

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No. 2914 /MUM/2015
(Assessment Year : 2010-11)
ITA No. 2915 /MUM/2015
(Assessment Year : 2011-12)

ShantilalJayavantraj Mehta,
205-206, J.K.Chambers, Sector 17,
Vashi , Navi Mumbai 400 703
PAN: ACUPM 2302F

... Appellant

Vs.

The Income Tax Officer 10(3)(3),
Mumbai.

.... Respondent

Appellant by : Shri J.B. Shah
Respondent by : Dr. Santosh Mankoskar

Date of hearing : 01/07/2016
Date of pronouncement : 13/07/2016

ORDER

The captioned appeals filed by the assessee pertaining to assessment years 2010-11 & 2011-12 are directed against orders passed by CIT(A)-24, Mumbai dated 30/03/2015 and 23/03/2015 respectively, which in turn have arisen out of orders passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 19/03/2013 and 20/02/2014. Since the issue involved in these appeals is identical, they are disposed of by this common order for the sake of convenience.

2. In both the appeals, the grievance of the assessee is against the disallowance made by the income tax authorities by invoking the provisions of section 14A of the Act. In assessment year 2010-11, disallowance has been made of Rs.16,50,000/-, whereas in assessment year 2011-12, the disallowance is of Rs.17,65,000/-.

3. Before me, a pertinent point which has been raised is to the effect that in both the assessment years assessee has not earned/declared any exempt income and, therefore, following the ratio of the judgment of the Hon'ble Delhi High Court in the case of Chemivest Ltd. vs. CIT, 378 ITR 33(Del) no disallowance under section 14A of the Act is merited. Apart therefrom, the Ld. Representative for the assessee also referred to the decision of the Mumbai Tribunal in the case of DIT vs. Apex Realty Pvt. Ltd., in ITA No.2855/Mum/2013 dated 31/8/2015, wherein under a similar situation, disallowance under section 14A of the Act has been deleted following the judgment of Hon'ble Bombay High Court in the case of CIT vs. Delite Enterprises (ITA No.110 of 2009) dated 26/2/2009.

4. The Ld. Departmental Representative, on the other hand, did not dispute the factual matrix brought out by the Ld. Representative for the assessee but defended the disallowance under section 14A of the Act even in the absence of any exempt income being received by the assessee during the year.

5. I have carefully considered the rival submissions. In the present case, the Assessing Officer noticed that assessee had made certain investments in shares and, therefore, he proceeded to work out the disallowance under section 14A of the Act by applying the formula

contained in Rule 8D of the Income Tax Rules, 1962(in short 'the Rules'). So, however, it is quite clear that during the two assessment years under consideration, assessee has not received any exempt income and, therefore, invoking of section 14A of the Act in such a situation is suspect. Quite clearly, where no exemption has been claimed by the assessee in the instant years, in the absence of any tax free incomes, provisions of section 14A of the Act cannot be invoked as held by the Hon'ble Delhi High Court in the case of Chemivest Ltd. (supra). The judgment of Hon'ble Gujarat High Court in the case of CIT vs. Corrttech Energy (P) Ltd. , 272 CTR 262(Guj) is also on the same line. Under these circumstances, in my considered opinion, the disallowance of Rs.16,50,000 & Rs.17,65,000/-made by the Assessing Officer for the two assessment years under consideration by invoking the provisions of section 14A of the Act is unwarranted and unfounded. Accordingly, the Assessing Officer is directed to delete the addition in two captioned assessment years.

6. In the result, appeals of the assessee are allowed, as above.

Order pronounced in the open court on 13/07/2016

Sd/-

(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Dated 13/07/2016

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai