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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 77/2022**

H.T. MEDIA LIMITED ..... Appellant

Through: Mr.V.P. Gupta with Mr.Anunav Kumar, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX-4, DELHI ..... Respondent

Through: Mr.Ajit Sharma, Sr. Standing Counsel with Mr.A.Renganath, Advocate.

\+ **ITA 95/2022**

H.T. MEDIA LIMITED ..... Appellant

Through: Mr.V.P. Gupta with Mr.Anunav Kumar, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX-4, DELHI ..... Respondent

Through: Mr.Ajit Sharma, Sr. Standing Counsel with Mr.A. Renganath, Advocate.

Reserved on : 27th October, 2022

% Date of Decision: 23rd November, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present appeals have been filed under Section 260A of the Income Tax Act, 1961, ('Act').

1.1 The Assessee has impugned order dated 22nd February, 2021, passed in ITA No. 4583/Del/2017 for the Assessment Year ('AY') 2012-13 in ITA No. 77/2022.

1.2 The Assessee has impugned order dated 26th August, 2021, passed in ITA No.1876/Del/2018 for the AY 2013-14 in ITA No. 95/2022.

AY 2012-13

2. The facts giving rise to the present appeal are that the Appellant, Assessee, had filed its return of income ('ROI') for the relevant assessment year, declaring an income of Rs. 198,88,65,682/-. The Assessee earned dividend income of Rs. 5,80,00,000/- in the said year, which was claimed as exempt income under Section 10(34) of the Act. The Assessee had *suo moto* disallowed a sum of Rs.1,00,000/- as expenditure towards administrative expenses under Section 14A of the Act, in respect of the said tax-free income. The Assessing Officer ('AO') was not satisfied with the working of the disallowance made by the Assessee and he, therefore, determined a sum of Rs. 1,44,85,000/- as the disallowance towards administrative expenses under Rule 8D(2)(iii) of the Income Tax Rules, 1962 ('IT Rules').

2.1. The Commissioner of Income Tax (Appeals) ['CIT(A)'] relying upon the judgment of this Court in ***ACB India Ltd. vs. ACIT, (2015)***

374 ITR 108 (Del), restricted the disallowance by ascertaining the amount of total investment and limiting it to the investment from which the tax-exempt dividend was earned. The CIT(A), however, excluded the investment held by the Assessee in its subsidiary company even though it had yielded dividend. The CIT(A), therefore, restricted the disallowance under Rule 8D(2)(iii) to Rs. 26.70 Lakhs.

2.2. The Income Tax Appellate Tribunal ('Tribunal') relied upon the judgment of this Court in Assessee's own case for the AY 2010-11 to uphold the aforesaid disallowance under Rule 8D(2)(iii). However, the Tribunal modified the order of the CIT(A) to the extent it disallowed the value of Assessee's strategic investment in its subsidiaries for the purpose of computation of disallowance and added the same. The Tribunal held that the said investment held by the Assessee in the subsidiary company has to be considered for the purpose of disallowance, following the judgment of the Supreme Court in ***Maxopp Investment Ltd. vs. CIT, (2018) 402 ITR 640 (SC).*** The Tribunal concluded that the disallowance under this Rule works out at Rs. 55,12,500/-. The working of the said disallowance has been set out as under: -

Particulars	***Investment as on 31.03.2011 (crores)***	***Investment as on 31.03.2012 (crores)***	***Average Investment (crores)***
Investments on which dividend income was received during the year.	*117.75*	*102.75*	*110.25*
*Disallowance at **0.5%***			*Rs. 55,12,500*

AY 2013-14

3. In this AY, the Tribunal upheld the disallowance made by the AO under Section 14A read with Rule 8D(2)(iii), as upheld by the CIT(A). However, for the purpose of calculation of the said disallowance the Tribunal relied upon the order passed by its coordinate bench in Assessee's own case for AY 2012-13 and has directed the AO to re-compute the disallowance under Rule 8D(2)(iii) by including the investment made by the Assessee in the subsidiary company.

3.1. In this assessment year, the Assessee had earned dividend income of Rs. 7.04 Crores and had *suo moto* disallowed Rs.9,75,000/- under Section 14A of the Act, towards expenses pertaining to tax free income. The AO being unsatisfied with the *suo moto* disallowance by the Assessee towards administrative expenses, determined a sum of Rs. 11,550,027/- as the disallowance towards administrative expenses under Rule 8D(2)(iii) of the IT Rules.

3.2. The CIT(A), qua the disallowance on administrative expenses relied upon the decision of its Predecessor Bench for AY 2012-13 to hold that the disallowance on average investment on which dividend income has actually been received by the Assessee company excluding the investment in subsidiary company works out at Rs. 23.46 Lacs being 0.5% of average investment of Rs. 46.92 crores.

3.3. The Tribunal had dismissed the objection of the Assessee that no satisfaction has been recorded by the AO, by observing that the AO has

recorded the facts qua investment made by the Assessee in the shares/mutual funds and has also considered the working of the *suo moto* disallowance by the Assessee, however, the basis on which the Assessee arrived at the said figure of Rs. 9,75,000/- was not explained. The Tribunal further modified the order of the CIT(A) to the extent it excluded the value of Assessee's strategic investment in its subsidiary for the purpose of computation of disallowance and added the same. The Tribunal held that the said investment held by the Assessee in the subsidiary company has to be considered for the purpose of disallowance following the judgment of the Supreme Court in ***Maxopp Investment Ltd.*** (supra) and directed the AO to re-compute the disallowance by including the investment made in the subsidiary company.

Arguments of the Assessee

4. The arguments raised by the learned counsel for the Assessee are common for both the appeal(s) as the issues raised in the present appeal(s) are same.

4.1. The learned counsel for the Assessee states that the Tribunal erred in holding that the AO has duly recorded its proper satisfaction in terms of Section 14A(2) of the Act, without considering the submissions of the Assessee and the judgment of this Court in Assessee's own case for AY 2008-09 being ***H.T. Media Ltd. vs. Principal Commissioner of Income Tax, (2017) 399 ITR 576***. He states that the facts and circumstances in AY 2008-09 were similar and this Court had in those proceedings held that the AO had not recorded

proper satisfaction and therefore, the disallowance made by the AO was deleted. He states that the Tribunal erred in upholding the disallowance without appreciating that the AO has not recorded his satisfaction and therefore, the disallowance of Rs. 1,00,000/- in its ROI should have been accepted. He states that the Tribunal failed to consider the explanation submitted by the Assessee in its letter dated 10th December, 2014, along with the basis for determining the disallowance of Rs. 1,00,000/- under Section 14A of the Act, on account of expenses incurred in relation to the exempt income in AY 2012-13. He states that the Tribunal failed to appreciate that the disallowance of administrative expenses on the basis of salary cost of the Assessee's finance department was calculated in the ratio of exempt income to gross receipt, which was justified and reasonable and that the said computation had been upheld by this Court in AY 2008-09. He states that the calculation of the disallowance for the AY 2012-13 was set out in the letter dated 10th December, 2014, and in letter dated 04th January, 2016, for AY 2013-14.

4.2. The learned counsel for the Assessee states that there is no dispute about the quantification of the disallowance and the challenge in the present appeal is that AO has not recorded any satisfaction while determining the disallowance as per Section 14A of the Act, read with Rule 8D if the IT Rules.

Arguments of the Revenue

5. Mr. Ajit Sharma, learned senior standing counsel for the Revenue

appears on advance notice. He states that the Tribunal and the CIT(A) have returned concurrent findings in both the appeal(s) upholding the satisfaction recorded by the AO for disallowance of the expenses under Section 14A of the Act. He states that the Tribunal has relied upon the judgment of this Court in Assessee's own case for AY 2010-11 while determining the value of investment to be considered for disallowance under Rule 8D. He states that in AY 2010-11 and 2011-12 disallowance under Section 14A of the Act, read with Rule 8D has been upheld.

6. In rejoinder, learned counsel for the Assessee states that for AYs 2010-11 and 2011-12, the issue of recording of proper satisfaction under Section 14A of the Act was remanded by the ITAT to the AO. He therefore states that it is incorrect for Revenue to contend that the disallowance for AYs 2010-11 and 2011-12 has been made as per Rule 8D of the IT Rules.

Analysis by this Court

7. We have heard the learned counsel for the parties. The submission of learned counsel for the Assessee that the method adopted by the Assessee for calculating the disallowance had been upheld in AY 2008-09 and therefore the same should be accepted in the AY(s) 2012-13 and 2013-14, which are subject matter of the present appeal(s), on the principle of consistency, is incorrect and contrary to the record. The submission of the learned counsel for the Assessee that the issue of satisfaction for AYs 2010-11 and 2011-12 was remanded by ITAT to AO is also not borne out from the record.

7.1. On a perusal of the Tribunal's order, it is borne out that in the intervening assessment years i.e., AYs 2010-11 and 2011-12, the AO had similarly calculated the disallowance under Rule 8D(2)(iii), on account of administrative expenses incurred on earning of exempt income and the same was upheld by the Tribunal in its order dated 05th September, 2018. The method adopted by the Assessee for making *suo moto* disallowance was not accepted by the AO in the said assessment years and the AO proceeded to invoke Rule 8D(2)(iii) for determining the administrative expenses for disallowance.

7.2. For AYs 2010-11 and 2011-12, the ITAT in its order dated 05th September, 2018 upheld the satisfaction recorded by the AO with respect to the invocation of Section 14A of the Act read with Rule 8D(2)(iii). However, the ITAT observed that while computing the disallowance, the AO had not taken into consideration the amount of Rs.5,45,000/- disallowed by the Assessee. This finding of ITAT is borne-out from the assessment order of AY 2010-11, where the AO while calculating the expenditure under Rule 8D(2)(iii) of the Act, did not take into account, the disallowance of Rs.5,45,000/-. In other words, the amount of Rs. 5,45,000 was not accounted for by the AO and to that extent the demand was excessive. The ITAT remanded the said issue back to the AO with the mandate for determining the average value of investment to which Rule 8D(2) has to be applied and thereafter to calculate the expenditure incurred by the Assessee on non-exempt investments including interest portion. The terms of the remand of ITAT is premised on the acceptance of valid invocation of Rule 8D(2).

There was, thus, no surviving issue with respect to validity of the satisfaction recorded by AO under Section 14A of the Act before making disallowance.

7.3. This becomes further evident from the order dated 29th March, 2019 passed by this Court while disposing of the appeal filed by Revenue against the ITAT's order dated 5th September, 2018 for AY 2010-11 in ITA No. 281/2019 wherein, this Court recorded the scope of remand by the ITAT as follows:

> *"Issue notice to the respondent.*
>
> *Mr. V.P. Gupta, Advocate accepts notice on behalf of the respondent. With the consent of learned counsel, this appeal is heard.*
>
> *The question urged by the Revenue in its appeal is with respect to the correctness of the remand made by the ITAT in its impugned order; the remand was on two aspects i.e. the calculation of average investments (confined to the income generating part thereof) and the exclusion of tax exempt income derived from strategic investments.*
>
> *The observation of the ITAT on the latter aspect, i.e. exclusion of tax exempt income derived from a strategic investments, is not a correct view in the light of the decision of the Supreme Court in Maxopp Investment Ltd. Vs. Commissioner of Income Tax, (2018) 402 ITR 640. Accordingly, the observations of the ITAT on this aspect are set aside. However, its observations with respect to the calculation of disallowance under Section 14A being confined to investments that derived tax exempt income are valid in the light of the Division Bench ruling in ACB India Ltd. v. ACIT, (2015) 374 ITR 108 (Del).*
>
> *In view of the above clarification, the ITAT's order, to the extent that it makes observations with respect to exclusion of*

income derived from strategic investments, is hereby set aside.

This appeal is partly allowed."

(Emphasis supplied)

7.4. This Court in fact modified the order of remand and issued further directions to the AO for arriving at the value of average investment for applying the method under Rule 8D(2)(iii). The order of this Court proceeded on the premises that Section 14A of the Act, has been invoked after recording of proper satisfaction.

7.5. The contention sought to be raised by learned counsel for Assessee that the issue of satisfaction under Section 14A of the Act, was also remanded to the AO for AY 2010-11 is not borne out from the orders of the ITAT or this Court. The order dated 29th March, 2019, of this Court was passed in the presence of learned counsel for the Assessee, however, the Assessee had not raised any contention before this Court that the issue of proper satisfaction before invoking Section 14A is also an issue to be decided by the AO on remand.

7.6. With respect to AY 2011-12 as well, the ITAT upheld the invocation of Section 14A read with Rule 8D and remanded the matter to the AO for the purpose of calculating the value of average investment and the expenditure incurred by the Assessee on non-exempt investments.

7.7. The Assessee has admittedly not challenged the order dated 5th September 2018 of ITAT for AYs 2010-11 and 2011-12 as well as order

of this Court for AY 2010-11. The order passed by the ITAT for the year AY 2010-11 has merged with the order dated 29th March, 2019, passed by this Court, which sets out the scope of the remand, which is limited to determining the average value of investment.

7.8. Therefore, in light of the aforesaid decision of predecessor bench, it can be seen that in the intervening AY(s) 2010-11 & 2011-12, the method of disallowance adopted by Assessee was rejected by the AO and the said rejection was confirmed by the ITAT. The said order of ITAT has not been challenged by Assessee and has attained finality. Thus, the submission of the Assessee on the basis of principle of consistency does not hold ground.

Disallowance under section 14A

8. We are also not persuaded by the contention of the Assessee that the AO has failed to record proper satisfaction before rejecting the explanation offered for the disallowance made by the Assessee itself and proceeding to make the disallowance under Section 14A of the Act read with Rule 8D(2)(iii).

8.1. The AO at paragraph 3.1 of his assessment order dated 19th January, 2015, for AY 2012-13, after examining the accounts, called upon the Assessee to explain the basis of the estimation of expenses of Rs. 1,00,000/- disallowed by the Assessee for the tax-free income of Rs. 85.04 Crores earned in the AY 2012-13. The AO put the Assessee to notice of his intention to calculate the disallowance as per Rule 8D(2)(iii). Paragraph 3.1 of the said assessment order reads as under: -

"3.1 A perusal of profit & loss account and balance sheet reveals that assessee company has made investment in quoted shares at Rs. 9,29,28,10,000/- as on 31st March, 2012 out of which investment of Rs. 2,99,11,00,000/-has been made in equity shares for the purpose of earning dividend income and long term capital gains which are exempt and not chargeable to tax under the Income Tax Act whereas the total turnover of the assessee company is Rs. 12,14,21,56,000/-. The assessee company has earned dividend income at Rs. 5,80,00,000/- during the year under reference. On examination of computation of income it is noted that the assessee has disallowed Rs. 1,00,000/- u/s 14A being expenses pertaining to the tax free income. During the assessment proceedings, the assessee company was asked to explain the basis of estimation of expenses at Rs. 1,00,000/- pertaining to tax free income and as to why such disallowance may not be computed as per Rule 8D of I.T. Rules, 1962. In response, vide reply dated 10.12.2014, the assessee has submitted that no direct expense was incurred for earning of this dividend income however the disallowance of Rs. 1,00,000/- computed on estimation basis."

[Emphasis supplied]

8.2. The Assessee filed its reply dated 10th December, 2014, to the said notice and stated that there was negligible cost incurred by the Assessee company on account of administrative expenses. The Assessee, however, stated that the company had offered a sum of Rs. 1,00,000/- by allocating the proportionate salary cost of corporate finance department executives in the ratio of exempt income to gross turnover ratio. In support of the said contention the Assessee also annexed to its letter, a computation explaining the method of cost allocation. The AO at paragraph 3.2 after duly considering the financial statements of the Assessee and the said reply filed by the Assessee,

recorded his unsatisfaction with respect to the computation furnished by the Assessee in the following terms:-

> *"3.2 The submissions advanced by the assessee company have duly been considered. The working of disallowance of the assessee u/s 14A read with Rule 8D of the I.T. Rules has been gone through and considered. On what basis the assessee has arrived at the figure of Rs. 1,00,000/- is not clear. Similarly, the assessee's claim that it has not incurred any other expenses in respect of management of investment affairs is also not acceptable. Thus, I am not satisfied with the working of disallowance u/s 14A by the assessee, hence actual disallowance as per Rule 8D is required."*
>
> **[Emphasis supplied]**

8.3. On a perusal of paragraph 3.1 and 3.2 of the assessment order(s) for the concerned assessment years qua the issue of recording of satisfaction by the AO, it can be seen that the AO in first place examined the Assessee's accounts and was not satisfied with the disallowance offered by the Assessee and had, therefore, called upon the Assessee to offer its explanation with respect to the break up the disallowance.

8.4. The AO thereafter examined the accounts of the Assessee and the explanation submitted by him vide its letter dated 10th December, 2014, qua the Assessee's disallowance of administrative expense. The AO observed that the submissions made by the Assessee is unsatisfactory and held that the working of the disallowance is without any 'basis' and consequently, proceeded to invoke Rule 8D(2)(iii).

8.5. In the appeal filed by the Assessee, the said finding of the AO was upheld by CIT(A). The CIT(A) as well, after considering the

submissions of the Assessee in its letter dated 10th December, 2014, held that the amount offered by the Assessee as a disallowance towards administrative expenses was on a 'guess estimate' basis rather than it being actually borne out from the records of the Assessee. Accordingly, the CIT(A) concurred with the disallowance made by the AO under Rule 8D(2)(iii) of the IT Rules, after rejecting the explanation submitted by the Assessee for offering the sum of Rs. 1,00,000/-.

8.6. In the appeal filed by the Assessee, the Tribunal as well upheld the finding of the AO recording his unsatisfaction with respect to the disallowance offered by the Assessee.

Further, the Tribunal in its impugned order dated 26th August, 2021, for AY 2013-14 has returned a finding of fact that in the year under consideration there was churning and change in the investment portfolio of the Assessee, as the Assessee had sold some of its investments and made new investments. The Tribunal held that the decisions pertaining to selection of new investments and appropriate time for sale of existing investments would necessarily require application of mind and time by the management of the Assessee. The Tribunal, therefore, concluded that the claim that no expenditure had been incurred by the Assessee in the relevant assessment year was unacceptable.

8.7. The Tribunal in its impugned order dated 26th August, 2021, has also held that the Assessee's estimate of disallowance is contrary to its claim of no expenditure and it accordingly rejected the submissions of

the Assessee and upheld the application of Rule 8D(2)(iii) by the AO and CIT(A).

8.8. The AO and the appellate authorities have, thus, concurrently found that the disallowance of expense relating to exempt income offered by the Assessee was not borne out from the records and no 'basis' has been provided for arriving at the amount of disallowance and therefore, rejected the said disallowance estimated by the Assessee. The AO and the appellate authorities rejected the contention of the Assessee that it has incurred negligible expenses for earning the exempt income.

8.9. We have also perused the letter(s) dated 10th December, 2014, and 04th January, 2016, filed by the Assessee as justification in support of the disallowance offered by it. The contents of the Assessee's letters are identical wherein it has been stated that the Assessee has incurred negligible cost on account of administrative expenses. The relevant portion of the letter dated 10th December, 2014, reads as under:-

> *"As regards the disallowance on account of administrative expense, it is submitted that the activities relating to investment is attended by the executives of finance department who are primarily employed for the business activities of the company. During the subject year, the company has received dividend income from one investment. Hence, there was only one entry passed in books for accounting such dividend Income. Also, such dividend income was directly credited into the account of company by way of ECS credit. In view of direct credit of dividend income into bank and requisite accounting for the same, there could be negligible cost incurred by the company on account of administrative activities. The expenditure incurred by the company on recording these entries during the year would be*

negligible as compare to business operations of the company. The Company however has already offered Rs one lakh towards meeting of administrative expenses in its computation of taxable income which in view of the assessee company is sufficient and justified. The said amount has been determined by allocating the proportionate salary cost of corporate finance department executives in the ratio of exempt income to gross turnover ratio. The said method of allocation is given at Annexure 6 of this submission."

(Emphasis supplied)

8.10. The method of allocation adopted by the company for calculating the disallowance filed in support of the said letter is reproduced hereunder:-

H T Media Ltd
FY 2011-12
Allocation of proportionate corporate finance cost towards exempt Income

Particulars	*Amount (Rs.)*	*Remarks*
Total Salary Cost of executives of Corporate Finance Department (A)	*20,151,504*	*As per Annexure attached*
Exempt Income (B)	*58,019,274*	*Dividend Income earned during FY 2011-12*
Gross Turnover (C)	*13,191,397,465*	*Revenue from Operations*
*Proportionate cost allocated to exempt Income A*B/C*	*88,632*	
Say Rs.	***1 Lakh***	

(Emphasis supplied)

8.11. A perusal of the contents of the letter and the table calculating the

disallowance, substantiate the finding of the AO and CIT(A) that the disallowance made by the Assessee is admittedly on an ad-hoc basis. The AO and CIT(A) rejected the method of apportionment offered by the Assessee having not found the same to be reasonable or satisfactory; the CIT (A) held the same to be "guess estimate" and the said finding has been upheld by the Tribunal. The Assessee in the letter has used the expression 'say Rs.', which substantiates the findings of the appellate authorities that it is a mere "guess estimate" of the Assessee.

8.12. The Assessee in the facts of the present case has admittedly not furnished particulars of the actual expenditure incurred by it for earning the exempt income. It is the case of the Assessee that it had incurred negligible expenses, which are indeterminate and it has therefore relied upon its own self – devised method for estimating the said negligible expenditure. However, the AO recorded his dissatisfaction with the computation of disallowance after examining the accounts of the Assessee. Section 14A read with Rule 8D(2)(iii) prescribes the method to be applied for determining the expenditure incurred for earning exempt income. The AO and the appellate authorities, in the facts of this case, cannot be faulted for applying the statutory method for determining the expenditure and rejecting the Assessee's suo moto disallowance.

8.13. The dissatisfaction of the AO is expressly recorded in the assessment order. The said dissatisfaction has been upheld by the appellate authorities after perusing the records of the Assessee. We do not find any merit in the submission of the Appellant that the AO has

failed to record satisfaction. The Assessee has failed to point out any error in the findings of the appellate authorities except to state that the disallowance offered by the Assessee should be accepted as it was done in AY 2008-09 and AY 2009-10 on the principle of consistency. In this regard, we observe that this Court in its decision for AY 2008-09 while setting aside the deletion under Section 14A has not upheld the self - devised method adopted by Assessee for making the allowance but adjudicated on the failure of the AO to record his proper satisfaction before invoking Section 14A.

We have already rejected the submission of application of principle of consistency and further, held that the disallowance offered by the Assessee in the assessment years under consideration being on an ad-hoc basis has been rightly rejected by the AO. We, therefore, do not find any reason to interfere with the said concurrent findings of the appellate authorities.

9. It is pertinent to note here that the Supreme Court in the case of ***Godrej & Boyce Manufacturing Co. Ltd. v. Dy. CIT & Anr.*, *[2017] 394 ITR 449 (SC)*** at paragraph no. 37 has held as under:-

> *"37. …Whether such determination is to be made on application of the formula prescribed under rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of section 14-A(2) and (3) read with rule 8-D of the Rules or a best*

judgment determination, as earlier prevailing, would become applicable."

10. As noted above, in the present case as well, a perusal of the record reveals that the AO has applied his mind to the controversy as he firstly examined accounts, secondly duly invited the reply of the Assessee to explain the basis of the disallowance offered by the Assessee and thirdly after examining the explanation of the Assessee has recorded its dissatisfaction after observing that the 'basis' adopted by the Assessee for making such an estimate was unclear. The CIT(A) and ITAT, which are the fact finding authorities upon examination of record, have concurred with the said finding of dissatisfaction of the AO.

11. We therefore in the facts of this case do not find that any substantial question of law arises for consideration in the present appeals, accordingly the same are dismissed.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

NOVEMBER 23, 2022
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