

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.304/M/2023
Assessment Year: 2018-19**

Asstt. Commissioner of Income Tax – 4(1)(1), Room No.640, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Businessmatch Services (India) Pvt. Ltd., Shop No.2, Neptune II, Smt. Nargis Dutt Road, Bandra West, Mumbai – 400 050 PAN: AAACB6129N
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ravikant S. Pathak, A.R.
Revenue by : Shri Chetan M. Kacha, D.R.

Date of Hearing : 10 . 04 . 2023
Date of Pronouncement : 20 . 04 . 2023

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ORDER

Per : Kuldip Singh, Judicial Member:

The appellant, Asstt. Commissioner of Income Tax – 4(1)(1), Mumbai (hereinafter referred to as ‘the Revenue’) by filing the present appeal, sought to set aside the impugned order dated 14.12.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2018-19 on the grounds inter-alia that :-

“1. On the facts and circumstances of the case and in law, the CIT(A) erred in restricting the disallowance u/s. 14A r.w.r. 8D to the

extent of Rs. 9,60,000/-i.e. suo motto disallowance made by the as against the disallowance of Rs. 3,33,36,712/-computed by the AO being expenses incurred in relation to the exempt income.

2. On the facts and circumstances of the case and in law, the CIT(A) erred in not considering the clarification regarding disallowance of expenses under section 14A of the Income Tax Act, issued by the CBDT vide its circular no. 05/2014 dated 11/02/2014.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is a private limited company into the business of investment in shares and immovable properties, finance activities and trading in shares and securities including derivatives, earned the dividend income of Rs.7,29,565/-. The assessee suo-moto disallowed an amount of Rs.9,60,000/- under section 14A read with Rule 8D being 20% of the fee paid by the assessee to M/s. K. Right Management Solution Pvt. Ltd. being the advisor on investment. However, the Assessing Officer (AO) declining the contentions raised by the assessee disallowed the interest expenses to the tune of Rs.1,60,55,000/- by treating certain loan transactions as non-genuine and thereby made total disallowance under section 14A read with rule 8D to the tune of Rs.3,23,76,712/- and thereby framed the assessment under section 143(3) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the addition by allowing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the Revenue has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower

Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. The Ld. D.R. for the Revenue challenging the impugned order passed by the Ld. CIT(A) relied upon the order passed by the AO and further relied upon the order passed by the co-ordinate Bench of the Tribunal in case of ACIT vs. Williamson Financial Services Ltd. (2022) 140 taxmann.com 164 (Guwahati-Trib.) and circular No.5 of 2014 issued by the Central Board of Direct Taxation (CBDT).

6. However, on the other hand, the Ld. A.R. for the assessee relied upon the order passed by the Ld. CIT(A) and further contended that in any case disallowance under section 14A cannot be more than the dividend earned during the year under assessment and relied upon the decision rendered by Hon'ble Bombay High Court in cases of HSBC Invest Direct (India) Ltd. (421 ITR 125)[2020], Reliance Ports and Terminals Ltd. (114 taxmann.com 529) [2020], decision rendered by Hon'ble Madras High Court in case of M/s. Marg Ltd. (120 taxmann.com 84) [2020], decision rendered by Hon'ble Punjab & Haryana High Court in case of M/s. Empire package Pvt. Ltd. (81 taxmann.com 108)[2017], Tribunal's order in case of Pest control India Pvt. Ltd. (ITA No. 5048/Mum/2016), decisions rendered by the Hon'ble Apex Court in case of PCIT vs Oil Industry Development board in 103 taxmann.com 326 and PCIT vs Caraf builders and construction reported in 112 taxmann.com 322 and CIT vs Maxoop Investments Ltd in 402 ITR 640(SC).

7. The Ld. CIT(A) has duly thrashed the issue involved in this case in the light of the decision rendered by the Hon'ble Bombay High Court and Hon'ble Apex Court referred to in the preceding paras and returned the following findings:

“7.2 Finding on Ground of Appeal No. 2

a) The gist of disallowance made by AO u/s 14A rw Rule 8D is outlined in para 2b to 2d of this order.

b) Appellant had made investments in shares had earned dividend income of Rs.7,29,565/- on shares which was claimed as Exempt u/s 10(34) of Act. Appellant itself had disallowed Rs.9,60,000/- u/s 14A r.w. Rule 8D in the return filed. Thus, the appellant has earned exempt income of Rs.7,29,565/- on such investments and has itself disallowed Rs.9,60,000/ u/s 14A r.w. Rule 8D.

c) The AO has made disallowance of Rs.3,33,36,712/- u/s 14A r.w. Rule 8D in the assessment order. Thus the AO made a further disallowance of Rs.3,23,76,712/- u/s 14A r.w. Rule 8D of Act.

d) During the year the appellant had made investment in shares etc. and claimed the entire Dividend Income as exempt income u/s 10(34) of the Act.

7.3 It has been held in a number of judgments that amount of disallowance u/s 14A cannot exceed the exempt income. In the present case the exempt income earned is Rs.7,29,565/- and appellant itself has disallowed Rs.9,60,000/- in the return filed. The AO has made disallowance of Rs.3,33,36,712/- u/s 14A rw Rule 8D which is far in excess of exempt income and suo motto disallowance made by the AO. Reliance is placed on the following judgements which hold that disallowance u/s 14A cannot exceed the exempt income of assessee.

i) Future Corporate Resources vs DCIT in 85 taxmann.com 190 (Mumbai Tribunal)

ii) ACIT vs. Satish Kumar Agarwal 96 taxmann.com 373 (Jaipur Tribunal)

i) PCIT vs Empire Package (P) Ltd. vs ITO (2017) 24 taxmann.com 108 (P&H)

iv) Greaves Leasing & Finance Ltd vs ITO(2012) 24 taxmann.com 343 (Mum)

v) Hon'ble Bombay High Court in the case of Nirved Traders Pvt Ltd (421 ITR 142) 2020- It was held that disallowance u/s 14A cannot exceed the exempt income of assessee.

vi) *Hon'ble Bombay High Court in the case of HSBC Invest Direct (India) Ltd. (421 ITR 125)[2020] It confirmed the order of Tribunal restricting the disallowance u/s 14A to extent of exempt income earned.*

vii) *Hon'ble Bombay High Court in the case of Reliance Ports and Terminals Ltd. (114 taxmann.com 529) [2020] It was held that - disallowance u/s 14A cannot be more than exempt income.*

viii) *Hon'ble Madras High Court in the case of M/s. Marg Ltd. (120 taxmann.com 84) [2020]- It confirmed the order of Tribunal restricting the disallowance u/s 14A to extent to exempt income earned by assessee.*

ix) *Hon'ble Punjab & Haryana High Court in the case of M/s. Empire package pvt. Ltd. (81 taxmannn.com 108)[2017]- It confirmed the order of Tribunal restricting the disallowance u/s 14A to extent of exempt Income earned.*

x) *Hon'ble Mumbai Tribunal in the case of Pest control India Pvt Ltd. (ITA No. 5048/Mum/2016)- It directed the AO is restrict the disallowance u/s 14A to extent of Dividend Income earned i.e. Rs.1,83,000/-.*

xi) *The Hon'ble Apex Court in PCIT vs Oil Industry Development board in 103 taxmann.com 326 and PCIT vs Caraf builders and construction reported in 112 taxmann.com 322 held that disallowance u/s 14A cannot exceed the exempt income.*

xii) *The Hon'ble Apex Court in CIT vs Maxoop Investments Ltd in 402 ITR 640(SC) has held that disallowance u/s 14A cannot exceed otempt income.*

xiii) *The Hon'ble Apex Court in PCIT vs State Bank of Patiala (2018) 99 taxmann.com 286 (SC) held that amount of disallowance u/s 14A should be restricted to amount of exempt income of assessee only and not a higher income.*

xiv) *The Hon'ble Karnataka High Court in the case of Pragathi Kisasn Gramin Bank vs JCIT (2018) 256 Taxman 349 (Kar.) held that Expenditure in relation to Income not includible in Total Income cannot exceed such income.*

xv) *The Hon'ble ITAT Mumbai in DCIT vs Mahendra Brothers Export (P) Ltd (2021) dated 29.11.2021 held that disallowance u/s 14A cannot exceed the Exempt Income for the AY under consideration.*

7.4 In view of the above facts and respectfully following the judgments outlined in para 7.3 above the disallowance u/s 14A is restricted to Rs.9,60,000/- i.e. to extent of disallowance suo motto made by Appellant in return. Disallowance to extent of Rs.9,60,000/- is

confirmed and relief of Rs.3,23,76,712/- (3,33,36,7129,60,000) is allowed to appellant. Ground of appeal No. 2 is allowed."

8. Undisputedly the assessee has earned dividend income of Rs.7,29,565/- on shares and claimed the same as exempt under section 10(34) of the Act. It is also not in dispute that the assessee has suo-moto disallowed an amount of Rs.9,60,000/- under section 14A read with Rule 8D.

9. In the backdrop of the aforesaid undisputed facts the core issue to be decided in this appeal is:

"As to whether the Ld. CIT(A) has rightly restricted the disallowance made by the AO under section 14A read with Rule 8D to Rs.9,60,000/- as against disallowance of Rs.3,33,36,712/- made by the AO, which is more than the dividend income earned by the assessee during the year under consideration."

10. By now it is settled proposition of law that disallowance under section 14A read with Rule 8D cannot be more than the exempt income earned by the assessee. In the instant case the assessee has suo-moto disallowed an amount of Rs.9,60,000/- under section 14A read with Rule 8D which is more than the dividend income of Rs.7,29,565/- earned by the assessee. This issue has successfully been decided by the Hon'ble Bombay High Court in cases of HSBC Invest Direct (India) Ltd. (supra) and Nirved Traders Pvt Ltd (supra), decisions rendered by the Hon'ble Apex Court in case of Oil Industry Development Board (supra) and State Bank of India (supra) that disallowance under section 14A should be restricted to amount of exempt income of assessee only and not a higher income.

11. So in these circumstances the order passed by the Tribunal relied upon by the Ld. D.R. is not applicable to the facts and circumstances of the case. Finding no illegality or perversity in the impugned order passed by the Ld. CIT(A) the present appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 20.04.2023.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 20.04.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.