

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

**BEFORE MS PADMAVATHY S, AM &
RAHUL CHAUDHARY, JM**

**I.T.A. No. 1754/Mum/2025
(Assessment Year: 2012-13)**

Warden International Pvt. Ltd. Warden House, 340, J.J. Road, Byculla, Mumbai-400008. PAN: AAACW0749H	Vs.	DCIT, Circle-8(3)(2), Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Sukhsagar Syal / Atul Suraiya
& Ms.Bhavika Jain, AR

Revenue / Respondent by : Shri Bhangapatil Pushkaraj
Ramesh, Sr. DR

Date of Hearing : 30.04.2025
Date of Pronouncement : 16.05.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre, (NFAC) Delhi [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 15.01.2025 for AY 2012-13. The assessee raised the following grounds of appeal:

“1. The Learned Commissioner of Income Tax (Appeals) [Ld. CIT(A)] erred in upholding order under section 154 of the Income Tax Act, 1961 ('the Act') dated 31.03.2019 passed by Learned Assessing Officer [Ld. AO].

2. The Order under section 154 of the Act is erroneous in law, as the modification made through the order regarding the disallowance of expenses under section 14A read with Rule 8D of the Act is unjustified.

3. The Ld. CIT(A) has erred in law and facts by increasing the disallowance amount through a rectification order under section 154 of the Act which is beyond the scope and power of rectification under the said section.

4. Without prejudice to the above and based on the facts and circumstances of the case, as well as the applicable law, the Ld. CIT(A) has grossly erred in making an additional disallowance of Rs. 22,76,612/- under Rule 8D(2)(iii) read with section 14A of the Act.”

2. The assessee is a company engaged in the business of agency/dealing in shares/ wind power. The assessee filed the return of income for AY 2012-13 on 29.09.2012 declaring a total income of Rs. 15,55,71,332/-. The assessee's case was selected for scrutiny and the statutory notices were duly served on the assessee. During the course of assessment the Assessing Officer (AO) noticed that the assessee has received a dividend income of Rs. 24,36,384/- and has claimed the same as exempt under section 10(34) of the Income Tax Act, 1961 (the Act). The AO issued a show-cause notice to the assessee as to why the disallowance under section 14A r.w.r 8D should not be made in assessee's case. The assessee submitted that the expenses attributable to earning of exempt income to the tune of Rs. 4,84,754/- have already been disallowed by the assessee and accordingly submitted that no further disallowance is warranted. The AO did not accept the submission of the assessee and proceeded to make a further disallowance of Rs. 51,510/- under Rule 8D(2)(iii) of the Income Tax Rules, 1962 (the Rules) while completing the assessment under section 143(3) of the Act. The AO subsequently passed an order under section 154 of the Act stating that the average investments considered for making the disallowance under Rule 8D(2)(iii) of the Rules by the assessee did not include the investments made by the assessee in the subsidiaries. Accordingly, the AO re-worked the disallowance thereby making a further addition of Rs.

22,76,612/-. The AO in this regard placed reliance on the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT [2018] 91 taxmann.com 154 (SC). The assessee filed further appeal before the CIT(A) against the order of the AO passed under section 154. The assessee submitted before the CIT(A) that the investments made in subsidiaries are strategic investments and therefore cannot be considered for the purpose of making disallowance under section 14A of the Act. The assessee made a without prejudice submission that the assessee has not earned any exempt income from the investments made in the subsidiaries and therefore only investment yielding exempt income should be considered. The CIT(A) dismissed the appeal by holding that

“4.1 Assessing officer rejected the argument of the taxpayer that strategic investments do not yield exempt income and are not covered under the provisions of section 14A, AO issued a notice under Section 154/155 of the IT Act, for rectification of order w/s 143(3) of the IT Act dated 24 February 2015 for recalculating the computation of average investments under Rule BD thereby increasing the disallowance to Rs 28.12.876. The reason for issuance of notice under Section 154 of the IT Act was that the AD had erroneously considered average investments at Rs.9.69.50.877 without considering investment in subsidiary companies at Ra 56.25,75,129 (for the purpose of Section 144 r.w Rule 8D disallowance. In response to the aforesaid notice, the appellant submitted that the order under Section 143(3) of the IT Act was not rectifiable as the exclusion of strategic investments was not a mistake apparent from record. Also, without prejudice, the appellant submitted that strategic investments in subsidiary companies should not be considered for the purpose of computation of average investments under Rule BD. The AO passed an order dated 31 March 2019 under Section 154 of the IT Act disregarding the claim of the appellant and disallowing the excess expenditure of Rs. 22,76,612 under Section 14A r.w Rule 80 of the IT Act. Further, the above-mentioned issue has been dealt with in the appellant's own case for AY. 2013-14 and AY. 2014-15 wherein, the AO had considered the investments in the subsidiary companies for the purpose of calculation of disallowance under Section 14A read with Rule SD. The CIT (A) vide his order dated 1st February 2018 has held that though the strategic investments in subsidiary companies are to be considered for the purpose of calculation of disallowance under Section 14A read with Rule BD, the appellant's appeal was allowed on its alternative submission that only those investments are to be considered for disallowance which have yielded exempt

income during the year. Further, the revenue authorities had filed an appeal against the order of the CIT(A) to the ITAT which was dismissed on the ground that the tax effect was less than 20 lakhs. Accordingly, the order of the CIT(A) for AY 2013-14 and AY 2014-15 is conclusive in nature. This means that CIT(APPEALS) agreed to the fact that strategic investments are to be considered but his only contention is that for the sake of disallowance only those investments which have earned exempt income during the year have to be considered. Which means that only those investments which have yielded exempt income during the year in the case of strategic investments as well as non strategic investments have to be considered. Disallowance relating to investments have to be restricted to only investments which have yielded exempt income during the year irrespective of the factum of strategic or non strategic. In this regard the decision of the Hon'ble Apex Court in the case of Maxopp Investment Ltd. Vs. Commissioner of Income Tax, New Delhi in civil appeal No, 104-109 of 20 IS dated 21.02.2018 is relevant as the Hon'ble Supreme Court has held that even strategic investment are to be considered for disallowance u/s. 14A. Since his issue is decided by Hon'ble Supreme Court, even otherwise non consideration of strategic investment, for the purposes of computing the disallowance u/s. 14A, is a mistake apparent from the record. As the mistakes are apparent from the record, same are rectified as per notice u/s. 154 dated 27.03.2019. The total disallowance u/s. 14A r.w. Rule 8D works out to Rs.28,12,876/-, Since the disallowance of Rs.5,30,264/- has already been disallowed in the assessment order u/s. 143(3) of the IT Act, 1961 dated 24.2.2015 and therefore the difference of Rs.22,76,612/- is added to the total income of the assessee. The disallowance u/s 14A at Rs 2276612 is upheld.”

3. We heard the parties and perused the material on record. In assessee's case the AO enhanced the disallowance made under section 14A r.w.r 8D by considering the entire investments including investments made in the subsidiaries by the assessee. The argument of the ld. AR is that the strategic investments made in the subsidiaries from which no exempt income is earned and therefore cannot be considered for disallowance under section 14A. The ld. DR on the other hand argued that even the strategic investments need to be considered and accordingly supported the order of the lower authorities. From the findings of the CIT(A) as extracted in the earlier part of this order we notice that the disallowance is confirmed on the ground that the strategic investments cannot be excluded for the purpose of disallowance. It is further noticed that the CIT(A) himself has held that for the purpose of disallowance

only those investments earning exempt income should be considered. It is a settled legal position that for the purpose of making disallowance under section 14A r.w.r 8D(2)(iii) the investments which are yielding exempt income only are to be considered as has been held by the Special Bench of the Delhi Tribunal in the case of ACIT vs. Vireet Investments Pvt. Ltd. (2017) 82 taxmann.com 415 (SB). A similar view has been consistently held by the Co-ordinate Bench. In view of this discussion and respectfully following the judicial precedents, we hold that the disallowance made by the AO by considering investments in subsidiaries which are not yielding any exempt income cannot be sustained. The AO is directed to delete the disallowance made in this regard.

4. In result, appeal of the assessee is allowed.

Order pronounced in the open court on 16-05-2025.

Sd/-
(RAHUL CHAUDHARY)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

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