



\$~19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 162/2023**

PR. COMMISSIONER OF INCOME TAX-7 Appellant

Through: Mr Puneet Rai, Sr. Standing Counsel
with Mr Ashvini Kumar and Ms
Madhavi Shukla, Jr Standing
Counsels.

versus

M/S SECURITY PRINTING AND MINING CORPORATION OF
INDIA LTD Respondent

Through: Mr Rajiv Tyagi with Mr Rohit Gupta
and Mr Rahul Tyagi, Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

20.03.2023

%

[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL. 12808/2023

1. Allowed, subject to just exceptions.

CM APPL. 12809/2023 [*Application filed on behalf of the appellant
seeking condonation of delay of 56 days in filing the appeal*]

2. This is an application moved on behalf of the appellant/revenue
seeking condonation of delay in filing the appeal.

2.1 According to the appellant/revenue, there is a delay of 56 days.

3. Mr Rajiv Tyagi, who appears on behalf of the respondent/assessee,
says that he does not oppose the prayer made in the application.

4. Accordingly, the delay is condoned.

5. The application is disposed of.

ITA 162/2023

page 1 of 7



ITA 162/2023

6. This appeal concerns Assessment Year (AY) 2014-2015.

7. The appellant/revenue has assailed the order of the Income Tax Appellate Tribunal [in short, “Tribunal”] dated 30.06.2022. The Tribunal has deleted the disallowance made by the Assessing Officer (AO) under Section 14A of the Income Tax Act, 1961 [in short, “the Act”] and the CSR expenses incurred by the respondent/assessee.

7.1 This disallowance made by the AO, was confirmed by the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”].

7.2 In an appeal filed by the respondent/assessee, which is a public sector undertaking, the Tribunal reversed the view taken by the AO and CIT(A).

8. Mr Puneet Rai, senior standing counsel, who appears on behalf of the appellant/revenue, fairly concedes that the issue concerning CSR expenses stands covered by a judgment dated 06.01.2023 passed in ITA 3/2023, titled ***Pr. Commissioner of Income Tax-7 v. Steel Authority of India Ltd, 2023/DHC/000307.***

8.1 In other words, Mr Rai seeks admission of this appeal only with regard to the deletion of disallowance made by the Tribunal under Section 14A of the Act.

9. To be noted, the Tribunal while dealing with both the issues referred to hereinabove, followed its decision rendered in AY 2012-2013 and AY 2013-2014.

10. We are informed by the counsel for the parties that the appellant/revenue had not preferred an appeal against the decision of the Tribunal for the said AYs.



11. Mr Rai, however, tries to distinguish the view taken by the Tribunal in AY 2012-2013 and AY 2013-2014, by adverting to the fact that the AO in that case had not returned any specific finding.

11.1 In this context, reliance is placed *inter alia* on paragraph 7.2 of the Tribunal's order wherein relevant paragraphs of the Tribunal's decision for AY 2012-2013 and 2013-14 have been extracted. For the sake of convenience, paragraph 7.2 is extracted hereafter:

“7.2 Similar disallowance under section 14A came up for consideration before the Tribunal in the case of the assessee relating to the AY 2012-13. Vide consolidated order dated 16.09.2021 in ITA No. 3685/86, 3686/Del/2017 for AYs 2012-13 and 2013-14, the Tribunal deleted the disallowance of Rs. 49,82,319/- under section 14A for AY 2012-13. The relevant paras are extracted hereunder:-

“13. Coming to the disallowance u/s 14 A of Rs. 49,82,319/-, we find that in assessment year 2013-14, the Ld. CIT(A) has deleted the said addition on merits. In this year, the Ld. AO noted that assessee has made substantial investment in mutual fund dividend on which income is exempt. In response to the show cause notice, it was submitted that the dividend income earned during the year was Rs.4,31,79,170/- from the investment in the units of mutual fund and no specific or any special effort was made nor any direct or indirect expenditure was incurred. Further assessee has not taken any loan for making any investment as same has been made out of surplus fund. Ld. AO without examining the assessee's explanation having regard to the nature of expenditure debited has simply proceeded to make the disallowance u/s 14A read with Rule 8D of Rs. 49,82,310/- which was worked out under rule 8D by deducting 0.5% of the average investment. Ld. CIT(A) after detailed reasoning and analysis has confirmed the said disallowance.”

13. After hearing both the parties, we find that while invoking the disallowance u/s 14A read with Rule 8D, nowhere the AO has recorded his satisfaction as to why the assessee's explanation is not tenable. The relevant observation of the Ld. AO reads as under:-

“The assessee's contention is not acceptable, section 14A is very clear that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income, which does not form part of total income under this 'Act',



Dividend income arising out of these investments is exempt u/s 10 and does not form part of total income considering the facts of the assessee's case as common expenditure incurred and debited in the P&L a/c for both the activities i.e. for investment as well as business, I hold that disallowance of expenditure u/s 14A r. w. Rule 8 D is warranted in this case, which is worked out at Rs. 49,82,310/- (being 0.5% of the average investment of Rs. 99,64,63,755/-) as under and added to the total income of the assessee:-

*Opening Investment : Rs. 99,18,92,595/-
Closing Investment : Rs. 1,00,10,34,915/-
Average Investment : Rs. 99,64,63,755/-
0.5% of average : Rs. 49,82,319/-
(Addition of Rs. 49,82,319/-)"*

14. From the bare reading of the aforesaid observation, it is seen that nowhere AO has noticed the nature of expenditure debited nor he has examined the books of accounts as to what are the expenditure which can be said to be attributable for opening [sic] of the dividend income. The conditions laid down in u/s 14A(2) is not being satisfied and accordingly in view of the decision of Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing v. DCIT 328 ITR 81 disallowance made u/s 14A is allowed."

[Emphasis is ours]

11.2 Furthermore, Mr Rai has also drawn our attention to paragraphs 4.3 to 4.5 of the order passed by the AO, as extracted hereafter:

"4.3 The contention of the assessee that no expenditure has been incurred which is directly related to the income which does not form part of total income is acceptable in this case as is the contention that no interest expenditure has been incurred in relation to such income as the assessee is a cash rich organisation. Accordingly, no disallowance is being made as per provision of Rule 8D(2)(i) & Rule 8D(2)(ii). However, it is obvious that certain expenditure of the nature of administrative and other expenditures are bound to have been incurred by the assessee simply for the reason that the assessee is maintaining such assets, in this case being units of mutual funds and shares of the joint venture company, which have yielded or can yield incomes which does not form part of total income. It cannot be denied that some expenditures such as those incurred on man-hours spent on maintenance of accounts of such investments, man-hours spent on



reconciliation of such investments, documentation, stationery, computer resources, accounting softwares etc. are attributable to the fact that the assessee is having such assets in its balance sheet. On the same note, it can also be said that the expenditure incurred by the assessee towards the audit of such investments and representation before the Authorities/Agencies are also expenses incurred towards maintaining such assets.

4.4 *In the specific instance of mutual funds, the assessee will have to monitor the NAV of the mutual funds units on a regular basis for deriving the most benefits from the mutual funds. Further, the investment made from time to time, as per the availability of surplus funds, also has cost involved in terms of entry load, documentation, management decision making for making the investment etc. In the specific instance of investment in the joint venture company, as in the case of this year, the assessee has infused significant funds by way of equity in the JV company. This itself entails significant cost in terms of documentation, legal formalities, decision making, seeking of legal/financial opinion etc.*

4.5 *Therefore, in view of the provisions of Section 14A(2), I am not satisfied with the claim of the assessee that no such expenditure has been incurred in relation to the assets incomes from which do/may not form part of total income. In above background assessee's claim that it has not incurred any expenditure in relation to incomes which do not form part of total income or in relation to assets incomes from which do not form part of total income is rejected."*

12. In sum, the AO has ruled that although the provisions of Rule 8D(2)(i) and (ii) would not apply, the provisions of Rule 8D(2)(iii) would apply *qua* the respondent/assessee's case. At the relevant time, Rule 8D read as follows:

"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;

(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely:-

$$A X \frac{B}{C}$$

Where A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year,

(iii) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year."

(3) For the purposes of this rule, the "total assets" shall mean, total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets."

14. We may note that the AO has not returned any specific findings with regard to the expenses which the respondent/assessee may have incurred towards exempt income. The AO has proceeded on the basis that the respondent/assessee would have incurred expenses towards audit of the investments made, from which exempt income was earned and for maintaining the assets. The AO has also observed that the assessee would



have had to monitor the Net Asset Value (NAV) of the mutual funds on a regular basis. Based on these observations, 0.5 % of the average value of investment in terms of Rule 8D(2)(iii) has been disallowed towards administrative and other expenses.

15. Counsel for the parties say that they want a short accommodation to assist the Court on this aspect of the matter.

16. Accordingly, list the appeal on 25.04.2023.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 20, 2023 / tr

[Click here to check corrigendum, if any](#)

ITA 162/2023

page 7 of 7