

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "L", MUMBAI

Before Shri Shamim Yahya, Accountant Member  
& Shri Sandeep Gosain, Judicial Member

ITA No.4004/Mum/2016  
Assessment Year : 2011-12

ACIT Circle 6(2)(2) Mumbai	Vs.	Essar House Ltd., Essar House, 11 K.K.Marg, Mahalaxmi, Mumbai 400 034
(Appellant)		PAN AAACJ2883P Respondent)

Appellant By : Shri M V Rajguru  
Respondent By : Shri Vijay Mehta

Date of Hearing :26.10.2017	Date of Pronouncement : 08.11.2017
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**ORDER**

**Per Sandeep Gosain, Judicial Member**

This appeal is by the Revenue against the order of CIT(A) -12, Mumbai, dated 21.03.2016 for assessment year 2011-12.

2. The brief facts of the case are that the assessee is engaged in the business of renting of properties and trading in shares and securities. The Assessing Officer, computed the income of the assessee by making disallowing ` 2,08,92,240/- u/s. 14A read with Rule 8D, vide order dated 24.03.2014, passed u/s. 143(3) of the Income tax Act, 1961. Aggrieved by the order of the Assessing Officer, the assessee preferred appeal before the CIT(A). The learned CIT(A), after considering the case of both the sides, deleted disallowance and allowed the appeal of the

assessee. Aggrieved, the Revenue is in appeal before us raising the following ground:

*"On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the disallowance made u/s. 14A r.w.r. 8D of ₹2,08,92,240/- ignoring the fact that assessee has failed to prove that own funds have been utilized for making investments."*

3. We have heard the counsels for both the parties and have also perused the material placed on record along with the orders of the authorities below. Before we go into the merits of the grounds raised by the Revenue, it is necessary to evaluate the orders passed by the lower authorities. The operative portion of the order of the CIT(A) is contained in para 9 of his order and the same is reproduced below:

*"9. Ground of Appeal No. 2 relates to the disallowance of expenses of Rs.2,08,92,240/- u/s 14A of the Act. It is seen that the appellant's main contention is that if there is no exempt income, then the disallowance u/s 14 was not triggered off. The appellant has given various judicial findings over the issue. The Assessing office has not disputed the facts that the appellant has not received the exempt income during the year. I find merit in the submission of the appellant that unless and until, there is receipt of exempted income for concerned assessment years, section 14A cannot be invoked. This view has also been held by Hon'ble Delhi High Court in Holeim India Pvt. Ltd. ITA No.486/ 2014 and 299/2014, Hon'ble High Court of Punjab & Haryana in the case of Lakhani Marketing Inc (49 taxmann.com 257 ) and Hon'ble High Court of Allahabad in the case of CIT Vs. M/s Shivam Motors (P) Ltd ( 55 taxmann.com 262). Thus the addition is liable to be deleted.*

*It is also seen that the A.O. has not brought on record any evidence to show that the borrowed funds have been utilized for making investments and therefore in the absence of any nexus the disallowance of interest cannot be made, particularly when its own funds of Rs.218.40 crores are far in excess of the total amount of investments of Rs.27.5 crores made in shares. Thus, it is held that the following Hon'ble decisions of jurisdictional High Court and ITAT are squarely applicable in the case of the appellant here and so the disallowance U/S.14A cannot be made:-*

- i) Reliance Industries Ltd. Vs. Addl.CIT(2012)(79 DTR(Tri.)315),Mumbai*
- ii) Reliance Utilities and Power Ltd.(2009) 313ITR 340(Bom).*

*iii) Bunge Agribusiness(India)(Pvt.) Ltd. Vs. DCIT (2011) 64 DTR(Tri) 201(Mum)*

*In view of the above discussion at para 9, the Ground of Appeal No.2, of the appellant is allowed."*

After having gone through the impugned order passed by the learned CIT(A), we find that it is undisputed fact that the assessee has not received any exempt income during the year and in such situation, it is a settled law that until and unless there is a receipt of exempt income for the concerned assessment year, section 14A cannot be invoked. The CIT(A) has deleted the disallowance made by the Assessing Officer by taking into consideration the central proposition of law as laid down by respective High Courts.

4. In the absence of any new facts or circumstances brought before us to controvert or revert the findings so recorded by the CIT(A), we see no reason to interfere with the well reasoned order passed by the learned CIT(A). It is accordingly upheld.

5. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open court on this day of 8<sup>th</sup> November 2017.

**Sd/-**  
**(Shamim Yahya)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated : 8<sup>th</sup> November, 2017.  
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**Sd/-**  
**(Sandeep Gosain)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'L' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)  
Income Tax Appellate Tribunal, Mumbai