

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “D” MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 5534/MUM/2024
Assessment Year: 2018-19**

Radiant Life Care Pvt. Ltd.,
401, 4th floor, Man Excellenza, SV
Road, Vile Parle,
Mumbai-400056.

**PAN NO. AACCH 3374 B
Appellant**

Vs.

Dy. CIT Circle 3(1)(1),
Aayakar Bhavan, M K Road, New
Marine Lines, Near Pratishtha
Bhavan,
Mumbai-400020.

Respondent

Assessee by : Mr. Ravikant Pathak
Revenue by : Mr. R.R. Makwana, Sr. DR

Date of Hearing : 18/12/2024
Date of pronouncement : 20/12/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 27.08.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2018-19, raising following grounds:

1. *The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (CIT-A) erred in confirming the action of the AO in*



making additional disallowance of Rs. 1,50,59,977/- under section 14A of the Income Tax Act, 1961 (Act) r.w. Rule 8D of the Income Tax Rules, 1962 (Rules) on the ground that if the investments have been held by the Appellant for six months then while computing the 'annual average of the monthly average...' six months shall be considered and not one year (twelve months) as required under Rule 8D(2)(ii) of the Rules.

The Appellant submits that above view of the CIT(A) is contrary to provision of section 14A of the Act r.w. Rule 8D(2)(ii) of the Rules; hence, the disallowance made by the AO as confirmed by the CIT(A) shall be deleted.

2. Briefly stated facts of the case are that the assessee filed return of income on 31.10.2018 declaring total loss (-) Rs.51,68,84,840/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In the scrutiny assessment order dated 23.04.2021 passed in terms of section 143(3) of the Act, the Assessing Officer made disallowances including disallowance of expenditure towards earning of exempted income invoking section 14A of the Act r.w.r. 8D of the Income-tax Rules, 1962 (in short 'the Rules').

3. On further appeal, the Ld. CIT(A) also confirmed the disallowance. Aggrieved the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

4. We have heard rival submissions of the parties and perused the relevant material on record. In the case, the assessee made *suo-motu* disallowance u/s 14A r.w.r. 8D of the Rules pursuant to the formula given under Rule 8D of the Income-tax Rules, 1962 (in short



the 'Rules') and worked out the disallowance at Rs.1,50,59,977/-. The Assessing Officer did not accept the computation of the assessee made under Rule 8D (2)(ii) of the Rules. For, ready reference said rule during relevant period is reproduced as under:

“Method for determining amount of expenditure in relation to income not includible in total income.

8D.

(a).....

(b)

[(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; 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:

Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.]

4.1 Under the Rule 8D(2)(ii) amount 1% of the **annual average** or monthly average of the opening & closing balances of investments, income from which does not or shall not form part of the total income was to be computed by the assessee. In the case of the assessee investment in the securities yielding exempted income was held only for six months and thereafter there was no investment in securities eligible for yielding exempted income in remaining part of 6 months. Therefore, monthly average for the six months was zero



and accordingly, the assessee computed the annual average by way of dividing the sum of monthly average of six month by number 12. Whereas the Assessing Officer was of the view that since the securities eligible for yielding exempted income were held only for six months, therefore, sum of monthly averages of the six months was to be divided by a number of six and not by a number of twelve. The Assessing Officer accordingly computed the disallowance under Rule 8D(2)(ii) at Rs.3,01,19,954/-. The Ld. CIT(A) concurred with the finding of the Assessing Officer and upheld the disallowance.

4.1 Thus, before us, the only limited issue is whether while computing annual average of the monthly average of opening and closing value of the investment yielding exempted income should be computed by way of dividing the sum of the monthly averages by six or twelve. Before us, the Ld. counsel for the assessee has relied on the decision of the Hon'ble Supreme Court in Civil Appeal No. 551 and 552 of 1960 in the case of National Insurance Co. Ltd. v. Life Insurance Corporation of India, wherein the meaning of the word "annual" average has been discussed. The relevant para is reproduced as under:

"27. The next question is how is the average to be found. Here the words are "annual average". The word "annual" must be given its full meaning. By the word meant something which is reckoned by the year. The addition of the word "averages" shows that what is to be found is an average reckoned by the year. If the two periods were to be viewed separately and an annual average is found out for each of the periods there would be two annual averages and they would almost always be different. When an average of these periods is taken there is no longer an "annual average". The result can only be described as the average of two annual averages. The Tribunal was right when It said that the law contemplates one average and not the



average of two averages. Giving the word "annual" its full meaning it is obvious that that system must be adopted which will lead to a result which can be described both as "annual" and as an "average". That can only be when the amount of the surplus as disclosed in the two investigations is aggregated and the result is divided by the total number of years. One finds an average by dividing the aggregate of several quantities by the number of quantities. In this case one can only get the "annual average" by aggregating the surplus related to at least two actuarial investigations covering a period of more than four years and by dividing the result and by the number of years involved. In our judgment formula D alone was applicable to the facts of this case and as that formula has been applied the result reached by the Tribunal was correct."

4.2 Respectfully, following the decision of the Hon'ble Supreme Court, we are of the view that the term "annual", as consistently interpreted in accordance with established principles, denotes a period of twelve months. Consequently, in determining the annual average of the monthly averages of investments under Rule 8D(2)(ii) of the Income Tax Rules, the aggregate of the monthly averages must necessarily be divided by the figure of twelve to compute the annual average. It is further noted that in the present case, the investment of the assessee was in existence only for a period of six months. Therefore, if the disallowance is to be computed in accordance with the methodology adopted by the Assessing Officer, the resultant figure must logically be divided by two. This is owing to the fact that, for the remaining six-month period, no activity relating to investments in assets capable of generating exempt income was undertaken. Consequently, no disallowance for that period can be justified. This can be understood by an illustration of where four persons held the investment of Rs. 1 crores for the period of 3 months, 6 months, 9 months and 12 months



respectively. The disallowance under rule 8D(2)(ii) of Rules as per the interpretation by revenue and assessee would be as under:

	As per Assessee		As per AO	
Holding period of investment.	Annual Average of monthly average Investment in Rs.	Disallowance under @1% of annual average investment	Annual Average of monthly average Investment in Rs.	Disallowance under @1% of annual average investment
Investment held for 3 months	$1,00,00,000 \times (3/12) = 25,00,000/-$	Rs. 25,000/-	$1,00,00,000 \times (3/3) = 1,00,00,000/-$	Rs. 1,00,000/-
Investment held for 6 months	$1,00,00,000 \times (6/12) = 50,00,000/-$	Rs. 50,000/-	$1,00,00,000 \times (6/6) = 1,00,00,000/-$	Rs. 1,00,000/-
Investment held for 9 months	$1,00,00,000 \times (9/12) = 75,00,000/-$	Rs. 75,000/-	$1,00,00,000 \times (9/9) = 1,00,00,000/-$	Rs. 1,00,000/-
Investment held for 12 months	$1,00,00,000 \times (12/12) = 1,00,00,000/-$	Rs. 1,00,000/-	$1,00,00,000 \times (12/12) = 1,00,00,000/-$	Rs. 1,00,000/-

4.3 In above illustration, according to the computation by the AO, the 1% disallowance for the period of holding of investment of Rs. 1.00 crore for 3 months is equal to the disallowance for holding of investment for a period of 12 months, thus, interpretation of rule 8d(2)(ii) by the AO is giving absurd result. The disallowance u/s 14A of the Act is made for the expenditure incurred toward exempted income earning activity, but when the exempted income earning activity was limited for few months, and then disallowance at the rate of 1% should be lower as compared to disallowance for investment held for whole year. The interpretation of Rule 8D(2)(ii) of rules by the Assessing Officer, in our considered opinion, is arbitrary and lacks reasonable justification. The mere fact that the investments existed



only for a portion of the year does not warrant a distortion of the term “*annual*” to suit a different computation methodology. It is evident that there is no ambiguity in the language of Rule 8D, particularly in the expression “*annual average*”, and the computation undertaken by the Assessing Officer, as upheld by the Learned Commissioner of Income Tax (Appeals), is a misinterpretation of the provision. On the contrary, the computation furnished by the assessee aligns with the intent and spirit of Rule 8D.

4.3 Accordingly, we set aside the orders of the lower authorities and direct that the disallowance made by them be deleted. The grounds of appeal preferred by the assessee are allowed.

4.4 Ordered accordingly.

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

Order pronounced in the open Court on 20/12/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 20/12/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai



5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai