempt Income by the assessee company *(Dividend income of Rs.1,13,80,540/-, Gain on sale of investment of Rs.9,62,27,995/- & Interest on tax free bonds of Rs.2,69,27,264/-)*. The quantum of the Exempt Income is substantial amount and there must be some part of expenditure in terms of resources deployed both financial as well as non-financial which were used for the purpose earning this exempt Income. Therefore, it is necessary to invoke the provisions of section 14A of the IT Act to arrive at the disallowance. Even though the AO has not recorded the satisfaction in the assessment order, the facts of the issue as discussed by the AO in the assessment order are apparent from the record. The CIT(A) has been conferred powers to decide any matter which has not been decided by the AO. As the issue has been discovered by the undersigned during the appellate proceeding, the above is treated as satisfaction recorded.

8.3 In regard to the addition made u/s. 14A of the IT Act, the issue has been examined by **Apex court decision in Principal Commissioner of Income Tax vs. McDonalds India Pvt. Ltd., ITA 725/2018 decided on 22nd October, 2018** wherein following the judgment of the Supreme Court in the case of Maxopp Investments Ltd. vs. CIT (2018) 402 ITR 640 (SC) and the earlier judgments of the Delhi High Court in Cheminvest vs. CIT (2015) 378 ITR 33 and CIT vs. Holcim Pvt. Ltd. (2014) 272 CTR (Del.) 282 upheld the applicability of the section 14A of the IT Act and only restricting the disallowance under this section to the extent of the Exempt Income.

8.4 In **Maxopp Investment Ltd vs CIT (2018) 402 ITR 640 (SC),** it was held, "Fact remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind Section14A of the Act in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income."

8.5 Further the Appellant has also stated that AO was wrongly invoked the provision of Rule 8D(iii) as the same is not permitted while making addition u/s. 14A of the IT Act Act. However, it shall be noted that Rule 8D(iii) was not in force for the year under assessment and also the same was not referred by the AO. The entire working to make addition was made as per the provision of Rule 8D(i) & 8D(ii) and the same is clearly evident from the assessment order. Therefore this contention of the appellant is purely baseless and can not be accepted.

8.6 It is evident from the records that the appellant has not disputed the receipt of Exempt Income during the year and also therefore respectfully relying on the above quoted decisions of various High Courts, the disallowance of Rs. 1,41,54,646/- made u/s 14A is found to be in order as the same is below the Exempt Income earned during the year and as per the provisions of the Income Tax Act. Accordingly, these grounds of appeal are hereby **dismissed**.

Ground of Appeal No.6:

9. This ground of appeal filed by the appellant is in regard to right to add amend or alter any one or grounds of appeal at or before the time of hearing, however no other ground has been urged at the time of appeal hearing nor altered any grounds of appeal, hence no separate adjudication is required for this ground of appeal.

10. In the result, the appeals filed by the appellant for AY 2018-19 is **dismissed.**

5. Assessee, being aggrieved with the order of CIT(A), has carried the matter in appeal before us.

6. We have heard the learned Authorized Representatives of both the parties, perused the orders of lower authorities and the material available on record.

7. After giving a thoughtful consideration to the issue in hand in the backdrop of the aforesaid contentions advanced by the Ld. Authorized Representatives of both the parties, we find substantial force in the claim of the Ld. AR. Admittedly, pursuant to the judgment of the **Hon'ble Supreme Court** in the case of **Maxopp Investment Ltd. Vs. CIT, New Delhi (2018) 91 taxmann.com 154(SC),** the A.O prior to dislodging the disallowance, if any, offered by the assessee u/s.14A of the Act remains under a statutory obligation to record his dissatisfaction as regards the correctness of the said claim of the assessee in reference to its accounts and therein, categorically record the reasons as to why the claim of the assessee qua the disallowance so offered by him is not being accepted. On a similar footing would be a case where the assessee had not attributed any part of the expenditure for earning of exempt dividend income and the A.O is not satisfied with the said claim. Our aforesaid view is further fortified by the judgement of the **Hon'ble Supreme Court** in the case of **Godrej and Boyce Manufacturing Co. Ltd., Vs Dy.CIT (2010) 328 ITR 81 (Bombay).** The Hon'ble Apex Court in its order had, inter-alia, observed that sub-section (3) of Section 14A casts an obligation on

the A.O. to record his dissatisfaction regarding the claim of the assessee that no expenditure was incurred by him in relation to income which does not form part of his total income under the Act. For the sake of clarity the observations of the Hon'ble Apex Court are culled out as under:

> "What merits emphasis is that the jurisdiction of the Assessing Officer to determine the expenditure incurred in relation to such income which does not form part of the total income, in accordance with the prescribed method, arises if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of the expenditure which the assessee claims to have incurred in relation to income which does not part of the total income. Moreover, the satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the assessee. Hence, Sub section (2) does not ipso facto enable the Assessing Officer to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income is correct. The Assessing Officer must, in the first instance, determine whether the claim of the assessee in that regard is correct and the determination must be made having regard to the accounts of the assessee. The satisfaction of the Assessing Officer must be arrived at on an objective basis. It is only when the Assessing Officer is not satisfied with the claim of the assessee, that the legislature directs him to follow the method that may be prescribed. In a situation where the accounts of the assessee furnish an objective basis for the Assessing Officer to arrive at a satisfaction in regard to the correctness of the claim of the assessee of the expenditure which has been incurred in relation to income which does not form part of the total income, there would be no warrant for taking recourse to the method prescribed by the rules.
>
> For, it is only in the event of the Assessing Officer not being so satisfied that recourse to the prescribed method is mandated by law. Sub section (3) of Section 14A provides for the application of sub section (2) also to a situation where the assessee claims that no expenditure has been incurred by him in relation to income

> which does not form part of the total income under the Act. Under the proviso, it has been stipulated that nothing in the section will empower the Assessing Officer, for an Assessment Year beginning on or before 1 April 2001 either to reassess under Section 147 or pass an order enhancing the assessment or reducing the refund already made or otherwise increasing the liability of the assessee under Section 154."
>
> (emphasis supplied by us)

8. Also, we find that the **Hon'ble High Court of Delhi** in its recent order in the case of **PCIT-2 Vs. Tata Capital Limited in ITA No.1091 of 2018 dated 03.04.2024,** has approved the view taken by the Tribunal that not only the A.O. is obligated to record his dissatisfaction regarding the claim of the assessee in respect of expenditure attributable to earning of exempt income u/s 14A of the Act, but he is also required to give cogent reasons for so concluding before triggering the mechanism under Rule 8D for quantifying the said disallowance.

9. Apart from that we find that the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Sociedade De Fomento Industrial (P). Ltd (2020) 429 ITR 358 (Bom)** had observed, that the A.O before rejecting the disallowance offered by the assessee remains under a statutory obligation to give a clear finding with reference to the accounts of the assessee that the other expenditure which

were being claimed qua the non-exempt income were in fact related to its exempt income. Also, a similar view had been taken by the **Hon'ble High Court of Delhi** in the case of **H.T Media Ltd. Vs. Pr. CIT (2017) 399 ITR 576 (Delhi)**.

10. Now, in the case before us, we find that the A.O had failed to give any reason as to why the claim of the assessee company that no part of the expenditure could be attributed towards earning of exempt income was not to be accepted. Although, the CIT(Appeals) in his order had stated to undo the aforesaid lapse of the A.O, but a perusal of his observations does not reveal so. Based on the aforesaid facts, we are of a firm conviction that in the case of the present assessee company before us the statutory obligation requiring recording of a clear finding with reference to the assessee's accounts that the expenditure claimed by the assessee company to have been incurred in respect of its non-exempt income was in fact related to its exempt income is not found to be satisfied.

11. Be that as it may, we, in terms of our aforesaid observations, concur with the Ld. AR that as the A.O had failed to record his dissatisfaction as regards the claim of the assessee that no part of

the expenditure claimed as deduction could be attributed towards earning of exempt income, therefore, he had wrongly assumed jurisdiction u/s.14A of the Act, as a result whereof the disallowance of Rs.1,41,54,646/- determined by him by triggering the mechanism contemplated in Rule 8D(2)(ii) cannot be sustained and is liable to be vacated. As we have vacated the disallowance made by the A.O u/s.14A for want of valid assumption of jurisdiction on his part, therefore, we refrain from adverting to the other contentions that have been advanced by the Ld. AR qua the sustainability of the said disallowance on merits, which thus are left open. Thus, the Ground of appeals raised by the assessee company are allowed in terms of our aforesaid observations.

12. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the Open Court on 23rd April, 2025.

Sd/-	**Sd/-**
(श्री मधुसूदन सावडिया)	(श्री रवीश सूद**)**
(MADHUSUDAN SAWDIA)	**(RAVISH SOOD)**
लेखा सदस्य/ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

Hyderabad, dated 23.04.2025.
TYNM/sps

आदेशकी प्रतिलिपि अग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	G R N Constructions Private Limited, 16-3-1632, Venkatakantha Nilayam, Harnatha Puram Main Road, Harnatha Puram, Nellore, Andhra Pradesh
2.	राजस्व/ The Revenue	:	The Deputy Commissioner of Income Tax, Circle 1, Nellore.
3.	The Principal Commissioner of Income Tax, Tirupati.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Hyderabad