

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER**

AND

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 5694/MUM/2025

Assessment Year: 2018-19

| | | |
|---|----|---|
| Bhishma Realty Limited. 3 rd Floor, Sir Vithaldas Chambers, 16 Mumbai Sanmarg Marg, Fort, Mumbai 400001 PAN: (AAACB5995N) | vs | DCIT, CC-1(4), Central Building Mumbai 400020 |
| Appellant | | Respondent |

Present for:

Appellant by : Ms. Neha Paranjpe, AR

Respondent by : Shri Lyaqat Ali Aafaqui, Sr. DR

Date of Hearing : 17.11.2025

Date of Pronouncement : 11.12.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of CIT(A) 47, Mumbai vide Order No. ITBA/APL/S/250/2025-26/1078523862(1) dated 15.07.2025 passed against assessment order u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 03.02.2021 for AY 2018-19.

2. The sole issue raised in the present appeal is in respect of disallowance made under section 14A r.w.r. 8D of the Income-tax Rules, 1962 (hereinafter referred to as ‘the Rules’) of Rs. 20,06,2346/- against *suomoto* disallowance made by the assessee of Rs. 94,147/-.

3. Brief facts relevant to the issue are that assessee filed its return of income on 28.09.2018, reporting total income at Rs. 9,42,42,440/-. Ld. Assessing Officer noted that in the year under consideration, assessee had made investment in equity shares and mutual funds, earning dividend income of Rs. 12,68,000/-, interest on tax free bonds of Rs. 12,080,829/- and capital gain on sale of investment of Rs. 3,09,74,898/-. These incomes were claimed as exempt by the assessee against which a *suo moto* disallowance of Rs. 94,147/- was made under section 14A. Ld. AO sought explanation from the assessee in this respect wherein he noted that assessee had disallowed a very small amount under section 14A. According to him, disallowance made by the assessee is very low, hence he was not satisfied with the claim of assessee made in respect of exempt income. Assessee replied in detail, submitting that the disallowance made *suomoto* of Rs. 94,147/- is adequate against the exempt income earned by it. The working given by the assessee in respect of *suomoto* disallowance is tabulated as under:

| Sr. No. | Particulars | Amount (Rs.) |
|---------|---|--------------|
| 1. | Expenditure directly related to exempt income | 4,147/- |
| 2. | Disallowance out of expenses (indirect expenditure) | 90,000/- |
| | Total | 94,147/- |

3.1. However, against the above, ld. AO computed the disallowance by applying Rule 8D to arrive at a figure of Rs. 21,00,383/- for which the working is tabulated below:

| Sr. No. | Particulars | Amount (Rs.) |
|---------|---|--------------|
| 1. | Expenditure directly related to exempt income | 2,41,147/- |
| 2. | 1% of Average monthly investments | 18,59,236/- |
| | Total | 21,00,383/- |

3.2. He thus, made a disallowance of Rs. 20,06,236/- over and above *suomotu* disallowance made by the assessee.

4. We have heard both the parties and perused the material on record. We have also gone through the orders of the authorities below. We have also taken note of the paper book placed on record, containing 64 pages which has been perused to take note of the factual matrix. In respect of expenditure directly related to exempt income which the AO has considered at Rs. 2,41,147/-, the correct factual position placed before us is listed below:

| | |
|---|------------------|
| <i>Ask Wealth Management Fees</i> | - Rs. 8,950/- |
| <i>Performance Fees – Forefront Alternative Equity Scheme</i> | - Rs. 2,23,747/- |
| <i>Custodian Charges</i> | - Rs. 4,147/- |
| <i>Total</i> | - Rs. 2,36,844/- |

4.1. In respect of expense payment made to Ask Wealth Management, it was submitted that it relates to investment in debentures from which taxable income is earned. Also, investment in Forefront Alternative Equity Scheme Wealth yields taxable income, therefore, these two items are not expenditure to be included in direct expenses relating to earning of exempt income. As far as the claim of Custodian Charges of Rs. 4,147/-, assessee itself had *suomoto* disallowed it,

being direct expenditure. Thus, disallowance made by the ld. AO amounts to double disallowance of the same expense.

4.2. Further, observations made by the ld. AO in the impugned assessment order at para-4.5 is that there is a net gain of Rs. 3,09,74,898/- on sale of investment which has been considered as an exempt income. However, the correct factual position brought out before us is that the said gain on sale of investment is a taxable income as Short Term Capital Gain (STCG) which the assessee has offered to tax in its return of income. For this we referred to page no. 2 of the paper book containing computation of income from which it is noted that this amount has been offered to tax by the assessee as STCG.

4.3. Assessee has also made a *suomoto* disallowance towards indirect expenses amounting to Rs. 90,000/- on account of salary expense. Against the total *suo moto* disallowance made by the assessee, observation made by the ld. AO in his showcause notice is that quantum of this *suo moto* disallowance is very low and therefore, he proposed to invoke Rule 8D for the purpose of making disallowance under section 14A. In this regard, from the provisions contained in section 14A(2), we note that ld. AO cannot make disallowance under section 14A unless he believes that the claim of assessee is incorrect having regard to the accounts of the assessee for which he has to demonstrate with reasons, why the working made by the assessee for *suo moto* disallowance is not correct. Thus, satisfaction of the AO as to the incorrect claim made by the assessee is *sinequa non* for invoking the application of Rule 8D. This satisfaction can be reached only when the claim of the assessee is verified. We have noted already in the above paragraph; ld. AO had made certain incorrect observations

while computing direct expenses as well as while taking into account the quantum of exempt income earned during the year. Additionally, assessee had pointed out from its computation of income that expense relating to valuation of shares amounting to Rs. 2,23,627/- was added back while computing income from business. We note that Id. AO nowhere in the impugned assessment order gave his reasons for not accepting the *suomoto* disallowance of Rs. 94,147/- except for making a sweeping remark that the said *suomoto* disallowance is very low. In this context it is important to note that Rule 8D is not automatic. Assessing Officer can visit to the method prescribed in Rule 8D only if he is not satisfied with the correctness of claim of expenditure made by the assessee.

4.4. The correct sequence for making any disallowance u/s14A is to firstly, examine the assessee's claim of having incurred some expenditure or no expenditure in relation to exempt income. If the AO is satisfied with the same, then there is no need to compute disallowance as per Rule 8D. It is only when the AO is not satisfied with the correctness of the claim of the assessee in respect of such expenditure or no expenditure having been incurred in relation to exempt income, that the mandate of Rule 8D will operate.

4.5. We thus, referred to statement of P&L a/c of the assessee for the year under consideration placed at page-8 of the paper book and note that except for employee benefit expense, all other expenses relate to its business activity of construction and therefore, would not have a bearing on the disallowance under section 14A. In respect of employee benefit expense, assessee has already taken into account salary of Rs. 90,000/- as an indirect expense while making *suomoto* disallowance. Further, from the perusal of the balance sheet, more

particularly, Note No. 9 containing Non-current Investment, we note that assessee has made investment of Rs. 17,65,03,064/- in equity shares of Capricon Realty Ltd. which is an unlisted company and sister concern of the assessee. It was submitted before us that since the investment made by the assessee is in the sister concern, no market expertise was required for making the said investment, nor does it require any regular monitoring or reporting.

5. Considering the factual matrix discussed above in detail and taking note of the fact that no satisfaction has been recorded by the ld. AO in terms of section 14A(2) so as to negate the *suomoto* disallowance made by the assessee having regard to the accounts, the disallowance made by the AO by invoking Rule 8D is not tenable and is badinlaw. Accordingly, the incremental disallowance made by the ld. AO is deleted by restricting it to the *suomoto* disallowance made by the assessee in its return. For this, we draw our force from the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT 402 ITR 640 (SC) wherein it held that:

“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.”

6. Accordingly, ground raised by the assessee in this respect is allowed.

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

Order pronounced in the open court on 11.12.2025.

Sd/-
[Amit Shukla]
Judicial Member

Sd/-
[Girish Agrawal]
Accountant Member

Dated: 11.12.2025.

Sharwan Kumar
Sr. PS.

Copy to:

1. The Appellant
2. The Respondent
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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai