

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No.2262/Bang/2016
Assessment year : 2012-13

M/s. Vitari Distributors Private Limited, No.44/1-A, Bannerghatta Road, Jayalakshmi Industrial Estate, Bengaluru-560029. PAN : AAACV4819R	Vs.	The Additional Commissioner of Income Tax, Range 7(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. R. E. Balasubramaniyan, CA
Revenue by	:	Shri. B. R. Ramesh, JCIT

Date of hearing	:	11.09.2017
Date of Pronouncement	:	13.09.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order of CIT(A), *inter alia*, on the following grounds:

“The appellant objects to the order of the Learned CIT(A) on the following grounds:

- 1. The impugned order is opposed to the facts of law in so far as it is prejudicial to the interest of the appellant.*
- 2. The Learned CIT(A) erred in upholding the disallowance made in accordance with Rule 8D in as much as the application of Rule 8D is not*

mandatory and cannot be invoked merely by rejecting the claim of the Assessee u/s 14A(2) of the Income Tax Act, 1961.

3. *The Learned CIT(A) erred in not considering the fact that the Appellant had not earned any exempt income during the year and amount of disallowance computed u/r 8D r.w.s. 14A of the Income Tax Act, 1961 cannot exceed the amount of income itself.*
4. *The Learned CIT(A) erred in not considering the fact that the Appellant held these investments to have a strategic control in the group companies and not to earn any exempt income out of it and as such provisions of rule 8D are not applicable.*

For these and such other grounds that may be adduced in time to time, it is requested that the Hon'ble ITAT may be pleased to examine the case in the light of justice and grant the relief sought for.”

2. During the course of hearing, the learned counsel for the assessee has contended that in the impugned assessment year, assessee has not earned any exempted income, therefore no disallowance u/s. 14A is permissible. He has invited our attention to the profit and loss account and the details of other income in support of his contention that he has not earned any exempted income during the impugned assessment year. The learned counsel for the assessee further placed reliance upon the order of the Tribunal and various orders of the High Court in which it has been held that in the absence of any exempted income, the provisions of section 14A cannot be invoked. Copy of the order of Tribunal in the case of Alliance Infrastructure Projects Pvt. Ltd. v. DCIT, IT Nos. 220 & 1043/Bang/2013 in ITA No.220 & 1043/Bang/2013 is placed on record.

3. The learned DR on the other hand has placed reliance upon the order of the CIT(A).

4. Having carefully examined the orders of the lower authorities in the light of rival submissions, we find from the record and profit & loss account that the assessee did not earn any exempted income during the year. Therefore, in the absence of any

exempted income, provisions of section 14A of the Act cannot be invoked. Reliance was placed upon the order of the Tribunal in the case of Alliance Infrastructure Projects Pvt. Ltd., v. DCIT (supra) and AllBank Finance Ltd., in ITA No.465/Kol/2013 in which it has been held in the light of various judicial pronouncements of various High Courts that in the absence of any exempted income, provisions of section 14A of the Act cannot be invoked. Therefore, in the light of this legal position, we are of the view that in the instant case, the AO has wrongly invoked the provisions of section 14A for making the disallowance. Accordingly, we set aside the order of CIT(Appeals) and delete the addition made in this regard.

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

Pronounced in the open court on 13th September, 2017.

Sd/-

(A. K. GARODIA)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore.

Dated: 13th September, 2017.

/NShylu/*

Copy to:

1. Appellants
2. Respondent
3. CIT
4. Guard file

By order

Sr. Private Secretary,
ITAT, Bangalore.