

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचंद, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 671/JP/2017  
निर्धारण वर्ष/Assessment Year : 2014-15

Assistant Commissioner of Income Tax, Circle-1, Kota	बनाम Vs.	Sudha Hospital and Medical Research Centre Pvt. Ltd., 11-A, Talwandi, Kota.
PAN No.: AAGCS 2221 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri R.A. Verma (Addl.CIT)  
निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)

सुनवाई की तारीख / Date of Hearing : 04/10/2017  
उदघोषणा की तारीख / Date of Pronouncement : 09/10/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is the appeal filed by the revenue emanates from the order of the Id. CIT(A), Kota dated 27/06/2017 for the A.Y. 2014-15, wherein the revenue has taken sole effective ground of appeal, which is as under:-

“On the facts and in the circumstances of the case, the Id. CIT(A) has erred in:

- (i) deleting the addition of Rs. 1,61,741/- made by the A.O. U/s 14A of the I.T. Act, 1961 r.w.r. 8D of the I.T. Rules, 1962 as amended by the Income Tax (13<sup>th</sup> Amendment) Rules, 2016 and in view of CBDT Circular No. 05/2014.”

2. The only issue involved in the appeal is against deleting the addition of Rs. 1,61,741/- made U/s 14A of the Income Tax Act, 1961 (in short the Act) read with Rule 8D of the Income Tax Rules, 1962 (in short the Rules and in view of the CBDT Circular No. 05/2014.

3. The Id. CIT(A) has granted relief to the assessee by holding as under:-

*"I have gone through assessee's submission and AO's findings.*

*As regards **Ground of appeal no 1**, it is notable that the assessee has not earned any exempted income on his investments made nor has the company received any dividend. In view of the latest judicial opinion in this regard, the A.O's working of disallowance based on rule 8D is not justified.*

*In the following cases, this proposition is more than amply clarified.*

*HIGH COURT OF MADRAS in Redington (India) Ltd. v. Additional Commissioner of Income-tax, Co Range-V, Chennai 77 taxmann.com 257 (Madras) held-*

*Section **14A** of the Income-tax Act, 1961, read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (Condition precedent) - Assessment year 2007-08 - Whether provision of section 14A is relatable to earning of actual income and not notional or anticipated income, hence, where there is no exempt income in a year, there cannot be a disallowance of expenditure in relation to an assumed income - Held, yes  
(Relevant extract)*

*..7. Per contra, Sri. T. Ravikumar appearing on behalf of the revenue drew our attention to the marginal notes of s. 14A pointing out that the provision would apply not only where exempted income is 'included'<sup>1</sup> in the total income, but also where exempt income is 'includable' in total income.*

8. He relied upon a Circular issued by the Central Board of Direct Taxes in **Circular No. 5 of 2014 dated 11.2.2014** to the effect that s. 14A was intended to cover even those situations whether there is a possibility of exempt income being earned in future. The Circular, at paragraph 4, states that it is not necessary for exempt income to have been included in the income of a particular year for the disallowance to be triggered. According to the Learned Standing Counsel, the provisions of s. 14A are made applicable, in terms of sub-section (1) thereof to income 'under the act' and not 'of the year' and a disallowance under s. 14A r.w. Rule 8D can thus be effected even in a situation where a tax payer has not earned any taxable income in a particular year.

9. We are unable to subscribe to the aforesaid view. The provisions of section 14A were inserted as a response to the Judgments of the Supreme Court in *CIT v. Maharashtra Sugar Mills Ltd.* [1971] 82 ITR 452 and *Rajasthan State Ware Housing Corpn. v. CIT* [2000] 242 ITR 450/109 Taxman 145 in terms of which, expenditure incurred by an assessee carrying on a composite business giving rise to both taxable as well as non-taxable income, was allowable in entirety without apportionment. It was thus that s. 14A was inserted providing that no deduction shall be allowable in respect of expenditure incurred in relation to the earning of income exempt from taxation. As observed by the Supreme Court in the judgment in the case of *CIT v. Watfort Share & Stock Brokers (P.) Ltd.* [2010] 326 ITR 1/192 Taxman 211.

... The mandate of s. 14A is clear It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of an exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income.'

10. The provision thus is clearly relatable to the earning of actual income and not notional or anticipated income. The submission of the

*Department to the effect that s. 14A would be attracted even to exempt income 'includable' in total income would entail the assessment of notional income, assumed to be exempt in the future, in the present assessment year. The computation of total income in terms of s. 5 of the Act is on real income and there is no sanction in law for the assessment of admittedly notional income, particularly in the context of effecting a disallowance in connection therewith.*

*11. The computation of disallowance in terms of Rule 8D is by way of a determination involving direct as well as indirect attribution. Thus, accepting the submission of the Revenue would result in the imposition of an artificial method of computation on notional and assumed income. We believe this would be carrying the artifice too far.*

*HIGH COURT OF DELHI in Cheminvest Ltd. v. Commissioner of Income-tax-IV 61 taxmann.com 118 (Delhi) held-*

*Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income (Applicability) - Assessment year 2004- 05 - Whether section 14A envisages that there should be an actual receipt of income which is not includible in total income; hence, section 14A will not apply where no exempt income is received or receivable during relevant previous year - Held, yes (Relevant extract)*

*15. Turning to the central question that arises for consideration, the Court finds that the complete answer is provided by the decision of this Court in CIT v. Holcim India (P.) Ltd. [2015] 57 taxmann.com 28. In that case a similar question arose, viz., whether the ITAT was justified in deleting the disallowance under Section 14A of the Act when no dividend income had been earned by the Assessee in the relevant A Y? The Court referred to the decision of this Court in Maxopp Investment Ltd's, case (supra) and to the decision of the Special Bench of the ITAT in this very*

*case i.e. Cheminvest Ltd. v. ITO [2009] 121 ITD 318. The Court also referred to three decisions of different High Courts which have decided the issue against Revenue. The first was the decision in CIT v. Lakhani Marketing Inc . [2014] 226 Taxman 45/49 taxmann.com 257 of the High Court of Punjab and Haryana which in turn referred to two earlier decisions of the same Court in CIT v. Hero Cycles Ltd. [2010] 323 ITR 518/189 Taxman 50 and CIT v. Winsome Textile Industries Ltd [2009] 319 ITR 204 The second was of the Gujarat High Court in CIT v. Corrttech Energy (P.) Ltd. [2014] 223 Taxman 130/45 taxmann.com 116 and the third of the Allahabad High Court in CIT v. Shivam Motors (P.) Ltd [2015] 230 Taxman 63/55 taxmann.com 262. These three decisions reiterated the position that when an Assessee had not earned any taxable income in the relevant A Y in question "corresponding expenditure could not be worked out for disallowance."*

*16. In Holcim India (P.) Ltd's, case (supra), the Court further explained as under:*

*"15. Income exempt under Section 10 in a particular assessment year, may not have been exempt earlier and can become taxable in future years. Further, whether income earned in a subsequent year would or would not be taxable, may depend upon the nature of transaction entered into in the subsequent assessment year. For example, long term capital gain on sale of shares is presently not taxable where security transaction tax has been paid, but a private sale of shares in an off market transaction attracts capital gains tax. It is an undisputed position that respondent assessee is an investment company and had invested by purchasing a substantial number of shares and thereby securing right to management. Possibility of sale of shares by private placement etc. cannot be ruled out and is not an improbability. Dividend may or may not be declared. Dividend is declared by the company and strictly in legal sense, a shareholder has no control and cannot insist on payment of dividend. When declared, it is subjected to dividend distribution tax."*

17. *On facts, it was noticed in Holcim India (P.) Ltd's, case (supra) that the Revenue had accepted the genuineness of the expenditure incurred by the Assessee in that case and that expenditure had been incurred to protect investment made.*

18. *In the present case, the factual position that has not been disputed is that the investment by the Assessee in the shares of Max India Ltd. is in the form of a strategic investment. Since the business of the Assessee is of holding investments, the interest expenditure must be held to have been incurred for holding and maintaining such investment. The interest expenditure incurred by the Assessee is in relation to such investments which gives rise to income which does not form part of total income.*

19. *In light of the clear exposition of the law in Holcim India (P.) Ltd's, case (supra) and in view of the admitted factual position in this case that the Assessee has made strategic investment in shares of Max India Ltd.; that no exempted income was earned by the Assessee in the relevant AY and since the genuineness of the expenditure incurred by the Assessee is not in doubt, the question framed is required to be answered in favour of the Assessee and against the Revenue.*

20. *Since the Special Bench has relied upon the decision of the Supreme Court in ' Rajendra Prasad Moody's case (supra), it is considered necessary to discuss the true purport of the said decision. It is noticed to begin with that the issue before the Supreme Court in the said case was whether the expenditure under Section 57(iii) of the Act could be allowed as a deduction against dividend income assessable under the head "income from other sources". Under Section 57(iii) of the Act deduction is allowed in respect of any expenditure laid out or expended wholly or exclusively for the purpose of making or earning such income. The Supreme Court explained that the expression "incurred for making or earning such income", did not mean that any income should in fact have*

*been earned as a condition precedent for claiming the expenditure. The Court explained:*

*"What s. 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that is relevant in determining the applicability of s. 57(iii) and that purpose must be making or earning of income, s. 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of s. 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain natural construction of the language of s. 57(iii) irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure."*

*21. There is merit in the contention of Mr. Vohra that the decision of the Supreme Court in Rajendra Prasad Moody's case (supra) was rendered in the context of allowability of deduction under Section 57(iii) of the Act, where the expression used is for the purpose of making or earning such income'. Section 14A of the Act on the other hand contains the expression 'in relation to income which does not form part of the total income.' The decision in Rajendra Prasad Moody's case (supra) cannot be used in the reverse to contend that even if no income has been received, the expenditure incurred can be disallowed under Section 14A of the Act*

*22. In the impugned order, the ITAT has referred to the decision in Maxopp Investment Ltd's, case (supra) and remanded the matter to the AO for reconsideration of the issue afresh. The issue in Maxopp Investment Ltd's, case (supra) was whether the expenditure (including interest on borrowed funds) in respect of investment in shares of operating companies for acquiring and retaining a controlling interest therein was disallowable under Section 14A of the Act. In the said case*

*admittedly there was dividend earned on such investment. In other words, it was not a case, as the present, where no exempt, income was earned in the year in question. Consequently, the said decision was not relevant and did not apply in the context of the issue projected in the present case.*

*23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression 'does not form part of the total income' in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year.*

*THE ITAT DELHI BENCH 'A' in Ms. Amita Verma v. Assistant Commissioner of Income-tax, Central Circle-13, New Delhi 71 taxmann.com 91 (Delhi - Trib.)*

*Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income (Dividend) - Assessment years 2006-07 to 2010-11 - Assessee contended that during year it had no exempt income and, therefore, no disallowance under section 14A could be made - Assessing Officer relying upon decision of Tribunal rendered in case of Cheminvest Ltd. v. ITO (2009j 121 ITD 318 (Delhi) (SB) rejected assessee's contention - Whether since above decision of Tribunal had been reversed by jurisdictional High Court in case of Cheminvest Ltd. v. CIT [2015] 378 ITR 33/234 Taxman 761/61 taxmann.com 118 (Delhi), it would have to be held that no disallowance under section 14A can be made, where there is no exempt income - Held, yes*

*THE ITAT CHANDIGARH BENCH in Assistant Commissioner of Income-tax, Circle-2, Ludhiana v. Pardeep Kumar Aggarwal 70 taxmann.com 154 (Chandigarh - Trib.)*

*Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income (Condition precedent) - Assessment year 2011-12 - Whether no disallowance can be made under section 14A where no exempt income had been earned by assessee during year - Held, yes  
(relevant extract)*

*We have heard the learned representatives of both the parties, perused the findings of the authorities below and considered the material available on record. On perusal of the order of the learned CIT (Appeals), we do not find any infirmity in the same as the proposition laid down by the Punjab & Haryana High Court in the case of Lakhham Marketing Inc (supra) is squarely applicable to the facts of the present case, as no exempt income has been earned by the assessee during the year. As regards the contention of the teamed D.R. that the said judgment was delivered, before the insertion of Rule 8D, we are of the view that the Rule 8D is just a mechanism provided to compute the disallowance under section 14A of the Act. The provisions of the Rules can never prevail over the provisions of the Act. The judgment has been given in the context of the provisions of the section. If the situation demands for no disallowance, the computational provision does not come into the picture at all. In view of this, we uphold the action of the learned CIT (Appeals) in deleting the disallowance. The grounds raised by the Revenue are dismissed.*

*Based on the above legal precedents relevant to the facts of this case where no exempt income has been earned by the appellant to warrant disallowance as per the provisions laid down u/s 14A rwr 8D, the addition of Rs. 1,61,741/- is accordingly directed to be deleted.”*

4. Now the revenue is in appeal before the ITAT. The Id DR has relied on the order of the Assessing Officer. On the other hand, the Id AR of the assessee has relied on the order of the Id. CIT(A).

5. After hearing both the sides on this issue, we find that the revenue was not able to controvert the findings as recorded by the Id. CIT(A) in his order on facts as well as on law. Therefore, we find no reason to interfere in the order of the Id. CIT(A) and the same stands uphold.

6. In the result, appeal of the revenue stands dismissed.

Order pronounced in the open court on 09/10/2017.

Sd/-  
(कुल भारत)  
(Kul Bharat)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(भागचंद)  
(BHAGCHAND)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 09<sup>th</sup> October, 2017

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The ACIT, Circle-1, Kota
2. प्रत्यर्थी / The Respondent- M Sudha Hospital and Medical Research Centre Pvt. Ltd., Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 671/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar