

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri A.K.Garodia, AM & Shri George George K, JM

ITA No.1055/Bang/2017 : Asst.Year 2012-2013

M/s.BPL Limited C/o.T.Velupillai & Co. Chartered Accountants 3155/A-3, 3 rd Floor 11 th Main, 2 nd Stage Indira Nagar Bangalore – 560 038. PAN : AAACB9461B.	Vs.	Asst.Commissioner of Income-tax Circle 2(1)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : --- None ---
Respondent by : Smt.Padmameenakshi, JCIT

Date of Hearing : 30.10.2017	Date of Pronouncement : 03.11.2017
-------------------------------------	---

ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 23.03.2017. The relevant assessment year is 2012-2013.

2. The grounds raised read as follows:-

“1. The Learned Commissioner of Income tax (CIT) has erred in confirming the disallowing Rs.180,07,160 by invoking section 14A of the Income Tax Act.

2. The CIT has erred in assuming that funds have been borrowed to make investment in shares of various companies.

3. *The CIT should have appreciated the fact that the appellant had sufficient funds in the form of share capital and Reserves.*

4. *The CIT has failed to establish any link or nexus between the borrowings and investments made other than assumptions and surmises which are not based on facts.*

5. *The CIT should have appreciated the fact based on documents submitted that interest expenses are for business borrowings of the appellant and not for investments.*

6. *The CIT ought to have restricted the disallowance to the actual exempted income earned.*

7. *The CIT should have considered the fact that companies in which the appellant has invested are companies under liquidation or winding up and hence there is no possibility of ever receiving any tax free income.*

8. *The CIT has totally ignored the detailed submission made by the appellant and has passed an order without considering the facts and merits of the case.*

9. *The appellant craves permission to add, delete or alter any of the grounds at the time of hearing.*

10. *For these and other grounds that may be urged at the time of hearing, the appellant prays that the honorable Tribunal may kindly delete the disallowance made under section 14A of the Income Tax Act of Rs180,07,160”*

3. The brief facts of the case are as follows:-

3.1 The assessee is a company engaged in the manufacturing and trading of electronic goods. For the assessment year 2012-2013, return of income was filed on 27.09.2012 declaring a loss of Rs.9,38,53,069. The

assessment was taken up for scrutiny by issuance of notice u/s 143(2) of the Act. The assessment u/s 143(3) of the Act was completed vide order dated 30.03.2015. In completing the assessment u/s 143(3) of the Act, the Assessing Officer had made disallowance by invoking of provisions of section 14A of the Act, being interest expenditure amounting to Rs.1,80,07,160. The disallowance was calculated by invoking Rule 8D(2) of the Income-tax Rules. The Assessing Officer observed that as the assessee had borrowed funds and claim of interest expenditure on such borrowing, the same requires to be disallowed, since borrowed funds were utilized for making investment for earning dividend income which is exempted u/s 10(33) of the Act.

3.2 Aggrieved by the assessment order in making disallowance u/s 14A of the Act, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the disallowance made by the Assessing Officer. The relevant finding of the CIT(A) reads as follow:-

“4.1 Accordingly it is held that the assessee had made investment in shares which are tax exempted and do not yield any income chargeable to tax under the Income-tax Act. It is also seen that the assessee has borrowed funds and has claimed interest on such borrowing. Board’s Circular 5 of 2014 mandates that even though in the absence of expenditure to earn exempt income during the previous year, provisions of sec.14 have to be invoked and also in view of the decision rendered by the Hon’ble Tribunal of Madras bench in the case of Lakshmi Ring Travellers in order in ITA No.2083/Mds/2011 dt:02/03/2012. The expenditure of Rs.1,80,07,160/- is

attributable to exempted income and is correctly disallowed and added back to the income returned.”

3.3 Aggrieved by the order of the CIT(A), the assessee had preferred the present appeal before the Tribunal.

4. None was present on behalf of the assessee. However, we proceed to dispose of the appeal after hearing the learned Departmental Representative.

5. The learned Departmental Representative supported the orders of the Income tax Authorities.

6. We have the learned the learned DR and perused the material on record. Undisputedly, in the instant case for the assessment year 2012-2013, the assessee had not received any exempted income. The Hon'ble Delhi High Court in the case of *Cheminvest Limited v. CIT [(2015) 378 ITR 33(Delhi)]* had held that section 14A would apply only if exempted income was received or receivable during the relevant previous year. The Hon'ble High Court was considering the following substantial question of law -

“Whether disallowance under Section 14A of the Act can be made in a year in which no exempt income has been earned or received by the Assessee?”

6.1 In adjudicating the above substantial question of law, the Hon'ble Delhi High Court had categorically held that when no exempted income was earned in the previous year relevant to the concerned assessment year, section 14A cannot be

invoked. The relevant finding of the Hon'ble Delhi High Court reads as follow:-

“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. (decision dated 5th September 2014 in ITA No. 486/2014). 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 AY? The Court referred to the decision of this Court in Maxopp Investment Ltd. (supra) and to the decision of the Special Bench of the ITAT in this very case i.e. Cheminvest Ltd. v. CIT (2009) 317 ITR 86. The Court also referred to three decisions of different High Courts which have decided the issue against Revenue. The first was the decision in Commissioner of Income Tax, Faridabad v. M/s. Lakhani Marketing Incl. (decision dated 2nd April 2014 of the High Court of Punjab and Haryana in ITA No. 970/2008) which in turn referred to two earlier decisions of the same Court in CIT v. Hero Cycles Limited [2010] 323 ITR 518 and CIT v. Winsome Textile Industries Ltd. [2009] 319 ITR 204. The second was of the Gujarat High Court in Commissioner of Income Tax-I v. Corrttech Energy (P) Ltd. [2014] 223 Taxmann 130 (Guj.) and the third of the Allahabad High Court in Commissioner of Income Tax, Kanpur v. Shivam Motors (P) Ltd. (decision dated 5th May 2014 in ITA No. 88/2014). These three decisions reiterated the position that when an Assessee had not earned any taxable income in the relevant AY in question "corresponding expenditure could not be worked out for disallowance."

16. In CIT v. Holcim India (P) Ltd. (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 CIT v. Holcim India (P) Ltd. (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. (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 (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*

(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 (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. (supra)* and remanded the matter to the AO for reconsideration of the issue afresh. The issue in *Maxopp Investment Ltd. (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 14 A 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.

24. Consequently, the impugned order of the ITAT is set aside and the appeal is allowed in the above terms. This Court should not be understood to have expressed any opinion on the issue of whether for the AY in question the interest expenditure incurred by the Assessee would be

allowable as business expenditure under Section 36 (1)(iii) of the Act.”

6.2 In view of the above judgment of the Hon'ble Delhi High Court, since for the current assessment year assessee had not earned any exempted income, we hold the invocation of section 14A is uncalled for. It is ordered accordingly.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 03rd day of November, 2017.

Sd/-
(A.K.Garodia)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Bangalore ; Dated : 03rd November, 2017.
Devdas*

Copy of the Order forwarded to :

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

True copy

BY ORDER,

(Asstt. Registrar)
ITAT, Bangalore