

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.760/MUM/2025
(Assessment Year 2018-19)

Sanjay Kothari (HUF),

1404, 14th Floor, A Wing,

Naman MidTown, Senapati Bapat Marg,

Elphistone West,

Mumbai – 400013

PAN: AAJHS9132A

..... Appellant

v/s

National Faceless Assessment Centre,

Delhi

..... Respondent

Assessee by : Ms. Shivani Shah

Revenue by : Shri Layaqat Ali Aafaqui, Sr. AR

Date of Hearing – 04/11/2025

Date of Order - 17/11/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 16.12.2024, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*learned CIT(A)*], for the assessment year 2018-19.

2. In this appeal, the assessee has raised the following grounds: –

"1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the income of the appellant at Rs. 3,32,05,810/- as against the income declared in the return of income at Rs 1,98,98,240/-.*

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 6,74,600/- made by the Ld. AO by wrongly invoking the provisions of s.14A of the Act.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) wrongly confirmed the addition of Rs. 1,26,32,970/- made by the Ld. AO even when the said amount was not in the nature of income."

3. Ground No.1 is general in nature and therefore, needs no separate adjudication.

4. The issue arising in Ground No.2, raised in assessee's appeal, pertains to the disallowance made under section 14A read with Rule 8D of the Income Tax Rules, 1962 ("the Rules").

5. The brief facts of the case pertaining to this issue are that the assessee is an HUF and for the year under consideration filed its return of income on 10.10.2018, declaring a total income of Rs.1,98,98,240/-. During the year under consideration, the assessee declared income from solar power and profit from F&O trading. The return filed by the assessee was selected for scrutiny under CASS, and statutory notices under section 143(2) and section 142(1) were issued and served on the assessee. During the assessment proceedings, it was observed that the assessee has earned an exempt income of Rs. 2,34,87,124/-. However, it did not make any disallowance of expenditure under section 14A of the Act read with Rule 8D of the Rules. Accordingly, the assessee was asked to furnish the reason for not disallowing the expenditure under section 14A of the Act. In response, the assessee submitted that he had neither incurred nor claimed any expenditure for earning the exempt income, and therefore, the question of disallowing

expenses under Section 14A of the Act does not arise. The Assessing Officer ("AO") vide order dated 10.06.2021 passed under section 143(3) read with section 144B of the Act disagreed with the submissions of the assessee and, by applying the provisions of section 14A read with Rule 8D of the Rules, made a disallowance of Rs.6,74,600/- as follows: -

<i>Opening value of investments as on 01.04.2017</i>	<i>Rs.5,31,96,146</i>
<i>Closing value of investments as on 31.03.2018</i>	<i>Rs.8,19,24,626</i>
<i>Average value of investments</i>	<i>Rs.6,74,60,054/-</i>
<i>1% of average value of investments</i>	<i>Rs.6,74,600/-</i>

6. The learned CIT(A), vide impugned order, dismissed the grounds raised by the assessee on this issue and upheld the disallowance made under section 14A read with Rule 8D of the Rules. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("*learned AR*") reiterated the submissions made by the assessee before lower authorities and submitted that the disallowance of Rs.6,74,600/- made by the AO (being 1% of average value of average investments) under section 14A read with Rule 8D of the Rules has no basis as the assessee did not incur any expenditure for earning the exempt income of Rs.2,34,87,124/-. On a without prejudice basis, the learned AR submitted that in any case, the disallowance under Rule 8D(2) of the Rules cannot exceed the total expenditure that has been claimed by the assessee.

8. On the other hand, the learned Departmental Representative (“*learned DR*”) vehemently relied upon the order passed by the lower authorities.

9. We have considered the submissions of both sides and perused the material available on record. In the present case, there is no dispute regarding the fact that the assessee has earned exempt income of Rs.2,34,87,124/- which comprises of exempt long term capital gain amounting to Rs.2,23,62,182/- under section 10(38) of the Act, exempt dividend income of Rs.8,78,942/- under section 10(34) of the Act and interest at tax free bonds of Rs.2,46,000/-. It is also evident from the record that the assessee did not disallow any expenditure under section 14A of the Act for earning the aforesaid exempt income. We find that in compliance with the provision of section 14A of the Act, the AO recorded its satisfaction as follows: -

"5.9 Let us now examine the factual matrix in the assessee's case. As per the profit and loss account of the assessee, the only source of income is on account of trading in shares. The assessee does not maintain any separate portfolio for investment and trading activities. Besides, it cannot be stated with certainty that only the shares that are appearing in his investment portfolio are the ones that would have yielded exempt income. Since the assessee's main activity is dealing in shares, therefore the possibility of earning dividend income cannot be ruled out in case of other shares. The same is evident from the fact that though the assessee's investment is of Rs. 8.21 Cr, the assessee has earned exempt income on the same of Rs. 2.34 Cr. The assessee has also claimed expenses towards demat charges, STT, interest expenses etc. in his P/L account against his income from share trading. However, despite the same the assessee claims to have not incurred any expense towards earning of exempt income."

10. We find that in *Godrej & Boyce Manufacturing Company Ltd. v/s DCIT* [2017] 81 taxmann.com 111 (SC), the Hon'ble Supreme Court observed as under: -

"37. 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.

11. Therefore, we find that the action of the AO in computing the disallowance under section 14A read with Rule 8 of the Rules is in conformity with the law laid down by the Hon'ble Supreme Court in the aforesaid decision. We find that, as per Rule 8D(2) of the Rules, the expenditure in relation to the income which does not form part of the total income includes the following: -

(i) the amount of expenditure directly relating to income which does not form part of total income; and

(ii) an amount equal to one *per cent* of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income.

12. In the present case, no direct expenditure was incurred by the assessee for earning the exempt income. Therefore, the AO computed the disallowance of Rs.6,74,600/- (being 1% of the average value of average investment of Rs.6,74,60,054/-) as per Rule 8D(2)(ii) of the Rules.

13. During the hearing, the learned AR on a without prejudice basis by placing reliance upon the proviso to Rule 8D(2) of the Rules submitted that the disallowance as computed under the provisions of Rule 8D cannot exceed the total expenditure claimed by the assessee. Accordingly, the learned AR submitted that in the year under consideration, the assessee claimed an expenditure of Rs. 69,455/- in its profit and loss account; therefore, the

disallowance under Section 14A, read with Rule 8D of the Rules, should be restricted to that extent.

14. Having considered the submissions and perused the material available on record, we find merit in the submissions of the assessee and accordingly direct the AO to restrict the disallowance made under section 14A, read with Rule 8D, to the expenditure claimed by the assessee after necessary verification. Accordingly, Ground No.2 raised in assessee's appeal is partly allowed for statistical purposes.

15. The issue arising in Ground No.3, raised in assessee's appeal, pertains to the addition of Rs.1,26,32,970/-.

16. The brief facts of the case pertaining to this issue are that during the year under consideration, the assessee HUF made advances of Rs.11.70 crore to Mr. Sanjay Kothari in his individual capacity. During the assessment proceedings, it was observed that the assessee received an amount of Rs.12,93,62,970/- against the advance given of Rs.11,70,30,000/- to Mr. Sanjay Kothari. Thus, there was an excess refund of Rs.1,26,32,970/- during the year under consideration from Mr. Sanjay Kothari in his individual capacity. The assessee claimed that the differential amount of refund of advance is a capital receipt and hence not taxable. The AO, vide assessment order passed under section 143(3) of the Act, disagreed with the submissions of the assessee as the assessee could not bring any material on record to substantiate its claim that the refund was a capital advance. Accordingly, the AO made an addition of Rs.1,26,32,970/- on the basis that the ledger of Mr.

Sanjay Kothari in the books of the assessee shows frequent receipts and payments and the assessee has utilized the amount in his individual capacity as well as HUF for F&O business. The learned CIT(A) vide impugned order, dismissed the ground raised by the assessee on this issue and upheld the addition made by the AO. Being aggrieved, the assessee is in appeal before us.

17. We have considered the submissions of both sides and perused the material available on record. In the present case, there is no dispute regarding the fact that there were multiple transactions of receipt of payment of money between the assessee HUF and Mr. Sanjay Kothari in his individual capacity. The assessee received an amount of Rs.12,93,62,970/- as against the advances given of Rs.11,70,30,000/-, the excess refund of Rs.1,23,32,970/- was treated as taxable in the hands of the assessee by the AO since the assessee could not bring any material to justify its claim of treating it as a capital advance. It is pertinent to note that only an amount in the nature of income can be brought to tax under the Act, and as per the AO's own finding, the payment and receipt between the assessee as HUF and Mr Sanjay Kothari, in his individual capacity, was in the nature of an advance. Further, the fact that such an advance was used by the assessee for its F&O trading cannot change the nature of the receipt as the receipt of a sum of money and its payment by a person can be of a different nature. Thus, it is not necessary that what is received as a capital receipt should be only expended for a capital transaction. Similarly, what is received as a revenue receipt does not necessarily have to be expended for a revenue transaction by the taxpayer.

Such being the facts, we do not find any infirmity in the submissions of the assessee that the excess refund received by the assessee as HUF from Mr. Sanjay Kothari, in his individual capacity, was a capital receipt, as it cannot be disputed that the assessee HUF and Mr. Sanjay Kothari, being its karta, are two different tax payers in the eyes of law. Accordingly, the impugned addition of Rs.1,26,32,970/- is deleted. As a result, Ground No.3 raised in assessee's appeal is allowed.

18. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 17/11/2025

**Sd/
VIKRAM SINGH YADAV
ACCOUNTANT MEMBER**

**Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 17/11/2025

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai