आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.1333/Ahd/2024
Assessment Year : 2020-21

Cera Sanitaryware Ltd 7th and 8th Floor, "B" Wing Privilon, Ambli BRTs Road Iskcon Cross Roads Shilaj BO, Taluka : Daskroi Dist: Ahmedabad. PAN : AABCM 9244 N	Vs	The DCIT, Cir.1(1)(1) Ahmedabad.
(Applicant)		**(Responent)**

Assessee by :	Shri Dinal Shah, AR
Revenue by :	Smt.Malarkodi R., Sr.DR

सुनवाई की तारीख/**Date of Hearing : 03/02/2025**
घोषणा की तारीख /**Date of Pronouncement: 07/02/2025**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

The above appeal has been filed by the Assessee against order passed by the ld.Commissioner of Income-tax (Appeal), National Faceless Appeal Centre ("NFAC"), Delhi dated 13.6.2024 passed under section 250 of the Income Tax Act, 1961 ("the Act" for short) pertaining to Assessment Year 2020-21.

2. Ground no.1 raised by the assessee reads as under:

1. The learned CIT (Appeals) erred in confirming the expenses of Rs.4,70,331/- under Section 14A read with Rule 8D inasmuch as the AO has not brought any cogent material to show that the expenses incurred are more than what is disallowed by the appellant company and that the AO has not expressed any satisfaction.

3. The issue raised in the above ground relates to disallowance of expenses, incurred by the assessee allegedly for earning exempt income ,made in terms of section 14A of the Act, amounting to Rs.4,70,331/-.

The facts relating to the issue being that the assessee was noted to have earned exempt income of Rs.22,44,171/- and to have made suo moto disallowance of expenses for the purpose of earning the exempt income under section 14A of the Act amounting to Rs.3,69,059/-. The assessee was asked to justify the *suo moto* disallowance made. Due reply was furnished by the assessee. The AO not being satisfied with the reply of the assessee, invoked Rule 8D of the Income Tax Rules, 1962 for the purpose of computing the quantum of disallowance and worked out the same to be Rs.8,39,390/-. Since the assessee had *suo moto* made disallowance of Rs.3,69,059/-, the balance amount of Rs.4,70,331/- was further disallowed by the AO and added to the income of the assessee under section 14A of the Act. The same was confirmed by the ld.CIT(A).

4. The contention of the ld.counsel for the assessee before us was that the disallowance made was not as per the law because since the AO had invoked Rule 8D of the Rules for the purpose of computing the disallowance, without recording any dissatisfaction with the explanation of the assessee regarding the *suo moto* disallowance made, which he contended was mandatory for invoking Rule 8D of the Rules. He pointed out that while the assessee had given a break-up of calculating the *suo moto* amount disallowed of Rs.3,69,059/- to which our attention was drawn as under:

Cera Sanitaryware Limited
Working of disallowance u/s 14A

Particulars	For the Period 31st March, 2020 Rs.
Employee Cost	2,83,561
Depreciation	10,275
Other overheads [25% of (Emp. Cost + Dep)]	75,223.01
Total:	**3,69,059**

Employees cost	Total Cost	Total time involved (%)	Amount (Rs.)
Rajesh B. Shah, CFO and COO (Fin. & Comm.)	1,10,69,576	1%	1,10,696
Vinit Jain	28,49,945	2%	56,999
Rini Bhiwaniwala	11,58,661	10%	1,15,866
Total:	**1,50,78,182**		**2,83,561**

5. The AO, he contended, had not recorded any reasons worth-its-while for discrediting the explanation of the assessee with respect to the books of accounts of the assessee, and therefore, the invocation of Rule 8D for the purpose of calculating the quantum of disallowance to be made under section 14A of the Act by the AO was unjustified. The ld.counsel for the assessee contended that identical disallowance made by the AO in Asst.Year 2018-19 had been deleted by the ITAT in its order passed in ITA No.145/Ahd/2022 dated 3.10.2023 noting the absence of dissatisfaction of the AO with respect to the explanation of the assessee vis-a-vis the expenses *suo moto* disallowed by the assessee. Copy of the order was placed before us.

6. Even otherwise, he pointed out that the assessee had sufficient own-funds to the tune of Rs.77,289.15 lakhs comprising share capital of Rs.650.29 lakhs, and other equity of Rs.76,638.86 lakhs, which was more than sufficient for making investments amounting to Rs.26,243.17 lakhs. Further, he stated that net cash flow generated by the assessee during the impugned year from its operating income as per the cash flow statement, forming part of the financial statements amounted to Rs.12,323.53 lakhs which amount was more than sufficient for making investments. His contention, therefore,

was that the financial statements itself demonstrated that the total investment made by the assessee was out of its own fund and not out of borrowed funds, and therefore, there was no question for disallowing any interest income incurred for the purpose of making the impugned investments.

7. As for the administrative expenses incurred by the assessee, he contended, the assessee had sufficiently demonstrated the basis for making such disallowance, being salary of three employees involved in the financial and commercial department, basing the quantum of time devoted for making investments and 25% of other expenses. His contention was that the assessee having demonstrated suitably the basis for disallowance of expenses, the AO had to record objective dissatisfaction with the same, pointing out as to why more expenses need to be disallowed.

8. The ld.DR, however, pointed out that the AO did record his dissatisfaction and drew our attention to this fact noted by the ld.CIT(A) also at page no.36 to 37 of his order as under:

> *The provisions of Rule 8D read with the provisions of section 14(2) clearly mandate that it would be applicable and arise when the assessing officer is not satisfied with the claim of the expenditure made by the assessee in relation to income which does not form part of the total income. Thus the assessing officer is required to determine the claim of the assessee and examine the correctness of claim having regard to the accounts of the assessee.*
>
> *Reference is drawn to para 5.1 of the assessment order wherein the Assessing Officer noted his alleged dissatisfaction with the claim of the appellant and thus invoked Rule 8D of the Rules for computing expenses disallowable u/s 14A of the Act. The contents of the paras 5.1 is reproduced hereunder-*
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> *5.1 The assessee arguments for the disallowance u/s 14A cannot be considered due to following reasons:*
>
> *The submission of the assessee is studied, however the calculation of expenses pertaining to exempt income as per section 14A read with Rule 8D*

of the Income Tax Act, submitted by the assessee does not seem to be justified with following reasons:

1) When the assessee has made an annual average investment of Rs.8,39,39,019/-, the expenses incurred towards making the investment cannot be only Rs.3,69,059/- because the assessee has not kept the funds in separate accounts in the process of utilization, but the same is mixed & in a general pool of funds. The assessee has not been able to demonstrate whether the cash flow has been utilized to incur expenses in relation to exempt income or taxable income section 14A, includes that the assessee has to allocate both direct & indirect expenses for the exempt income, which has not been done & in absence of the same, the disallowance has to be calculated based on Rule 8D. In the assessee case, the exempt income has emanated from the investments made by the appellant.

2) While the assessee give the break-up of expenses incurred he has not furnished supporting evidence the expenses were incurred towards earning exempt income or taxable income.

Even in the computation, the assessee has only disallowed an ad-hoc expenses of 25% of other overheads amounting to Rs.75,223/- without providing any basis, why it is 25% of the total expense. This computation is without supporting evidences.

3) Hence, the disallowance is computed based on the provisions of sec 14A rw rule 8D of the IT Act, 1961 as discussed above.

The expenses incurred towards earning exempt income have not been disallowed as per rule 8D and the total disallowance as worked above is computed & added to the total income of the assessee.

Hence, the claim of assessee for the above issue is not allowed and the same is added to the income returned by the assessee."

It is clear that the AO had recorded the reason as to why he was not satisfied with the explanation of the Appellant and then only he had taken the route of Rule 8D.

The AO was correct in applying rule 8D while framing the assessment order since the appellant has failed to furnish the details of fund utilized for making such investment whether those from loans and on its own funds before the AO. The appellant had not kept the funds in separate accounts in the process of utilization, but the same is mixed & in a general pool of funds. The appellant has not been able to demonstrate whether the cash flow has been utilized to incur expenses in relation to exempt income or taxable income section 14A, includes that the appellant has to allocate both direct & indirect expenses for the exempt income, which has not been done. 5 »r J

Where Assessing Officer having regard to the volume of investment in shares and quantum of dividend income, earned thereon, invoked provisions of Rule 8D of 1962 Rules, read with section 14A and enhanced amount of disallowance for earning exempt income, disallowance so made was to be

confirmed - FLSmidth (P.) Ltd. Vs DCIT [2020] 118 taxmann.com 272 (Madras)/[2020]/273 taxman 441 (Madras)

After issuing show cause notice the ld.Assessing officer applied provisions of section 14A read with rule 8D(2)(iii). I found rib infirmity in action of the Ld. Assessing Officer, therefore the disallowance is hereby confirmed.

9. We have heard contentions of both the parties, and we find merit in the contention of the ld.counsel for the assessee that the disallowance made by the AO under section 14A of the Act by invoking Rule 8D for computing the quantum of expenses disallowable, is not in accordance with law.

10. It is not disputed that the assessee had furnished a basis for computing the quantum of disallowance, which included primarily the administrative expenses incurred by the assessee, including the cost of employees who had devoted time towards investment operations of the assessee and other overheads. The basis for allocating salaries towards these expenses was also provided. Thus, the assessee had disallowed only salary and other expenses which were incurred for the purpose of earning the exempt income, and no disallowance was made of interest expenses incurred for the purpose of making investment. The reason for not making any interest disallowance was that the assessee had sufficient own interest free funds by way of capital and even its own profits for making investments, which was sufficiently evidenced from the financial statements of the assessee itself. We have noted the dissatisfaction recorded by the AO while invoking Rule 8D of the Rules and we find that in its point no.1, the AO has recorded dissatisfaction in relation to the expenses not disallowed by the assessee relating to the funds utilized for making investment, which means, the financial expenses incurred for making the investment. But the fact of the matter is, which is noted above was clearly evident from the financial statements of the assessee, that

there was sufficient own interest free funds available with the assessee for making investment, and it is settled law that in such circumstances, the presumption is that the own fund has been utilized for making investments, and no disallowance of expenses is to be made under section 14A of the Act. The Hon'ble apex court in the case of South India Bank Ltd. vs CIT C.A.No.9606 of 2011 & Others dt 09-Sept 2021 that where there are mixed funds of the assessee and the own funds of the assessee are sufficient for making investment no disallowance of interest u/s 14A of the Act is warranted. Therefore, the dissatisfaction recorded by the AO with respect to financial expenses not disallowed by the assessee, we find is not correct. As for the dissatisfaction recorded by the AO with respect to the other expenses, the same, we find, is just a cursory dissatisfaction noted by him. The assessee has given the basis for allocating a certain percentage of expenses by way of salary and other expenses incurred for the purpose of earning exempt income while the AO has given no reasons to disbelieve the same from the accounts of the assessee.

11. In view of the same, we have no hesitation in holding that the computation of disallowance in the present case under section 14A of the Act by invoking Rule 8D of the IT Rules was not in accordance with law. The disallowance, therefore, made amounting to Rs.4,70,331/- is directed to be deleted.

Ground No.1 raised by the assessee is allowed.

12. The ground no.2 reads as under:

2. The learned CIT (Appeals) has erred in confirming the disallowance of Rs.45,97,690 under Section 41(1) on the ground that there is no cause of action arising from the order under Section 143(3) inasmuch as once an order

under section 143(3) is passed, the intimation under section 143(1) merges and therefore the CIT (Appeals) ought to have granted the relief."

13. The assessee has agitated the disallowance of Rs.45,97,690/- made in terms of provisions of section 41(1) of the Act. The contentions of the assessee before us was that the AO in his order passed while framing assessment and computing assessable income of the assessee had at para-7 of its order taken the income computed in the case of the assessee under section 143(1)(a) of the Act, which was higher as compared to the income returned by the assessee by an amount of Rs.45,97,690/- pertaining to the addition made under section 41(1) of the Act. He pointed out that while the income returned by the assessee amounted to Rs.141,18,75,750/-, the income computed as per section 143(1)(a) of the Act was Rs.141,64,73,440/- and to this income computed as per section 143(1)(a), the addition on account of disallowance under section 14A of the Act was made along with disallowance of health & education cess, resulting in the total income assessed amounting to Rs.142,99,69,643/-.

14. The ld.counsel for the assessee contended that no intimation under section 143(1)(a) of the Act was ever made on the assessee. Therefore, there was no question of treating the income computed under section 143(1)(a) of the Act as starting point for assessing the total income liable to tax of the assessee in the scrutiny assessment framed under section 143(3) of the Act. This contention was first made before us, during the course of hearing conducted on 17.10.2024, when the ld.DR was directed to verify from the AO, whether any intimation was made to the assessee under section 143(1)(a) of the Act. Thereafter, on several dates fixed for hearing, the Department unable to come up with anything concrete on the issue. On 26.11.2024, the ld.DR admitted that the AO had communicated

with the CPC in this regard and had received a general reply, from which nothing was forthcoming. She, therefore, sought some more time to get specific information on this aspect. The order-sheet entry dated 26.11.2024, notes that the ld.counsel for the assessee filed a screen-shot of the status of the return filed for the impugned year, which showed the return to be under processing and no intimation made under section 143(1)(a) of the Act. But despite so, the ld.DR was given further opportunity to inform the Bench, whether any intimation had been made under section 143(1) of the Act. Finally, when the matter came up before us today, the ld.DR expressed her inability to confirm the said fact.

15. Having noted so, we further record the other arguments of the ld.counsel for the assessee on the merit of the addition made, which was to the effect that the assessee had itself added liabilities which had ceased to exist, in terms of provisions of section 41(1) of the Act to its income reflected in the financial statement of the assessee itself, in its P&L account, and therefore, the income returned by the assessee of Rs.141.18 crores included liability returned back to the tune of Rs.45.97 lakhs. In this regard, he drew our attention to the financial statements of the assessee for the impugned year, more particularly, note no.28 to the audited financial statements, being revenue from operations, reflecting the item pertaining to the previous year unexplained liabilities etc. amounting to Rs.45.98 lakhs. The same is reproduced hereunder:

Sr. No.	Particulars	Year ended 31st March, 2020
Note - 28. OTHER INCOME		
1	Interest Income from Financial Assets at Amortised Cost	
	(a) On Security Deposits	16.74
	(b) Others	200.71
2	Dividend Income	
	(a) From Subsidiary company	-
	(b) From Mutual Funds	-
3	Profit on sale of Mutual Fund Units (Net)	135.92
4	Net Gain on Fair Valuation of Investments	1,130.57
5	Net Gain on foreign currency translation	5.98
6	Miscellaneous Income	19.70
7	Items pertaining to Previous year, unspent liabilities & provisons no longer required written back (Net)	45.98
	Total	1,555.60

16. He further placed before us copy of the tax audit report of the assessee in form 3CA for the impugned year pointing out therefrom the reporting of the tax auditor of profits chargeable to tax u/s 41(1) of the Act, in point no.25 of the report. Ld.Counsel for the assessee pointed out that the entire amount of Rs.45.98 lacs was reported therein and the auditor had also reported the amount to have been credited to the Profit and Loss account.

The ld.counsel for the assessee contended that any addition, therefore made now of the same, in any manner whether in the intimation under section 143(1) or in scrutiny assessment under section 143(3) of the Act would tantamount to double addition being made.

17. The ld.DR, on the other hand, on the merits of the case contended that the issue needed verification, and therefore, pleaded that the matter be restored back to the AO for fresh adjudication.

18. We have heard contentions of both the sides. We find merit in the contentions of the ld.counsel for the assessee that the addition made of Rs.45.97 lakhs under section 41(1) of the Act is not sustainable. As demonstrated by the ld.counsel for the assessee, the taxable income of the assessee has been assessed beginning with the

income assessed in the intimation made under section 143(1) of the Act, which included the addition of Rs.45.97 lakhs to the income of the assessee. Undoubtedly, there is no intimation made to the assessee under section 143(1), therefore, there is no question of computing the income of the assessee in its scrutiny assessment made by taking the figure assessed in the intimation made under section 143(1) of the Act. In the absence of any intimation under section 143(1)(a) of the Act, the income has to be computed from that returned by the assessee. Therefore, the addition of Rs.45,97,690/- for whatever reasons made, is not sustainable, and the same is, therefore, directed to be deleted.

19. Even otherwise on merits the assessee has demonstrated the impugned amount to be already included in its Profits returned to tax. The same has been shown to be included in the income of the assessee reflected in its Profit and Loss account and this has been confirmed by the tax auditor also. We, therefore, agree with the Ld.Counsel for the assessee that the addition is not sustainable on merits also as it tantamount to double addition.

Ground no.2 is allowed.

20. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 7th February, 2025 at Ahmedabad.

Sd/-	**Sd/-**
(T.R. SENTHIL KUMAR)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad,dated 07/02/2025

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