IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

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THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 20TH DAY OF NOVEMBER 2025 / 29TH KARTHIKA, 1947

ITA NO. 2 OF 2021

AGAINST THE ORDER DATED 19.05.2020 IN ITA NO.60 OF 2015 OF I.T.A.TRIBUNAL, COCHIN BENCH

APPELLANT/APPELLANT IN ITA:

ASPINWALL AND COMPANY LIMITED,
PRESENTLY AT POST BOX NO. 560, SUBRAMANIAN ROAD,
WILLINGDON ISLAND, KOCHI-682 003, REPRESENTED BY
ITS CHIEF FINANCIAL OFFICER, MR.T.R.RADHAKRISHNAN.

BY ADVS.
SHRI.M.GOPIKRISHNAN NAMBIAR
SHRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SHRI.PAULOSE C. ABRAHAM
SHRI.RAJA KANNAN

RESPONDENT/RESPONDENT IN ITA:

THE COMMISSIONER OF INCOME TAX
C.R. BUILDING, I.S.PRESS ROAD,
COCHIN-682 018.

BY ADVS.
SRI.P.K.RAVINDRANATHA MENON (SR.)
SHRI.JOSE JOSEPH, SC, INCOME TAX DEPARTMENT, KERALA

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 17.11.2025, THE COURT ON 20.11.2025 DELIVERED THE FOLLOWING:

JUDGMENT

Harisankar V. Menon, J.

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act' for short), at the instance of the assessee, seeks to challenge the order dated 19.05.2020 in I.T.A No.60/COCH/2015 of the Income Tax Appellate Tribunal, Cochin Bench with respect to the assessment year 2006-07 relevant to the financial year 2005-06.

2. The assessment for the year 2006-07 was subjected to re-assessment steps on various grounds. One such ground is with reference to the provisions of Section 14A of the Act, which provides for disallowing deductions with respect to expenditures incurred in relation to income which does not form part of the total income under the Act. The assessing authority noticed that the appellant-assessee made long-term investments in subsidiary companies and, by applying the ratio prescribed under Rule 8D of the Income Tax Rules, 1962

(hereinafter referred to as the 'Rules' for short), disallowed a claim for deduction of Rs.18,43,500/-. The first appeal was unsuccessful. The second appeal was instituted before the Tribunal, contending that Rule 8D of the Rules has no application regarding the assessment year 2006-07, as it was introduced only by the Finance Act, 2008, with prospective operation. The Tribunal, though it accepted this contention, went on to direct the assessing authority to disallow 2% of expenses incurred towards the exempted income. It is this direction that is challenged by the appellant in this appeal.

3. The following questions of law arise for consideration in this appeal: -

i. Whether the Appellate Tribunal is justified in overlooking the decision of the Hon'ble Supreme Court in CIT v. Essar Teleholdings Ltd., reported in (2018) 401 ITR 445 (SC), which held that Rule 8D of the Income Tax Rules, 1963, cannot apply to the assessment years prior to 2008-09?

ii. Whether the Appellate Tribunal is justified in not setting aside the assessment in entirety, which it ought to have done, holding that the invocation of Rule 8D and the adoption of the methodology/computation envisaged under Rule 8D cannot

apply to the A.Y. 2006-07?

iii. Whether the Appellate Tribunal is justified in placing reliance on an unreported decision of the Hon'ble High Court of Madras in Simpson and Company Ltd., in T.C. No. 26212/2006 dated 15.10.2012, which admittedly cannot stand against the decision in Essar Teleholdings Ltd., reported in (2018) 401 ITR 445 (SC)?

iv. Whether the Appellate Tribunal is justified in directing the assessing authority to disallow 2% of the expenditure, in the absence of any statutory provision authorising the said direction?

v. In the alternative, whether the disallowance of expenditure made under Rule 8D read with Section 14A of the Act, can be sustained, in the absence of the finding regarding the nexus between the exempt income and the interest-bearing funds?

vi. In the alternative, whether the lower authorities committed an error in disregarding the proof submitted by the appellant to show that the investments, which led to the earning of exempt income, were made prior to the year 2002, utilizing their own funds?

vii. In the alternative, whether the lower authorities erred in making the disallowance of expenditure amounting to Rs. 18,43,500/-, which far exceeds the actual exempt income earned amounting to Rs. 6,59,278/-; which is not in accordance with the binding precedents?

viii. Is not the finding of fact by the Appellate Tribunal erroneous and perverse?

4. Sri.Raja Kannan, the learned counsel for the appellant-assessee, would rely on **Commissioner of Income-Tax v. Essar Teleholdings Ltd. [(2018) 401 ITR 445 (SC)]** to contend that Rule 8D of the Rules can have application only from the assessment year 2008-09 and therefore, the Tribunal ought to have allowed the appeal.

5. *Per contra,* Sri.Jose Joseph, the learned Standing Counsel for the revenue, would contend that Section 14A of the Act would apply *dehors* the provisions of Rule 8D of the Rules and therefore, the directions of the Tribunal were perfectly in order.

6. We have considered the rival contention as well as the connected records.

7. The Apex Court in **Essar Teleholdings Ltd.** (*supra*) considered the question as regards the retrospective operation of Rule 8D of the Rules, holding that the same would only have prospective operation applicable for the assessment years 2008-09 onwards. However, the Apex Court in paragraph 35 of

the judgment has categorically found that even without there being any mechanism provided for the purpose of computation of the expenditure to be disallowed, the provisions of Section 14A of the Act were 'fully workable'. That being the position, reliance placed on the afore judgment of the Apex Court by the learned counsel would not be apposite with respect to the proposition mooted by him.

8. On the face of this finding, the direction contained in the impugned order of the Tribunal in paragraph 7.1 requires to be analysed. The Tribunal has directed the assessing authority to make a disallowance of 2% of the expenditure incurred towards the exempted income. The provisions of Section 14A of the Act, as it existed during the relevant period, read as under:-

> **"Expenditure incurred in relation to income not includible in total income.**
>
> **14A.** (1) Notwithstanding anything to the contrary contained in this Act, for the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which

does not form part of the total income under this Act."

Thus, the statute requires the disallowance of the deduction of the expenditure incurred for obtaining exempt income. With reference to the principle laid down by the Apex Court in **Essar Teleholdings Ltd.** (*supra*), when Section 14A of the Act is applied, the assessing authority has to identify the expenditure incurred by an assessee which requires to be disallowed thereunder. The assessing authority in the case at hand has not approached the issue in that angle; instead, he has thought it fit to invoke the provisions of Rule 8D of the Rules, which, going by the judgment of the Apex Court referred to above, could not have been done. To that extent, the assessment requires to be *set aside*.

9. However, the direction to disallow 2% of the expenses as ordered by the Tribunal could also not be sustained without there being an actual quantification. This is especially so since the appellant-assessee has a case that there is no nexus of the exempt income *qua* interest-bearing funds. In such

circumstances, we are of the opinion that the matter requires to be remitted to the assessing authority for fresh consideration for carrying out the quantification with reference to the books of account for arriving at the actual amount to be disallowed, or in the alternative, the near actual amount.

In the result, this appeal would stand allowed, remitting the file to the assessing authority for fresh consideration as directed above.

Sd/-
A.MUHAMED MUSTAQUE
JUDGE

Sd/-
HARISANKAR V. MENON
JUDGE

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APPENDIX OF ITA 2/2021

APPELLANT'S ANNEXURES:-

ANNEXURE A THE TRUE COPY OF THE ASSESSMENT ORDER DATED 27.10.2011 ISSUED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-1 (1), KOCHI, UNDER SECTION 14393) READ WITH SECTION 147 OF THE IT ACT, 1961.

ANNEXURE B THE TRUE COPY OF THE ORDER DATED 30.09.2014 ISSUED BY THE COMMISSIONER OF INCOME TAX APPEALS II, KOCHI IN APPEAL NO. ITA 32/R1/E/CIT -II/2011-12.

ANNEXURE C THE TRUE COPY OF THE APPEAL MEMORANDUM DATED 22.01.2015 (WITHOUT ANNEXURES) FILED BY THE APPELLANT BEFORE THE INCOME TAX APPPELLATE TRIBUNAL, COCHIN BENCH.

ANNEXURE D THE TRUE COPY OF THE ORDER DATED 19.05.2020 ISSUED BY THE ITAT, COCHIN BENCH IN ITA NO. 60/COCH/2015 FOR THE A.Y. 2006-07