

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.7415/Mum/2025
(Assessment year: 2017-18)

Elegant Marbles and Grani Industries Limited Raghuvanshi Mill Compound, Senapati Bapat Marg, Lower Parel, Mumbai-400013 PAN: AAACE1584C	vs	Assistant Commissioner of Income Tax, Circle 6(2)(2), Mumbai Room No. 506, 5 th Floor Aayakar Bhawan, M.K. Road, Mumbai 400020
APPELLANT		RESPONDENT

Assessee by : Shri Shreyash Shah,
Respondent by : Shri Ritesh Misra (CIT DR)

Date of hearing : 27/01/2026
Date of pronouncement : 30/01/2026

ORDER

Per: Anikesh Banerjee (JM):

The instant appeal of the assessee filed against the order of the NFAC, Delhi [for brevity 'the Id. CIT(A)], order passed under section 250 of the Income Tax Act 1961 (for brevity 'the Act') for assessment year 2017-18, date of order 06.11.2025. The impugned order emanated from the order of the Ld. Assistant Commissioner of Income Tax Circle.-6(2)(2), Mumbai (for brevity the "Ld. AO"), order passed under section 143(3) of the Act, date of order 12.12.2019.

2. The brief facts of the case are that the assessee filed the return u/sec. 139(1) by declaring total income Rs.5,36,03,330/-. The return was processed u/sec. 143(1) and finally the case was selected for scrutiny. During the impugned assessment year the assessee earned the exempted income as dividend amount to Rs.1,70,03,683/- and long term capital gains amount to Rs.1,73,84,875/- which comes to total amount of Rs.3,43,88,558/-. The assessee after a detailed calculation voluntarily disallowed in the return of income amount to Rs.10,17,141/-. During the scrutiny assessment the Ld. AO separately calculated the annual average of monthly average of the assessee's investment which comes to Rs.17,29,36,956/- and 1% of the annual average of monthly average which comes to Rs.17,29,370/- was disallowed u/sec. 14A of the Act. After due deduction of assessee's voluntary disallowance u/sec. 14A amount of Rs.10,17,141/- the balance amount of Rs.7,12,229/- was added back with the total income of the assessee. The aggrieved assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) uphold the observations of the Ld. AO . Being aggrieved assessee filed an appeal before us.

3. The Ld. AR argued and stated that the assessee has made a logical calculation considering its books of accounts and the expenses related to this exempted income disallowed u/sec 14A amount to Rs.10,17,141/-. The details calculation is annexed in appeal submission related to **page 37 and 38** which is reproduced as below:

SDBA & Company

Chartered Accountants

- c) It disallowed the common expenses, i.e., expenses which are attributable to exempted as well as taxable income, in proportion to exempted income and total revenue.

1.12 On the basis of above analysis, the summary of common expenses is as under:

Sr. No.	Particulars	Amount Rs.
1.	Salary to accountant	8,29,661
2.	Salary of paid to Shri Rajesh Agrawal	30,00,000
3.	Rent, Rates and Taxes & Car Rental Charges	28,62,678
4.	Auditors' Remuneration	1,00,000
5.	Insurance Charges	1,05,468
6.	Motor Car Expenses	1,29,311
7.	Telephone & Internet Expenses	40,657
8.	Legal & Professional Fees	2,94,312
9.	Miscellaneous Expenses	5,40,821
	Total	79,02,908

1.13 The expenses directly attributable to exempted income arising from investment activities of the assessee are as under :

Sr. No.	Particulars	Amount Rs.
1.	Demat Charges	2,432
2.	STT	2,12,268
3.	Software Expenses	1,725
4.	Subscription & Membership	22,000
	Total	2,38,425

1.14 As the common expenses are related to the entire business activities and income of the assessee at Mumbai and not exempted income alone, the same should be disallowed in the proportion of exempted income and total revenues of the assessee. The details of exempted income and total revenues of the assessee are as follows:

Sr. No.	Particulars	Amount Rs.
(a)	Revenue from Operations	28,21,81,057
(b)	Other Income	6,68,15,602
	Total Revenue	34,89,96,659
	Exempted Income	
(c)	Dividend income	1,70,03,683
(d)	Long Term Capital Gains	1,73,84,875
	Total Exempted Income	3,43,88,558

1.15. Accordingly the disallowance envisaged u/sec. 14A of the Income-tax Act, 1961 is worked out at Rs.1017141/- the details of which are as follows:

Exempted Income/Total Revenue Indirect expenses related to Exempted Income + Direct Expenses related to exempt income

*= (34388558/348996659*7902908) + 238425*

= Rs.1017141/-."

4. The Ld. AR advanced his arguments and contended that, without first rejecting the computation made by the assessee, the Ld. AO proceeded to determine an excess disallowance by placing reliance on CBDT Circular No. 5/2014 dated 11.02.2014. It was submitted that the Ld. AO was required, as a mandatory precondition, to record dissatisfaction with and reject the assessee's computation, and only thereafter could he proceed to compute the disallowance by adopting the method prescribed under Rule 8D of the Income-tax Rules, 1962, including the calculation of the annual average of monthly average investments. It was further submitted that an identical issue had come up for consideration before the Coordinate Bench of the ITAT, Mumbai 'E' Bench, in the assessee's own case for **AY 2012-13**, vide **ITA No. 1018/Mum/2017**, order dated **03.08.2018**. The relevant observations of the Coordinate Bench are reproduced hereunder:

"6. We have gone through the facts in entirety and also gone through the assessment order. We find that the pre-condition for resorting the provision of section 14A read with Rule 8D(2) of the Rules is that the AO must be satisfied that the computation for disallowance made by assessee is incorrect in respect to expenses relatable to exempt income. Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT [2018] 402 ITR 640 (SC), held as under: -

"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.”

7. In view of the above facts and respectfully following the Supreme Court, we are of the view that in the present case, the AO has not recorded any satisfaction as to why the disallowance made by assessee, suo motto, is incorrect. Even otherwise, the issue is covered by Tribunal's decision in assessee's own case for immediately preceding year. Accordingly, we delete the disallowance and allow the appeal of the assessee. However, the disallowance will be restricted to the extent of 3,41,235. This issue of assessee's appeal is allowed.”

5. The Ld. DR argued and stated that the Ld. AO had disallowed the expenses related to section 14A read with Rule 8D of the rule relying on the CBDT's Circular no.5/2014 dated 11.02.2014. He invited our attention in relevant **para 4.2** of the assessment order which is reproduced as below:

“4.2 The assessee's reply was perused, but not found acceptable in the view of CBDT's Circular No. 5/2014, dated 11th February, 2014, wherein it has been clarified that disallowance under section 14A of the Act read with Rule-8D of the Income Tax Rules' 1962 needs to be made even in a case where the assessee has not earned exempt income during a particular year. In the said Circular, it has, inter-alia, been clarified that use of the word "includible" in heading to Section 14A and Rule 8D and use of phrase "income under the Act" under section 14A of the Act, instead of "income of the year", indicates that for invoking disallowance under section 14A, it is not material that assessee should have earned such exempt income during the financial year under consideration. It has also been clarified in the said Circular that "legislative intent is to allow only that expenditure which is relatable to earning of income and it therefore follows that the expenses which are relatable to earning of exempt income have to be considered for

disallowance, 'irrespective' of the fact whether any such income has been earned during the financial year or not the working for disallowance u/s 14A r.w.r. 8D."

6. We heard the rival submissions and considered the documents available in record. The assessee has voluntarily disallowed during filing of return amount of Rs.10,17,141 u/sec 14A of the Act. The details of the calculation related to the expenses connected with exempted income were submitted during the assessment and appeal proceedings. The Ld. AO proceeded to determine an excess disallowance by placing reliance on CBDT Circular No. 5/2014 dated 11.02.2014. It was submitted that the Ld. AO was required, as a mandatory precondition, to record dissatisfaction with and reject the assessee's computation, and only thereafter could he proceed to compute the disallowance by adopting the method prescribed under Rule 8D of the Income-tax Rules, 1962, including the calculation of the annual average of monthly average investments. The identical issue was squarely dealt by the Coordinate Bench of the ITAT, Mumbai, in the **assessee's own case** (supra). We find that there is no merit for due calculation of deduction under section 14A on the basis of the annual average of the monthly average without rejecting the assessee's calculation. Ratio laid down in the order of the Coordinate Bench of the ITAT, Mumbai, in the assessee's own case, we find that the excess disallowance made by the Ld. AO u/sec 14A amounting to Rs,7,12,229 is arbitrary and bad in law. We set aside the impugned appellate order. Accordingly, the addition made by the Ld. AO amounting to Rs.7,12,229 is deleted.

7. In the result, the appeal of the assessee being **ITA No.7415/Mum/2025** is allowed.

Order pronounced in the open court on 30th day of January 2026.

Sd/-

(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 30/01/2026
SAUMYASr.PS

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, MUMBAI