

**आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“E” BENCH, MUMBAI**

**माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.354 & 355/Mum/2020  
**(निर्धारण वर्ष / Assessment Year: 2015-16 & 2016-17)**

<b>M/s Shardul Securities Ltd.</b> G-12, Tulsiani Chambers Free Press Road 212 Nariman Point, Mumbai-400 021	<b>बनाम/</b> <b>Vs.</b>	<b>DCIT Range- 3(3)(1)</b> 6 <sup>th</sup> floor, R. No. 609 Aayakar Bhavan, M. K. Road, Mumbai-400 020.
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AAACS-7141-R</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Anuj Kisnadwala– Ld. AR
<b>Revenue by</b>	:	Shri Vijay Kumar Menon– Ld. DR

<b>सुनवाई की तारीख/</b> <b>Date of Hearing</b>	:	28/07/2021
<b>घोषणा की तारीख /</b> <b>Date of Pronouncement</b>	:	02/08/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

- The only grievance of the assessee in aforesaid appeals for Assessment Year (AY) 2015-16 & 2016-17 is disallowance u/s 14A. The facts are pari-materia the same in both the years and therefore, the appeals were heard together and are now being disposed-off by way of this common order for the sake of convenience & brevity.
- The Ld AR submitted that Ld. AO did not recorded objective satisfaction before applying Rule 8D and therefore, the disallowance

would not be sustainable in law as per settled legal position. The Ld. AR also advanced without prejudice argument that disallowance should have been computed only with respect to those investments which have yielded exempt income during the year. The assessee has also raised an additional ground of appeal to submit that the additional disallowance as made by Ld. AO while computing Book Profit u/s 115JB should also be deleted. Since the additional ground arises from the main ground, the same is admitted. The Ld. DR, on the other hand, submitted that the disallowance has been worked as per the statutory mandate. Our adjudication would be as given in succeeding paragraphs.

3.1 The material facts from case records of AY 2015-16 are that the assessee being resident corporate assessee is stated to be engaged in the business of leasing, finance, investment and advisory services. It earned exempt income of Rs.155.75 Lacs and offered suo-moto disallowance u/s 14A for Rs.6 Lacs. The same has been computed by apportioning salary expenditure, telephone, postage, electricity charges, STT, rent, demat charges as detailed in para 3.1.2 of the impugned order.

3.2 During assessment proceedings, the assessee submitted that, keeping in view assessee's computations, no further disallowance would be warranted. However, not convinced with assessee's explanation, Ld. AO computed additional disallowance of Rs.38.99 Lacs u/r 8D(2)(iii) being 0.5% of average investments. The suo-moto disallowance of Rs.6 Lacs was accepted as direct expense disallowance u/r 8D(2)(i).

3.3 During appellate proceedings, the assessee assailed the action of Ld. AO in making the disallowance, inter-alia, by submitting that invocation of Rule 8D was not automatic. The methodology adopted by

the assessee was accepted in appellate order for AY 2012-13. However, Ld. CIT(A), distinguishing the facts of AY 2012-13, confirmed the disallowance. Aggrieved, the assessee is in further appeal before us.

4. Upon due consideration of material fact, it could be gathered that the assessee is following particular methodology to make the disallowance u/s 14A. There is no change in assessee's business. The methodology has been accepted in appellate order for AY 2012-13. The assessee has computed the disallowance in a scientific manner which is evident from the following table: -

No.	Particulars	Amount (Rs.)	%	Disallowance (Rs.)
1.	Vidya Puthran (employee)	2,42,000	100%	2,42,000
2.	Tarun Chaturvedi (employee)	9,25,000	15%	1,38,750
3.	Telephone	1,45,431	15%	21,815
4.	Postage & Telegram	1,05,658	15%	15,849
5.	Electricity Charges	94,764	15%	14,215
6.	Securities Transaction Charges	66,406	100%	66,406
7.	Rent for Table space (notional)	90,000	100%	90,000
8.	Demat Charges	9,541	15%	1,431
	<b>Total</b>			<b>5,90,465</b>
	<b>Disallowance offered</b>			<b>6,00,000</b>

However, Ld. AO, without recording objective satisfaction as to why the assessee's computation were not acceptable, proceeded to compute disallowance as per Rule 8D. It is settled legal position that the application of Rule 8D is not automatic as held by Hon'ble Supreme Court in **Godrej & Boyce Manufacturing Co. Ltd. V/s DCIT (2017 394 ITR 449)**. Upon perusal of assessment order, we find that Ld. AO has failed to record any objective satisfaction as to why the assessee's stand was not acceptable having regards to the accounts of the assessee as per the mandate of Sec.14A. This jurisdictional requirement was not satisfied by Ld. AO in the present case and Ld.AO straightway

proceeded to compute disallowance as per Rule 8D. The application of Rule 8D, in our considered opinion, was not mechanical or automatic.

5. The Hon'ble Apex Court in the cited case of **Godrej & Boyce Manufacturing Co. Ltd. V/s DCIT (2017 394 ITR 449)** held that sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. 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 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable. Further Hon'ble Apex Court in **Maxopp Investment Limited V/s CIT (91 Taxmann.com 154)** at para-32 observed that it is that expenditure alone which has been incurred in relation to the income which is not includible in total income, is to be disallowed. If expenditure has no casual connection with the exempt income, such expenditure would be an allowable expenditure.

6. Applying the aforesaid principles to the fact of the present case, we find that Ld. AO has mechanically applied the provisions of Rule 8D(2)(iii) while making the aforesaid disallowance without establishing any nexus of expenditure claimed by the assessee with that of exempt

income earned during the year. In the absence of such recorded satisfaction, the additional disallowance as made in assessment order could not be sustained in the eyes of law. Accordingly, we are inclined to delete the additional disallowance of Rs.38.99 Lacs as made by Ld. AO while computing income under normal provisions as well as while computing Book Profits u/s 115JB. The same would render Ground No.2 of the appeal as infructuous. The appeal stand partly allowed.

7. Facts are similar in AY 2016-17 wherein the assessee has offered suo-moto disallowance of Rs.7.23 Lacs. However, Ld. AO computed additional disallowance of Rs.42.36 Lacs. The stand of Ld. AO, upon confirmation by Ld. CIT(A), is in further challenge before us. Since facts are pari-materia the same, our adjudication for AY 2015-16 shall *mutatis-mutandis* apply to this year also. The Ld. AO is directed to delete additional disallowance of Rs.42.36 Lacs while computing income under normal provisions as well as while computing Book Profits u/s 115JB. The same would render Ground No.2 of the appeal as infructuous. The appeal stand partly allowed.

8. Both the appeals stand partly allowed in terms of our above order.

*Order pronounced on 2<sup>nd</sup> August, 2021.*

**Sd/-**

**(Amarjit Singh)**

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 02/08/2021

Sr.PS, Dhananjay

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.