

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।  
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. Nos. 2846 & 2847/Mds/2016  
निर्धारण वर्ष /Assessment years : 2011-12 & 2012-13

M/s. KAL Airways Private Ltd,  
73, Murasoli Maran Towers,  
MRC Nagar Main Road,  
MRC Nagar,  
Chennai 600 028.

**Vs.** The Deputy Commissioner of  
Income Tax,  
Company Circle II(4)  
Chennai 600 034.

[PAN AADCK 9818J]

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. K. Ramakrishnan, C.A.  
and Shri. N. Devanathan, Adv.

प्रत्यर्थी की ओर से /Respondent by : Shri. Pathlavath Peerya, CIT.

सुनवाई की तारीख/Date of Hearing : 20-06-2017

घोषणा की तारीख /Date of Pronouncement : 29-06-2017

**आदेश / O R D E R**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

Assessee in these appeals is aggrieved on disallowance u/s.  
14A of the Income Tax Act, 1961 (in short "the Act") r.w.r. 8D of the

Income Tax Rules, 1962 (in short "the Rules") for the impugned assessment years.

**2.** Ld. Counsel for the assessee submitted that disallowance u/s. 14A of the Act were made for both these years for investments of the assessee company in mutual fund units and equity shares of M/s.Spicejet Limited. As per Id. Authorised Representative exemption claimed by the assessee u/s. 10(33) of the Act for assessment year 2012-2013 was only ₹240/- being dividend income from mutual fund units. For assessment year 2011-2012, as per Id. Authorised Representative there was no exempt income claimed at all. According to him, by virtue of judgment of Hon'ble Jurisdictional High Court in the case of *CIT vs. Chettinad Logistics (P) Ltd (2017) 80 taxmann.com 221* there could be no disallowance u/s. 14A of the Act where there was no exempted income claimed. Further, according to him, any disallowance u/s. 14A of the Act could not exceed the quantum of exempt income claimed. For this argument reliance was placed on the judgment of Hon'ble Delhi High Court in the case of *Joint Investments P. Ltd vs. CIT 372 ITR 694*.

**3.** Per contra, Id. Departmental Representative submitted that the Id. Assessing Officer in the assessment order for assessment year 2011-2012 had mentioned that assessee had earned dividend income

of ₹5,55,08,071/-. For assessment year 2012-13, as per Id. Departmental Representative assessee had claimed exemption of ₹3,34,91,729/- from short term capital gains under section 10(33) of the Act in addition to dividend of ₹240/-. Even otherwise as per Id. Departmental Representative, a disallowance u/s. 14A of the Act could be made even where there was no exempt income claimed by the assessee.

4. We have heard the rival submissions and perused the material on record. Claim of the assessee is that for previous relevant assessment year 2011-12, it had no exempt income and for previous year relevant to assessment year 2012-13, the exempt income claimed was only ₹240/- from mutual funds. However, as per Id. Departmental Representative Id. Assessing Officer has mentioned about a dividend income of ₹5,55,08,071/- in the assessment order for the assessment year 2011-2012 and STCG on mutual fund ₹3,34,91,729/- claimed as exempt in assessment order for assessment year 2012-2013. Before Id. Commissioner of Income Tax (Appeals) assessee had argued that the sum of ₹5,55,08,071/- mentioned as dividend income by the Id. Assessing Officer for assessment year 2011-12 was actually interest income from fixed deposits, which was never claimed as exempt. Assessee had specifically stated that there was no exempt income earned in the said year. Id. Commissioner of Income

Tax (Appeals) in his order did not make any comments on this claim of the assessee. He had sustained the disallowance made by the Id. Assessing Officer, taking a view that Sec 14A r.w.r. 8D could be invoked even where investments made were for business purpose. Id. Commissioner of Income Tax (Appeals) did not giving any specific finding on the claim of the assessee that it had nil or negligible exempt income, and there could be no disallowance under section 14A of the Act, for that reason. Hon'ble Jurisdictional High Court in the case of *Chettinad Logistics (P) Ltd (supra)* had held as under at paragraphs 11 to 15 as under:-

*"11. Furthermore, we may note that a similar argument was sought to be advanced by the Revenue in the matter concerning, M/s.Redington (India) Limited Vs. The Additional Commissioner of Income Tax, which was, subject matter of T.C.A.No.520 of 2016.*

*11.1. A Co-ordinate Bench of this Court, vide judgment dated 23.12.2016, rejected the plea of the Revenue advanced in that behalf.*

*11.2. As a matter of fact, a perusal of the judgment would show that the Revenue had sought to argue that because exempt income could be earned in future years, therefore, recourse could be taken to the provisions of Section 14A of the Act, to disallow expenditure. In other words the stand taken by the Revenue was irrespective of the fact whether or not income was earned in the concerned assessment year expenditure under Section 14A could be disallowed against anticipated income.*

*11.3. Pertinently, the Division Bench in M/s.Redington (India) Limited case has repelled this precise argument.*

*12. The Division Bench, in our view, quiet correctly held that, the computation of total income, in terms of Section 5 of the Act, is made qua real income and not, vis-a-vis, notional income.*

*12.1. The Division Bench went on to hold that Section 4 of the Act brings to tax, that income, which is relatable to the assessment year*

in issue. The Division Bench, thus, held that where no exempt income is earned in the previous year, relevant to the assessment year in issue, provisions of Section 14 A of the Act, read with Rule 8 D could not be invoked.

12.2. While coming to this conclusion, the Division Bench also took note of the aforementioned Circular, issued by the Board.

12.3. The reasoning of the Division Bench is contained in the following part of the judgment:

*'4.The admitted position is that no exempt income has been earned by the assessee in the financial year relevant to the assessment year in issue. The order of assessment records a finding of fact to that effect. The issue to be decided thus lies within the short compass of whether a disallowance in terms of s.14A of the Act read with Rule 8D of the Rules can be contemplated even in a situation where no exempt income has admittedly been earned by the assessee in the relevant financial year.*

*7.Per contra, Sri.T.Ravikumar appearing on behalf of the revenue drew our attention to the marginal notes of s.14 A pointing out that the provision would apply not only where exempted income is 'included' 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 Commissioner of Income Tax Vs. Maharashtra Sugar Mills Limited (1971)*

*(82 ITR 452) and Rajasthan State Ware Housing Corporation Vs. Commissioner of Income Tax ((2002) 242 ITR 450) 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 Commissioner of Income Tax vs. Walfort Share and Stock Brokers (P) Ltd (2010) 326 ITR 1 '... 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 this 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.(emphasis is ours)]*

*13.Mr.Senthil Kumar, seeks to distinguish the judgment in M/s.Redington (India) Limited case based on the fact that Rule 8D had not kicked-in by AY 2007-08, which was the AY being considered in the said case.*

*14.According to us, this was not the argument, put forth, before the Division Bench. As a matter of fact, the Revenue relied heavily on Rule 8D.*

14.1. Mr. Ravikumar, who appeared for the Revenue, in that matter and who is present in this Court, informs us that he had in fact argued that the Rule was clarifactory in nature and would apply retrospectively, and that, the Division Bench, therefore, discussed the impact of Rule 8D of the Rules.

15. However, it is, our view, as indicated above, independent of the reasoning given in *M/s. Redington (India) Limited* case that Rule 8D cannot be read in a manner, which takes it beyond the scope and content of the main provision, which is, Section 14 A of the Act.

15.1. Therefore, as adverted to above, Rule 8D, cannot come to the rescue of the Revenue.

15.2. In any event, the Tribunal, via, the impugned judgment has remitted the matter to the Assessing Officer.

15.3. Therefore, for the foregoing reasons, we are of the view, that no interference is called for qua the impugned judgment".

Accordingly, we are of the opinion that in the year in which there was no exempt income, there could not have been any disallowance u/s. 14A of the Act. However, Id. Assessing Officer has noted for assessment year 2011-12 that assessee had claimed exempt income of ₹5,55,08,071/- and for assessment year 2012-13 claimed exemption for short term capital gains of ₹3,34,91,729/-. Whereas assessee is saying it had nil or negligible exempt income. In such circumstances, the question whether assessee had any exempt income for these years requires a revisit by the Id. Assessing Officer. In so far as claim of the assessee that even where there was exempt income, disallowance should be limited to the claim of the exempt income, we find that Bombay Bench of the Tribunal in the case of *Manish D. Innani vs. ACIT (ITA No.861/Mum/2012, dated 01.08.2012)* has taken a view in

favour of the assessee. The Bench held that disallowance u/s. 14A r.w.r. 8D of the Act could not exceed the exempt income. We find that Hon'ble Delhi High Court in the case of Joint Investments Pvt. Ltd (supra) had also taken a similar view and held that Sec. 14A r.w.r. 8D could not be so interpreted to mean that entire tax exempted income could be disallowed. We are thus of the opinion that the question of disallowance u/s. 14A for both the assessment years requires a relook by the Id. Assessing Officer to verify the claim of the assessee that it had no or negligible income and if found correct, not to make any disallowance under Sec. 14A of the Act more than the exempt income if any derived.

5. In the result, the appeals of the assessee for both the assessment years are allowed for statistical purpose.

Order pronounced on Thursday, the 29th day of June, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

Sd/-

(अब्राहम पी. जॉर्ज)

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:29th June, 2017

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF