

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VP &  
MS PADMAVATHY S, AM**

**I.T.A. No.479/Mum/2025**  
(Assessment Year: 2016-17)

**I.T.A. No.480/Mum/2025**  
(Assessment Year: 2018-19)

<b>Nuvama Wealth Management Ltd.,</b> 801 to 804 Wing A, Building No.3, BKC, G Block, Bandra (East), Mumbai-400051. <b>PAN: AAACK3792N</b>	Vs.	<b>DCIT-4(1)(1),</b> CGO Building, M.K. Road, New Marine Lines, Mumbai-400020.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant /Assessee by** : Shri Ravikant S. Pathak, AR

**Revenue / Respondent by** : Shri Leyaqat Ali Aafaqui- Sr. DR

**Date of Hearing** : 22.04.2025

**Date of Pronouncement** : 28.04.2025

**ORDER**

**Per Padmavathy S, AM:**

These appeals by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals)-47, Mumbai [In short 'CIT(A)'] both dated 25.11.2024 for AY 2016-17 & 2018-19. The common issues contended by the assessee through various grounds in both the AYs pertain to

- (i) Disallowance under section 14A of the Income Tax Act, 1961 (the Act) r.w.r. 8D of the Income Tax Rules, 1962 (the Rules).
- (ii) Addition made to the book profit under section 115JB of the Act towards the disallowance made under section 14A of the Act.

2. For the purpose of adjudication we will consider the facts pertaining to AY 2018-19 as the lead case. The assessee is a company and registered as a trading and clearing member with National Stock Exchange of India Ltd. (NSEIL), Bombay Stock Exchange Ltd. (BSE) and Metropolitan Stock Exchange of India Ltd. (MSEI) and is engaged in providing broking services to its clients. The assessee filed the return of income for AY 2018-19 on 30.11.2018 and a revised return on 29.03.2019 admitting a total loss of Rs. 62,16,09,839/- and a book profit of Rs. 9,49,48,746/-. The case was selected for scrutiny and statutory notices were duly served on the assessee. The Assessing Officer (AO) during the course of assessment noticed that the assessee has earned exempt income to the tune of Rs. 30,16,99,896/-. The AO further noticed that the assessee has made a suo-moto disallowance of Rs. 50,91,063/- under section 14A of the Act. The AO was of the view that the suo-moto disallowance made by the assessee is not commensurate with the exempt income and called on the assessee to show-cause as to why the disallowance under section 14A r.w.r. 8D cannot be invoked in assessee's case. The assessee in reply furnished the workings of the suo-moto disallowance and also placed reliance on various judicial pronouncements. The assessee submitted a without prejudice working for making disallowance as per Rule 8D(2)(ii) to the tune of Rs. 1,71,55,213/-. The AO concluded the assessment by making disallowance under section 14A r.w.r. 8D as per the workings submitted by the assessee. The AO also added the disallowance made under section 14A to the book profits of the assessee computed under section 115JB of the Act. On further appeal, the CIT(A) confirmed

the disallowance made by the AO and also the addition made to book profit. The assessee is in appeal before the Tribunal against the order of the CIT(A).

3. The main contention of the ld. AR is that the AO has invoked Rule 8D without recording his dissatisfaction towards the suo-motu disallowance made by the assessee with respect to the books of accounts of the assessee. The ld. AR submitted in this regard that the assessee has made the disallowance based on a detailed working which was submitted before the AO and that the AO has not recorded any specific dissatisfaction with regard to the same. The ld. AR further submitted that as per the provisions of section 14A before invoking Rule 8D the AO is required to record why he is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to the exempt income. The ld. AR also submitted that the workings of disallowance under section 14A r.w.r 8D(2)(ii) was submitted by the assessee as a without prejudice contention and that the AO without recording why his not satisfied with the suo-motu disallowance has simply taken the disallowance based on the working submitted by the assessee. The ld. AR drew our attention to the decision of the Co-ordinate Bench in assessee's own case for AY 2017-18 (ITA No. 15/Mum/2022 dated 23.06.2025) where the Co-ordinate Bench has deleted the disallowance made by the AO for the reason that the AO has not recorded any dissatisfaction with respect to the suo-motu disallowance. The ld. AR further argued that the observations of the AO in the assessment order for invoking Rule 8D is similar to the observations made in AY 2017-18 and therefore the decision of the Co-ordinate Bench will be applicable for the year under consideration also. With regard to the addition made by the AO towards disallowance under section 14A while computing the book profit under section 115JB of the Act, the ld. AR submitted that this issue is well settled that the addition

towards disallowance under section 14A cannot be made to the book profits computed under section 115JB of the Act.

4. The Id. DR on the other hand submitted that the AO in the assessment order has recorded the dissatisfaction by stating that the disallowance made by assessee is not commensurate with the quantum of exempt income earned by the assessee and therefore the contentions of the assessee in this regard are not sustainable. Accordingly, the Id. DR supported the orders of the lower authorities.

5. We heard the parties and perused the material on record. For AY 2018-19 the assessee earned an exempt income of Rs. 30,16,99,896/- and the assessee has made a suo-motu disallowance of Rs. 50,91,063/- as per below workings:

**Working of suo-motu disallowance u/s 14A of I.T Act made in the computation of total income**

<b>Particulars</b>	<b>Expenses as per P&amp;LA/c</b>	<b>Proportionate expenses</b>	<b>Basis of allocation</b>
<i>Employee Cost</i>	1,138,711,623	4,000,000	<i>Proportionate employee of cost of an employee</i>
<i>Auditor Remuneration</i>	3,435,145	12,067	<i>% of employee cost</i>
<i>Communication</i>	87,839,831	308,559	<i>% of employee cost</i>
<i>Computer Exp</i>	6,449,154	22,654	<i>% of employee cost</i>
<i>Computer Software</i>	41,966,229	147,417	<i>% of employee cost</i>
<i>Electricity Exp</i>	11,105,034	39,009	<i>% of employee cost</i>
<i>Office Expenses.</i>	61,238,243	215,114	<i>% of employee cost</i>
<i>Printing and Stationery</i>	8,220,464	28,876	<i>% of employee cost</i>
<i>Rent</i>	84,616,201	297,235	<i>% of employee cost</i>
<i>Miscellaneous expenses</i>	5,731,210	20,132	<i>% of employee cost</i>
<b>Total</b>		<b>5,091,063</b>	

6. The AO did not accept the suo-motu disallowance made by the assessee and invoked the provisions of Rule 8D by holding that

*“8.1. 14A disallowance: On perusal of the audit report in 3CD form it is seen that expenditure debited to P&L (50,91,063/-) for earning exempt*

*income is very less in comparison to the investments made (Current investments of Rs 48 crore and non current investments of Rs 351 crores) to earn exempt income and shown low income in comparison to very high investments appearing in balance sheet. Further it is seen that company has shown exempt income from dividends of Rs 30.17 crores in the ROI for AY 2018-19. Vide show cause notice dated 09-09-2021, the assessee was requested to show cause why the above issue of huge investments and exempt income, cannot be considered for disallowance u/s 14A of I.T. Act and added to the income of the company for AY 2018-19.”*

7. The assessee submitted that except expenses considered by the assessee for proportionate disallowance under section 14A of the Act no other expenses have any immediate nexus to the exempt income. The assessee without prejudice submitted a working computing the disallowance under Rule 8D(2)(ii) to the tune of Rs. 1,71,55,213/- which the AO has added as a disallowance under section 14A of the Act. The main contention of the assessee in the appeal is that the AO has not recorded his dissatisfaction with respect to the suo-moto disallowance made by the assessee and therefore invoking Rule 8D without recording dissatisfaction cannot be sustained. From the observations of the AO which is extracted in the earlier part of this order, we notice that the AO has merely mentioned that the suo-moto disallowance is not commensurate with the exempt income earned by the assessee and that the AO has not recorded any specific finding as to why the detailed computation of suo-moto disallowance submitted by the assessee based on books of accounts is not correct. In this regard, we notice that the Co-ordinate Bench in assessee's own case for AY 2017-18 has considered a similar issue where it has been held that

*“9. We have carefully considered the rival contentions and perused the orders of the lower authorities. The ground no. 1 is with respect to the disallowance confirmed and enhanced by the learned CIT (A) under Section 14A read with rule 8D of the Rules. Admittedly, the assessee has earned exempt income of ₹80,75,88,086/-. The assessee has made suo motto disallowance under Section 14A of the Act of ₹12,06,069/-. As per Para no. 5,*

*the learned Assessing Officer has noted that assessee was specifically asked vide notice dated 5th November 2018 that why the disallowance under Section 14A of the Act should not be made as per Rule 8D of the Rules. Assessee submitted reply on 2nd January 2019, stating that no further disallowance was warranted. The working of disallowance submitted by the assessee is placed at page no. 58 of the Paper Book. At page number 59-62 a detail explanation was submitted. It was stated that total expenditure considered under the other head to exempt income is shown. It was also specifically stated that there is no interest disallowance under Section 14A of the Act as assessee has sufficient interest free funds amounting to ₹1,601 crores whereas, investment from which dividend can be earned is merely ₹1,556 crores. Therefore, there is availability of excess interest free fund of ₹45.19 crores. It was further stated that even the debenture interest and discount on commercial paper cannot be considered for disallowance as interest. It also relied on Circular no. 647 dated 22nd March 1993. Assessee submitted that expenses debited to profit and loss account are also related to various incomes shown in the profit and loss account apart from dividend income and therefore, proportionate employee cost and expenses worked out at ₹12,06,069/- are disallowed. The details of such expenses are also tabulated at page no. 6 of the order of learned CIT (A). Assessee has identified total expenditure of ₹84,52,25,428/- and made a disallowance of proportionate expenses of dividend income taking the basis of allocation being percentage of employee cost and thus, worked out the disallowance of ₹12,06,069/-.*

*10. The provision of section 14A(2) specifically provides that the learned Assessing Officer was determined the amount of expenditure incurred in relation to exempt income in accordance with method described. Naturally, such method is prescribed in Rule 8D of the Rules. However, that section mandates that before proceeding to compute disallowance under Rule 8D, the learned Assessing Officer is to record a satisfaction where assessee has offered same disallowance about its correctness with regard to the accounts of the assessee. Therefore, it is mandate for the learned Assessing Officer prior to rejection of the voluntary evidences offered by the assessee to look at the amount of disallowance offered, exempt the disallowance offered with the accounts of the assessee and then, record his satisfaction that why the disallowance offered by the assessee voluntarily is not correct. Unless, he records such satisfaction, he cannot proceed to a disallow sum as per Rule 8D of the Rules. Thus, recording of the satisfaction about the incorrectness of the claim of the assessee is Sine qua non before and making in disallowance under Rule 8D of the Rules.*

*11. Section 14A (2) & (3) provides as under :-*

*[(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.*

*(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act :]*

*12. The Hon'ble Bombay High Court in PCIT vs. Bombay Stock Exchange Limited (supra) in Para no. 11 it is held that non satisfaction with the disallowance offered by the assessee has to be arrived at on the basis of accounts submitted by the assessee if the learned Assessing Officer has not carried out the aforesaid exercise but rejecting the disallowance offered 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 learned Assessing Officer is not satisfied on an objective criteria in the context of its accounts that suo motto offered by the assessee is not proper. Honourable High court held that :-*

*“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 suo motu disallowances claimed by the assessee in the context of its accounts. It is only thereafter, the occasion to apply rule 8D 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.”*

13. *The Hon'ble High Court also quoted the decision of Hon'ble Supreme Court in Maxopp Investment Ltd. Vs. CIT 301 CTR 489, wherein it is held that only after the satisfaction recorded under Section 14A of the Act (2), the occasion to apply Rule 8D of the Rules for apportionment of expenses can arise. It was held that :-*

*“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.”*

14. *So is also held by Hon'ble Bombay High Court in case of PCIT Vs. Bajaj finance Limited 309 CTR 28 (Bom). In Para no. 9 Hon'ble High Court deleted the disallowance under Rule 8D of the Rules for the reason that the assessee offered voluntarily and made detail representation with no other expenditure is incurred by assessee, the learned Assessing Officer rejected the explanation of the assessee but merely proceeded to make disallowance by invoking Rule 8D of the rules.*

15. *Undoubtedly, similar view has been taken in assessee's own case for A.Y. 2010-11.*

16. *Circular No 14/2006 dated 28/12/2006 also provides that :-*

*“11.2 In view of the above, a new sub-section (2) has been inserted in section 14A so as to provide that it would be mandatory for the Assessing Officer to determine the amount of expenditure incurred in relation to such income which does not form part of the total income in accordance with such method as may be prescribed. However, the Assessing Officer shall follow the prescribed method if, having regard to the accounts of the assessee, he is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to income which does not form part of the total income. Provisions of sub-section (2), will also be*

*applicable in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income.”*

*17. In this background, it is required to be seen that how the learned Assessing Officer has satisfied himself about the incorrectness of the claim of disallowance offered by the assessee. The learned CIT (A) has held that in paragraph no. 5, the learned Assessing Officer has recorded the satisfaction. As per Para no. 5 of the assessment order the learned Assessing Officer held as under:-*

*“5. Disallowance u/s 14A of the Income Tax Act, 1961, read with Rule 8D of the Income Tax Rules, 1962*

*5.1 A perusal of the case records show that during the year under consideration the assessee company has earned Exempt income in the form of Dividend amounting to Rs 80,75,88,816 The assessee has suo moto computed disallowed an amount of Rs. 12,06,069/-us 14A of the IT Act. The assessee was specifically asked vide notice issued u/s 142(1) of the IT Act dated 05/11/2018 why the disallowance u/s 14A of the IT Act should not be made as per Rule 8D.*

*In response, the assessee submitted a reply dated 02/01/2019 wherein the assessee has stated that no further disallowance is warranted.*

*5.2 The case records and the replies submitted by the assessee have been perused. It is a fact that the assessee cannot earn Dividend income to the tune of Rs.80,75,88,816/- without any systematic management of its investment portfolio. Further, investment decisions being complex in nature require market research, day to day analysis and planning. Furthermore, the assessee has not maintained separate accounts for its taxable and exempt income. Hence, the present case is a fit case to invoke Rule 8D of the IT Rules. The assessee has suo moto worked adhoc disallowance u/s 14A amounting to Rs. 12,06,069/ However, as stated above, the disallowance is required to be calculated as per Rule 8D. Following the ruling of the Apex court in the case of Maxopp Investments [(2018) 402.*

*ITR 0640 (SC) the disallowance in the instant case is computed as under.*

*Rule 8D Nil*

*Rule 8D(ii) ₹28,63,486/-*

*Investments as on 31/03/2015 1444,55,14,263*

<i>Investments as on 31/03/2016</i>	<i>1531,08,11,698</i>
<i>Average investments</i>	<i>1487,81,62,980</i>
<i>Average total assets</i>	<i>4543,56,61,827</i>

*Interest*

<i>85,88,016X1487,81,62,980/4543,56,61,827=</i>
<i>Rule 8D(iii) 0.5% of 14878162980 =Rs.7,43,90,815/-</i>
<i>Disallowance u/s 14A as per rule 8D = 7,43,90,815/-</i>
<i>Less: Adhoc Disallowance already made= 12,06,069/-</i>
<i>Total disallowance under Section 14A=7,31,84,746/-</i>

18. On careful reading of the above assessment order it is amply clear that the learned Assessing Officer has not at all recorded any satisfaction 'with regard to accounts' that how the disallowance offered by the assessee is incorrect. Though, Assessee has given complete list of expenditure, which contained 13 types of expenditure. Assessee has worked out proportionate expenditure of disallowance giving allocation key of percentage of employee cost and this worked out such disallowance at ₹12,06,069/- out of the total expenditure of ₹84,52,25,428/-. Assessee has also submitted before him that no interest expenditure is incurred as assessee has higher interest free funds available. Despite this, the learned Assessing Officer noted only general observation and proceeded to disallow under Rule 8D of the Rules. We do not find any reference to nature of expenditure incurred by the assessee and quantum of expenditure disallowed by the assessee with regard to books of accounts that how it is inadequate or incorrect. Merely noting general observations does not satisfy requirement of section 14A (2) of the Act. Thus, we hold that the learned Assessing Officer has failed to record satisfaction about incorrectness of voluntarily disallowance offered by the assessee on examination of the accounts, that it is incorrect. The learned Assessing Officer does not have authority to invoke the provisions of Rule 8D of the Rules without recording satisfaction. Satisfaction of the ld AO mandated u/s 14A (2) is the entry gate for invoking computation of disallowance u/r 8D . Such is also the mandate of Hon'ble Supreme Court and Hon'ble Bombay High Court in various decisions quoted above. In assessee's own case similar issue is decided by the coordinate bench in earlier years. Therefore, in absence of any such satisfaction no disallowance under Section 14A of the Act can be made. The learned Assessing Officer is directed to retain the disallowance offered by the assessee of ₹12,06,096/- under Section 14A of the Act. Accordingly, ground no. 1 (a) of the appeal is allowed. In view of our above decision, ground no. 1 (b) to (d) becomes redundant. In the result, ground no. 1 of the appeal is allowed."

8. From the above observations of the Co-ordinate Bench, it is clear that recording of satisfaction about the incorrectness of the claim of the assessee is sine-qua non before making a disallowance under Rule 8D and that the dissatisfaction should be with regard to the accounts that how the disallowance offered by the assessee is incorrect. During the course of hearing the Id AR submitted the working of suo-motu disallowance made for AY 2017-18 and from the perusal of the same we notice that the working is identical to that of the year under consideration. Further it is noticed that the observations of the AO made in AY 2017-18 is in similar lines as in AY 2018-19. Therefore, we see merit in the submissions of the assessee that the decision of Co-ordinate Bench in assessee's own case for AY 2017-18 is applicable for AY under consideration also. In view of this discussion and respectfully following the decision of the Co-ordinate Bench, we hold that the action of the AO in invoking Rule 8D without recording satisfaction with regard to accounts that how the suo-motu disallowance is not correct, is unsustainable. Accordingly, we direct the AO to restrict the disallowance under section 14A to the suo-motu disallowance made by the assessee.

9. The assessee filed the return of income for AY 2016-17 on 29.11.2016 declaring a total income of Rs. 2,61,90,100/- and a book profit of Rs. 1,64,16,552/-. The Assessing Officer (AO) during the course of assessment noticed that the assessee has earned exempt income to the tune of Rs. 13,20,56,033/- for AY 2016-17 and that the assessee has made a suo-moto disallowance of Rs. 12,83,051/-. The AO invoked the provisions of Rule 8D and made addition to the tune of Rs. 1,38,74,524/- based on a without prejudice submission made by the assessee.

10. We heard the parties and perused the materials on record. The observations of the AO and the workings of the suo-moto disallowance for AY 2016-17 is identical

to AY 2018-19. Therefore in our considered view the decision in AY 2018-19 by following the decision of the Co-ordinate Bench in earlier years in assessee's own case is applicable mutatis mutandis to AY 2016-17 also. Accordingly, we direct the AO to restrict the disallowance for AY 2016-17 also to the suo-motu disallowance computed by the assessee in the said AY.

11. The AO for both AY 2018-19 and AY 2016-17 has added the disallowance made under section 14A of the Act to the book profits under section 115JB of the Act. In this regard it is relevant to note that this issue is no more *res-integra* since the same is settled by the Special Bench decision in the case of ACIT vs. Vireet Investments Pvt. Ltd 82 Taxmann.com 415 (Delhi Tribunal) (SB) where it has been held that the computation under clause (f) of the Explanation 1 to section 115JB (2) is to be made without resorting to the computation as contemplated under section 14A, read with Rule 8D of the Rules. Respectfully following the above decision, we hold that the AO is not correct in adding the disallowance made under section 14A to the book profit computed under section 115JB of the Act.

12. In result, the appeals of the assessee for AYs 2016-17 & 2018-19 are allowed.

*Order pronounced in the open court on 28-04-2025.*

**Sd/-**  
**(SAKTIJIT DEY)**  
**Vice President**

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

*\*SK, Sr. PS*

**Copy of the Order forwarded to :**

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

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**