

THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI
BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA no.1663/Mum./2014
(Assessment Year: 2009-10)

DCIT-2(2),
Room No.545,
Aayakar Bhavan,
M.K. Road,
Mumbai-400020

..... Appellant

v/s

Meditab Specialities Pvt. Ltd.
12, Gunbow Street, Fort,
Mumbai-AAACM6124A

..... Respondent

Assessee by : Shri. V.Mohan
Revenue by : Shri. Suman Kumar-Sr. AR

Date of Hearing -13.11.2017

Date of Order - 13..11.2017

ORDER

PER: PAWAN SINGH

This appeal by the Revenue u/s 253 of Income-tax Act is directed against the order of Ld. CIT(A)-5, Mumbai, dated 12.12.2013 for the Assessment Year-2009-10. The Revenue has raised two grounds of appeal:-

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance made by the AO u/s. 14A r.w.r. 8D of Rs.75,97,250/- to Rs.5,57,517/- ignoring the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. vs. DCIT (2010) 328 ITR 081 (Born.), wherein it is held that Rule 8D is a reasonable method

for making the disallowance u/s. 14A and it is applicable for A.Y. 2009-10."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred holding that the disallowance u/s. 14A cannot be made in respect of income of SEZ, stating that income from which is eligible for deduction u/s. 801A/IB or u/s. 10AA and both are deduction provisions, without appreciating that the assessee is not eligible for deduction u/s. 801A/IB as the assessee is not a developer of SEZ and the assessee is eligible for exemption u/s. 10AA, which falls in Chapter III appearing in the Act under the head - 'Incomes which do not form part of total income' and therefore the income of the assessee from SEZ is exempt income."

2. At the outset of the hearing, the Ld. Authorized representative of the assessee submits that both grounds of appeal raised by the Revenue is squarely covered in favour of the assessee in its own case for the Assessment Year 2008-09 in ITA No.5604/Mum/2011, dated 18/08/2017. On going through the order in ITA No. 5604/M/2011 the Ld. Departmental Representative for the Revenue fairly agreed with the arguments of the Ld. Authorized Representative.

2.1. We have considered the submission of the Ld. A.R of the assessee and perused the order of the Tribunal for A.Y 2008-09 in ITA no. 5604/um/2011 dated 18.08.2017 in assessee's own case. The coordinate bench of the Tribunal has passed the following order:-

"8. We have patiently and carefully heard rival contentions and perused the material available on record. We have also

applied our mind to the decisions relied upon by both the parties. At the outset, we must put it on record that learned Authorised Representative has restricted his contention on the disputed issue of disallowance made under section 14A r/w rule 8D only on the proposition that the disallowance under section 14A cannot exceed the exempt income earned in a particular assessment year. In this context, the learned Authorised Representative has furnished a chart before us as per which the exempt income earned in the assessment years under appeal are as under:-

<i>A.Y. 2008-09</i>	<i>₹6,04,377</i>
<i>A.Y. 2010-11</i>	<i>₹9,130</i>
<i>A.Y. 2012-13</i>	<i>₹ Nil</i>

9. In view of the aforesaid submissions of the learned Authorised Representative, we are called upon to decide the limited issue, whether the disallowance under section 14A r/w rule 8D has to be restricted to the exempt income earned in a particular assessment year. To counter the aforesaid proposition of the learned Authorised Representative, the learned Departmental Representative has submitted that the provisions of section 14A r/w rule 8D being mandatory in nature, the Assessing Officer has to compute the disallowance under section 14A in terms of the method prescribed under section rule 8D. We are unable to agree with the contention of the learned Departmental Representative. In case of Cheminvest Ltd. v/s CIT, ITA 749/2014, dated 2nd September 2015, the Hon'ble Delhi High Court has held that no disallowance under section 14A of the Act, can be made in the absence of exempt income. In case of CIT v/s Joint Investment Pvt. Ltd., ITA no.117/2015 dated 25th February 2015, the Hon'ble Delhi High Court has held that the disallowance under section 14A cannot swallow the entire exempt income. Following the aforesaid ratio of the Hon'ble Delhi High Court, different Benches of the

Tribunal have held that disallowance under section 14A r/w rule 8D, cannot exceed the exempt income earned by the assessee in a particular assessment year. In fact, ITAT, Delhi Special Bench, in case of ACIT v/s Vireet Investment Pvt. Ltd. (supra) has held that only investments yielding exempt income during the year can be considered for computing average value of investment. In contrast, the decisions relied upon by the learned Departmental Representative in no way contradict the aforesaid ratio. On a careful reading of the decision in case of Distributors (Baroda) Pvt. Ltd. (supra), Cloth Traders Pvt. Ltd. (supra, ACG Associated Capsules Pvt. Ltd. (supra), we are convinced that these decisions are in no way connected to the issue in dispute in the present appeals. As far as the decisions in Walfort Shares and Stock Brokers (supra), Godrej & Boyce Mfg. Co. Pvt. Ltd. (supra) are concerned, though they are in the context of section 14A of the Act, however, these decisions cannot be said to be laying down the ratio that even in absence of exempt income disallowance under section 14A can be made or the disallowance under section 14A should not be restricted to the exempt income earned in a particular assessment year. Learned Departmental Representative has failed to bring to our notice even a single decision which directly counters the proposition put forward by the learned Authorised Representative. In the aforesaid view of the matter, following the ratio laid down in the decisions referred to above by us, we hold that if in a particular assessment year, the assessee has not earned any exempt income, no disallowance under section 14A, can be made. Similarly, the disallowance under section 14A, cannot exceed the exempt income earned in a particular assessment year. In terms of our aforesaid observations, we direct the Assessing Officer to restrict the disallowance under section 14A, to ₹ 6,04,377 in assessment year 2008-09 and ₹ 9,130 in assessment year 2011-12. In assessment year 2012-13, assessee has not earned any exempt income, therefore, no disallowance under section 14A can be

made. In view of our reasoning above, the grounds raised by the Department in its appeal have become redundant, hence, dismissed.

10. Before parting, we must clarify that we have not expressed any opinion on the issue of applicability of section 14A to the investments made in SEZ, which is left open to be decided on its own merit if it arises in any other assessment year."

2.2. Considering the decision of the Tribunal in assessee's own case for Assessment Year 2008-09, we find that both the issue raised by the Revenue is squarely covered in favour of the assessee, hence, respectfully following the order of the Tribunal, the grounds of appeals raised by the Revenue are dismissed.

Finally, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 13.11.2017

Sd/-

R.C. SHARMA
ACCOUNTANT MEMBER

Sd/-

PAWAN SINGH
JUDICIAL MEMBER

MUMBAI, DATED: 13.11.2017

Shelkar, Private Secretary

Copy of the order forwarded to:

1. The Assessee;
2. The Revenue;
3. The CIT(A);
4. The CIT, Mumbai City concerned;
5. The DR, ITAT, Mumbai;

6. *Guard file.*

By Order

(Dy./Asstt.Registrar)
ITAT, Mumbai