

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.4953/De1/2024
(ASSESSMENT YEAR: 2020-21)

NTPC Limited, NTPC Bhawan, NTPC Bhawan Core-7, Lodi Road HQ, Aliganj, South East Delhi-110003. PAN:AAACN0255D	Vs.	DCIT, Circle-16(1), Delhi.
(Appellant)		(Respondent)

Assessee by	Shri Ved Jain, Adv., Shri Aman Garg, CA and Ms. Kirti Gupta, CA
Department by	Shri Sujit Kumar CIT-DR

Date of hearing	29.04.2025
Date of pronouncement	18.06.2025

ORDER

PER MANISH AGARWAL, AM:

This appeal is filed by the assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [Id. CIT(A), in short] in appeal No. NFAC/2019-20/10297137 vide order dated 31.08.2024 for A.Y. 2020-21 passed u/s 250 of the Income Tax Act, 1961 ("The Act" in short).

2. Brief facts of the case are that assessee is a large public sector undertaking and filed its return of income electronically on 30.11.2020 declaring total income at Rs. 28,58,11,36,960/-. The case of the assessee was selected for complete scrutiny. The AO issued various notices from time to time which were duly complied with and the assessment was completed u/s 143(3) r.w.s. 144B of the Act dt. 27.09.2023 at a total income of Rs. 30,05,76,98,163/- by making disallowance u/s 14A of Rs. 147,63,92,907/- and disallowance of interest u/s 201(1A) at Rs. 1,68,926/-.

3. In first appeal, the ld. CIT(A) dismissed the appeal of the assessee against which the present appeal is preferred by the assessee before the Tribunal.

4. The assessee has raised the following grounds of appeal:-

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner Income Tax (Appeals), National Faceless Appeal Centre ((CIT(A), NFAC) is bad, both in the eye of law and on the facts.

2. (i) On the facts and circumstances of the case the learned CIT(A), NFAC has erred both on facts and in law in confirming the disallowance of Rs.147,63,92,907/-made by the AO under section 14A read with rule 8D of the Income Tax Rules.

(ii) That the above said disallowance has been confirmed despite the fact that the same has been made by the AO without recording any satisfaction as to having regard to the accounts of the assessee how suo-moto disallowance of Rs. 45,87,471/- made by the assessee under Section 14A is not correct.

(iii) That the above said disallowance has been confirmed rejecting the detailed submissions and explanation given by the assessee in this regard.

3. Without prejudice to the above and in the alternative, the CIT(A), NFAC has erred in confirming the action of the AO ignoring the settled position of law that only those investments on which exempt income is received by the assessee during the year have to be considered for making the computation under Rule 8D of the Income Tax Rules.

4. The appellants crave leave to add, amend or alter any of the grounds of appeal.”

5. Since all the grounds taken by the revenue are with respect to the disallowance of Rs. 147,63,92,907/- made by invoking the provision of section 14A of the Act read with rule 8D of Income Tax Rules, 1962 (the Rules) therefore, they are taken together for consideration.

6. Before us the ld. AR of the assessee submits that during the year under appeal assessee has shown total investments of Rs. 26400,88,54,387/- under the head “Investment in Equity” in the “Balance Sheet”. The assessee had received total exempt income of Rs. 210.4 crore being dividend from investment in joint venture companies of Rs. 2390.87 crore and investment in equity instruments of Rs. 46.50 crore, thus as per ld. AR out of total investments made of Rs. 26400.88 crore, the exempt income in the shape of dividend was received from the investment of Rs. 2437.37 crore. The ld. AR submit that while making the disallowance the AO has not recorded the satisfaction of the claim of the assessee as provided in Rule 8D(1) of the Rules. He further submits that the assessee suomoto made a disallowance of Rs. 45,87,471/- being the expenses related to earn exempt income and further

filed working of the same which is reproduced at page 4 of the assessment order. The ld. AR submits that the assessee has already considered the proportionate expenses incurred on salary to the concerned staff and proportionate administrative expenses for making disallowance towards investment to earn exempt income, therefore, any further disallowance could not be made. Ld. AR further submit that investment was made out of internal accruals / reserves of the assessee company and no borrowed funds were utilized which fact has not been disputed by the AO also. The ld. AR submitted that the AO has invoked the provision of rule 8D(2)(ii) of the rules without proving any nexus and without recording his dissatisfaction about the claim of the assessee. For this he placed reliance on the judgement of coordinate bench of ITAT, Mumbai in the case of DCIT Vs. Reliance Industries Ltd. reported in 2023(10) TMI 1313 (ITAT Mumbai) and further in the case of Trent Ltd. Vs. DCIT in ITA No. 4074/Mum/2024. Ld. AR also filed a detailed written submission in this regard where the observations made by AO and ld. CIT(A) are rebutted, the written submission so filed is considered and placed on record. It is alternatively prayed that only those investments which yielded exempt income should be considered for making computation under rule 8D of the Income Tax Rules for the purpose of making disallowance u/s 14A of the Act.

7. On the other hand, ld. CIT-DR vehemently supported the order of authorities and submits that once the provisions of section 14A read with rule 8D of the I.T. Rules, 1962 are invoked, the amount of disallowance is to be computed in terms of the formula provided in rule 8D according to which the cumulative of the amount of expenditure directly relating the income which does not form part of total income plus 1% of average value of monthly investment is to be taken as the gross amount of disallowance u/s 14A of the Act. The ld. CIT-DR submits that the assessee has though made suomoto disallowance of Rs. 45,87,471/- which as per the assessee is directly related to earning such income however, has failed to compute to disallowance in terms of rule 8D(2)(ii) of the I.T. Rules, 1962 and therefore requested for the confirmation of the orders of lower authorities.

8. Heard both the parties and perused the material available on record. In the instant case, it is not in dispute that the investments were made by the assessee company out of its own interest free funds available with him in the shape of reserves and surplus. It is also a matter of fact that out of total investments of Rs. 26400.88 crore only from the investment of Rs. 2437.37 crore assessee had received exempt income in the shape of dividend of Rs. 210.4 crore. It is also seen that the assessee has accepted that there were certain expenses directly relatable to earn such exempt income and accordingly, proportionate expenses such as salary and administrative expenses were considered and a sum of Rs. 45.87 lacs [Rs. 45,87,471/-] was computed and suo-moto disallowed by the assessee company.

9. With regard to the argument of ld. AR that the AO has not recorded satisfaction before invoking the provision of section 14A read with rule 8D, we find that the AO has made a detailed discussion while recording satisfaction that the claim of the assessee is not correct in para 3.2 of the order and concluded in para 3.3 that claim made by the assessee that suomoto disallowance of Rs. 45,87,471/- is sufficient to cover the expenses directly relatable to earn exempt income is not tenable and, therefore, such argument of the assessee cannot be accepted. The AO issued show cause notice to the assessee proposing the disallowance u/s 14A other than the amount suomoto disallowed by the assessee which itself established that the AO has recorded his satisfaction and duly informed the assessee about his proposal of making further disallowance.

10. It is further seen that assessee argued that there is no direct expenses incurred to earn exempt income however, this claim is contradictory to the action of the assessee who *suo-moto* made the disallowance of Rs. 45.87 lacs and filed the details working which is reproduced at page 4 of the assessment order.

11. Before going further, we must examine the provisions of section 14A which are as under:

“Expenditure incurred in relation to income not includible in total income. 14A.

- (1) *Notwithstanding anything to the contrary contained in this Act, for the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.*
- (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 :*

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.

Explanation.—*For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income.”*

12. The title of 14A, i.e. “Expenditure incurred in relation to income not includible in total income” itself speaks about the existence of exempt income and then only a particular expenditure can be treated as incurred “in relation to” such income. Under Income Tax Act, expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income. Thus, section 14A is applicable if the assessee has income which is not includible in its total income and further assessee has incurred certain expenditure to earn such income. The language of section 14A is not at all ambiguous and in fact very clear and by virtue of the same, only expenditure actually incurred in relation to income not includible in total income shall be disallowed. Therefore, disallowance u/s 14A can be made only when assessee has actually earned exempt income. As observed above, in the instant case, the assessee has exempt income in the shape of Dividend and further admitted that the expenditure to the extent of Rs. 45.87 lacs were incurred to earn the exempt

income which does not form part of total taxable income. Therefore, in view of these facts, the provisions of section 14A are applicable to the facts of the present case of the assessee.

13. Sub-section 2 of section 14A provides the mode and manner of computing the disallowance according to which the mechanism is to be followed as provided in Rule 8D of the Rules. The provisions as contained in Rule 8D are as under:

“8D. Method for determining amount of expenditure in relation to income not includible in total income.

- (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with-
- (a) the correctness of the claim of expenditure made by the assessee; or
 - (b) the claim made by the assessee that no expenditure has been incurred, in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).
- (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 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:

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

14. From the perusal of the provision of rule 8D sub rule (1), the AO should record his dissatisfaction about the correctness of the claim of expenditure made by the assessee in relation to income which does not form part of total income and then he has to proceed to compute the amount of disallowance as provided in sub rule (2) of rule 8D. As observed above, in the instant case, the AO has duly recorded his dissatisfaction with regard to the suo-moto disallowance made by the assessee by issue of the show cause notice. As per the AO, the provisions of rule 8D has been changed w.e.f. 02.06.2016 and thereafter as per the AO, the provision of section rule 8D(2) are applicable.

15. The Hon'ble Supreme Court in the case of Maxopp Investment Ltd v. CIT reported in (2018)402 ITR 640(SC) laid down following principal:

- *The expression 'in relation to' appearing in section 14A cannot be ascribed a narrow or constricted meaning. The expression 'in relation to' does not have any embedded object. It simply means 'in connection with' or 'pertaining to'. If the expenditure in question has a relation or connection with or pertains to exempt income, it cannot be allowed as a deduction even if it otherwise qualifies under the other provisions of the said Act.*
- *While the expression 'expenditure incurred' refers to actual expenditure and not to some imagined expenditure, it is to be made clear that the 'actual' expenditure that is in contemplation under section 14A(1) is the 'actual' expenditure in relation to or in connection with or pertaining to exempt income. The corollary to this is that if no expenditure is incurred in relation to the exempt income, no disallowance can be made under section 14A*
- *The requirement of the Assessing Officer embarking upon a determination of the amount of expenditure incurred in relation to exempt income would be triggered only if the Assessing Officer returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure.*
- *It is only if the Assessing Officer is not satisfied with the correctness of the claim of the assessee, in both cases, that the Assessing Officer gets jurisdiction to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the said Act in accordance with the prescribed method.*

16. The assessee has also placed reliance on many judgements wherein it is held that if no borrowed funds are involved, no disallowance u/s 14A should be made. Further in some pronouncements it is held that when the AO has not recorded the satisfaction on the claim of the assessee, provision of section 14A could not be invoked. However, as discussed above, in the present case, the AO has recorded the satisfaction of correctness of the claim of the assessee and further seen that the assessee itself has made the disallowance u/s 14A by considering those expenses which are directly relatable to earn such exempt income, therefore, the ratio laid down in the judicial pronouncements are not relatable to the facts of the present case.

17. Further, from the perusal of the facts and arguments advanced by both the parties, we find that it is an admitted position that out of total investment of Rs. 26400.88 crores, only investments of Rs. 2437.37 crores earned exempt income of Rs. 210.4 crores as dividend. Once it is established that the AO is not satisfied with the claim of the assessee that the expenses shown under *suo-moto* disallowance are sufficient and correct with respect to the income

earned not forming part of the total taxable income, the provisions of sub rule (2) of rule 8D come into play according to which the cumulative figure of expenses directly relating to income which does not form part of total income and 1% of average of monthly value of investments should be the amount of disallowance.

18. However, as alternatively claimed by the assessee and also held by Delhi Special Bench of ITAT in the case of **Vireet Investments P Ltd** reported in **(2017)(82 taxmann.com 415)(Delhi)** and jurisdictional high court in the case of **Crago Motors Pvt. Ltd. Vs. DCIT** reported in **(2023) 453 ITR 554 (Delhi)** that the investments which have yielded exempt income should only be considered for the purpose of computing the amount of disallowance in terms of rule 8D(2)(ii) of the Income Tax Rules, 1962. Thus by respectfully following the judgements of hon'ble jurisdictional high court and of the special bench of Tribunal, we accept the alternative prayer of the assessee and direct the AO to recompute the amount of disallowance u/s 14A by considering those only investments which yielded exempt income. In the instant case, the investments of Rs. 2437.37 crores were admitted as the investments on which the exempt income was earned therefore, the monthly average of the same is to be taken into consideration for making disallowance in terms of Rule 8D(2)(ii) of the Rules in this regard. With these directions, all the grounds taken by the assessee are partly allowed.

19. In the result, appeal of the assessee is partly allowed.

Order pronounced on 18.06.2025.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 18/ 06/2025.

PK/Sr. Ps

Copy forwarded to:

1. Appellant
 2. Respondent
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3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi
