

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

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

&

SMT RENU JAUHRI, ACCOUNTANT MEMBER

**ITA No. 4090/Mum/2023
(A.Y. 2020-21)**

DCIT-2(3)(1) Room No. 552, 5 th Floor, Aaykar Bhawan, Mumbai-400020	Vs.	Paranjapee Schemes Construction Ltd. 1, Somnath, CTS. No. 988, Ram Mandir Road, Vile Parle (E), Near Tilak Mandir, Mumbai-400057
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCP1941Q		
Appellant	..	Respondent

Appellant by :	Shri. Yogesh Thar & Shri Karan Jain
Respondent by :	Shri H. M. Bhatt

Date of Hearing	01.05.2024
Date of Pronouncement	31.05.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the revenue against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [NFAC] dated 13.09.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the Assessment Year [A.Y.] 2020-21.

2. The revenue has raised following grounds of appeal:

1. *“Whether on the fact and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the disallowance u/s. 144 of the Act, without realizing the fact that the assessee is also earning exempt income on the strategic investments and expenses incurred on the same should be disallowed u/s 144 r.w.rule 8D.*
2. *Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of foreign travel expense amounting to Rs. 20,38,038/- with realizing the fact that the expenditure should be wholly and exclusively for business or profession, and the assessee had failed to validate that expenditure have been incurred wholly or exclusively for Business or profession.”*
3. The brief facts of the case are as under:
 - a. The return of income was e-filed by the assessee on 15.02.2021 declaring loss of Rs. 70,00,42,429/-. The case was selected for scrutiny and the assessment u/s 143 r.w.s. 144B of the Act was made vide order dated 26.09.2022 determining the total income at Rs. 436,79,15,715/-after making various additions/disallowances.
 - b. Aggrieved with the assessment order, the assessee filed appeal before CIT(A)/NFAC which was partly allowed vide order u/s 250 of the Act dated 13.09.2023.
 - c. However, aggrieved with the said order, the revenue has preferred appeal on two grounds which are discussed hereinbelow:

Ground No. 1 : Disallowance under section 14A r.w.rule 8D:

- i. Facts of the case are that the assessee had made suo-moto disallowance to the tune of Rs. 53,79,526/- in respect of expenses incurred on exempt income. The assessing officer (AO) proposed to disallow Rs.

4,08,32,574/- by applying section 14A r.w. rule 8D of the Act. In response, the assessee submitted the break-up of investments as under:.

Summary of Investment	Amount in Rs.	Exempt Income	Taxable Income	Remarks
In Equity instrument of Companies	2,19,61,86,337/-	-	-	No exempt income earned from Equity instruments during the year
Investment in Partnership Firms/ AOP's	86,27,13,379/-	10,22,70,532/-	-	Share of Profit from investment in Partnership Firms/ AOP is Rs. 10,22,70,532/- and share of Loss is Rs. 1,33,08,293/-. Certain balances related to Partnership Firm/AOP are reflecting in Other Financial Liabilities and current investment which has been duly considered for 14A working by the assessee.
In Debentures Instruments of Companies	2,56,07,64,644/-	-	9,12,84,971/-	Income from Debenture investment in PSC Properties Pvt. Ltd., Lavim Developers Pvt. Ltd. And Nalanda Shelter Pvt. Ltd. Debenture interest has been duly offered to tax in the return of income. It has not been claimed as an exempt income for the year.
In equity instrument of companies- Co-operative Banks	15,37,525/-	-	-	No exempt income earned from Equity Instruments in co-op banks during the year.
National Saving Certificate- Bangalore	1,000/-	-	-	No exempt income earned from NSC during the year
Total	4,62,12,02,885/-	10,22,70,532/-	9,12,84,971/-	-
Investment in Mutual Funds	-	1,18,574/-	-	Exempt income earned from Mutual fund
Grand Total		10,23,89,106/-	9,12,84,971/-	-

The AO took into consideration total non-current investments of the assessee of Rs. 306,04,37,241/- and calculated the disallowance u/s 14A r.w.rule 8D @ 1% at Rs. 3,06,04,372/-. After reducing disallowance made by the assessee, balance amount of Rs. 2,52,24,846/- (3,06,04,372-53,79,526) was added on account of disallowance under section 14A and rule 8D.

- ii. Before the Ld. CIT(A), the assessee contended that the AO cannot invoke rule 8D without recording any satisfaction with regard to the assessee's claim that no expenditure is relatable to earning of exempt income apart from the suo-moto disallowance offered by assessee in its return of income. Even otherwise only those investments which have yielded exempt income can be considered for the purpose of making disallowance and lastly in the absence of exempt income, disallowance of expenditure is not permissible. It was further submitted that the amendments in provisions of section 14A introduced vide Finance Act 2022 w.e.f. 01.04.2022 cannot be presumed to have retrospective effect.
- iii. The Ld. CIT(A) after observing that although AO had recorded his satisfaction before making disallowance u/s 14A, but in view of the decisions of the Hon'ble Jurisdictional Bombay High Court and also of the co-ordinate bench of ITAT, Mumbai relied upon by the appellant, held that the disallowance made by the AO over and above the suo-moto disallowance is not justified.
- iv. We have carefully considered the submissions made by the Ld. AR as well as Ld. DR. The statement of monthly average of investments has been submitted based on which the total average has been worked out at 5,32,99,615/-. Based on this suo-moto disallowance at Rs.

53,79,626/- has been rightly calculated by the Assessee. The AO has taken into account the investments which have not yielded income. In this regard, decision of **the Hon'ble Jurisdictional Bombay High in the case of Pr. CIT v/s Ballarpur Industries Ltd (ITA No. 51/2016, order dated 13.10.2016)** has been relied upon by the Ld. CIT(A) in which has been held that no disallowance u/s 14A is warranted in respect of investments not yielding tax free income for the appellant. Similar view has been taken by the Special Bench of the ITAT, Delhi in the case of **ACIT v/s Vireet Investments Pvt. Ltd. (2017) 58 ITR (T.) 313 (Delhi Trib.)**. Similarly, Mumbai Bench of ITAT in the case of **S. Krishnamurthy v/s ACIT (ITA No. 6207/Mum/2012)** has also held that the disallowance has to be worked out on the basis of investment which yielded dividend during the year and not by factoring in the total amount of investment.

- v. The appellant's contention is that it has not earned any exempt income during the year from investments in equity and debenture instruments and hence no disallowance of expenditure is permitted. In view of the various judicial pronouncement on this regard reliance was placed on **the Hon'ble Supreme Court's decision PCIT v/s Oil Industry Development Board (2019) 103 taxmann.com 326** wherein the Hon'ble Supreme Court has dismissed the SLP filed against the Hon'ble Delhi High Court's order upholding the ITAT's decision to delete the disallowance u/s 14A in the absence of any exempt income.
- vi. Considering the factual matrix, in the light of the various judicial pronouncements, we are of the view that the decision of the Ld. CIT(A) on this issue deserves to be upheld.

Ground No. 2 :- Disallowance of foreign travel expenses

- a. Facts in this regard are that the assessee had claimed foreign travel expenses to the tune of Rs. 20,38,038/- as mentioned in point No. 23 of the Tax Audit report. As the assessee did not

justify the nature of these expenses and its nexus with business and profession, the same was disallowed by the AO on the ground that it had not been incurred for the purposes of business. The Ld. CIT(A) noted that the reply filed by the assessee during the assessment proceedings was not considered by the AO. The Ld. CIT(A) sought the comments from the AO on the submission of assessee. Since no reply was received from the AO, the Ld. CIT(A) deleted the addition made by the AO after observing that foreign travel expenses were incurred for business purposes.

b. We have heard the Ld. AR as well as the DR on this issue. It has been explained that the assessee had undertaken Project 'Athashri' in Pune for Senior Housing, and that foreign travel was undertaken by the Director of the company in order to replicate the project in USA for Senior Citizens of Indian community. The other visit to Israel was undertaken to attend 19th Annual International Convention NETCON 2019 held in Tel Aviv, Israel in August 2019. The event was wholly and exclusively for the purpose of business. It is seen that submissions filed in this regard vide reply dated 07.09.2022 have not been taken into account by the AO, as such the Ld. CIT(A) has rightly allowed the claim of foreign travel expenses u/s 37(1) of the Act.

4. In the result, the appeal filed by the revenue is dismissed.

Order Pronounced in Open Court on 31.05.2024

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(RENU JAUHRI)
ACCOUNTANT MEMBER

Place: Mumbai
Date 31.05.2024

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.