

**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.13/CTK/2016
Assessment Year : 2011-12

DCIT, Circle 1(1), Cuttack	Vs.	Jitendra Nath Patnaik, Boneikela, Joda, Keonjhar
PAN/GIR No. ABFPP 3817 J		
(Appellant)	..	(Respondent)

Assessee by : Shri S.C.Bhadra, AR

Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 27/07/ 2017

Date of Pronouncement : 28 /07/ 2017

ORDER

Per N.S.Saini, AM

This is an appeal filed by the Revenue against the order of CIT(A)-Cuttack, dated 30.10.2015, for the assessment year 2011-12.

2. In Ground No.1 of the appeal, the grievance of the Revenue is that the CIT(A) erred in deleting disallowance of expenditure of Rs.14,09,386/- relating to income which does not form part of total income computed by the Assessing Officer u/s.14A of the Act.

3. The brief facts of the case are that the Assessing Officer observed that the assessee has made investments in assets which yield income not chargeable to tax. Considering the provisions of Section 14A of the Act read with Rule 8D, the Assessing Officer felt that there has to be disallowance of estimated expenditure for such investments and the corresponding income whether earned or expected to earn. Hence, he made disallowance of Rs.14,09,306/- and added the same to the total income of the assessee.

4. Before the CIT(A), the assessee submitted that the assessee is holding share as a promoter in Pattnaik Steel & Alloys Limited of Rs.29.78 Crores, from where he has not received any dividend from inception. The assessee temporarily parked Rs.2.69 Crores in mutual fund which was redeemed from year to year. It was further submitted that during the year, the assessee has earned short term capital gain as well as long term capital gain and also dividend from mutual fund. Tax was offered on short term capital gain. Major portion of the portfolio is investment in share in Pattnaik Steel & Alloys Ltd. made from inception. Regarding Mutual Fund the agent of the fund handled the same and no expenses are incurred for the same. That is why, there is no expenditure against exempted income. The Assessing Officer without giving any finding that the assessee incurred certain expenditure against exempted income directly applied rule 8D to compute disallowance under 14A. It was submitted that the investments were made from the cash generated from operation and has not been made out of borrowed money for which interest been paid by him. To corroborate

his statement the assessee had furnished his cashflow statement for the financial year. The assessee also pointed out that it has been decided in the case of CIT v. Gujarat Power Corporation Ltd. (Tax appeal No.1587 of 2009) that the assessee had demonstrated that it had other sources of investment and that, therefore, according to the assessee no part of the borrowed fund could be stated to have been diverted to earn tax free income. When the CIT (A) and the Tribunal both on facts in the present case found that the assessee did not investment borrowed fund for earning free income, not applying provision of section 14A of the Act for taxing such interest was justified. Further, he relied on the decision of Hon'ble P&H High Court in the case of CIT vs. Deepak Mittal,(86 CCH 51) 2013 wherein, it was held that disallowance u/s.14A requires finding of incurring expenditure where it is found that for earning exempted income, no expenditure has been incurred, disallowance u/s.14A cannot stand.

5. The CIT(A) after considering the submissions of the assessee allowed the appeal of the assessee by observing as under:

" I have perused the assessment order framed by the AO and the submissions of the appellant and particularly the ratio of case laws submitted by the appellant. The genesis of computation of disallowable expenditure u/s.14A of the Act is that the AO having regard to . the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which docs not form part of the total income. Moreover the AO can determine the disallowable expenditure also in relation to a case where the assessee claims that no expenditure has been incurred by it iii relation to income which does not form part of the total income. While computing the disallowable expenditure the AO has to put the above two tests to the accounts of the assessee. The AO should record his dissatisfaction regarding the amount already shown by the assessee as disallowance or AO can compute the same where assessee itself shows no disallowance of expenditure under this head. In the instant case the AO has not recorded the reason for dissatisfaction

regarding the same and the appellant had produced cashflow statement which shows that he had adequate fund to invest in assets earning tax free income and borrowed money have not been invested in the same. Considering these I do not see any reason for disallowing expenditure as computed by the AO u/s.14A of the Act read with Rule 8D. The AO is directed to delete the addition."

6. During the course of hearing, Id D.R. could not point out any specific error in the above quoted order of the CIT(A). Ld D.R. relied on the CBDT Circular No.5/2014/F.No.225/182/2013-ITA-II) dated 11.2.2014 and submitted that according to the said Circular, even if no exempt income is earned by the assessee, disallowance of expenditure can still be made u/s.14A of the Act.

7. Before us, Id A.R. has relied on the decision of Hon'ble Delhi High Court in the case of Cheminvest Limited vs CIT (2015) 378 ITR 33 (Del), wherein, it has been held that the expression 'does not form part of the total income' in Section 14A of the Act envisages that there should be an actual receipt of income, which was 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. He also relied on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Corrttech Energy Pvt Ltd., (2014) 272 CTR 0252 (Guj), wherein, it was held that sub-section (1) of section 14A provides that for the purpose of computing total income under Chapter IV of the Act, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total

income under the Act. In the present case, admittedly, the assessee did not make any claim for exemption. In such a situation section 14A could have no application. Further, he relied on the decision of Hon'ble Allahabad High Court in the case of CIT vs. Shivam Motors (P) Ltd., (2014) 89 CCH 0059 (All), wherein, it was held that in absence of any tax free income, corresponding expenditure could not be worked out for disallowance u/s.14A.

8. After considering the rival submissions and perusing the materials available on record, we find that no specific mistake in the order of the CIT(A) was pointed by the Id D.R. No material was brought on record by the Id D.R. to controvert the finding of the CIT(A) that no expenditure was incurred by the assessee on tax free dividend income earned by the assessee from mutual fund. Hence, we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and the ground of appeal of the revenue is dismissed.

9. In Ground No.2 of the appeal, the grievance of the revenue is that the CIT(A) erred in deleting the additions on account of depreciation as the partial disallowance was made for personal use of the vehicles u/s.38(2) of the Act.

10. The brief facts of the case are that the Assessing Officer held that it cannot be denied that the vehicles of the assessee could have been used for personal purposes and, therefore, disallowed 20% of the depreciation

claimed by the assessee thereby making addition of Rs.4,82,964/- to the total income of the assessee.

11. Before the CIT(A), it was submitted by the assessee that it was statutory allowance and the assessee is entitled to depreciation even if he uses the asset for one day for the purpose of his business. No vehicle is purchased during the year. He relied on the decision of the Mumbai Benches of the Tribunal in the case of Mukesh K. Shah v. ITO, 303 ITR 409 (MUM) where it was stated that "depreciation is a statutory allowance. The statutory allowance cannot be restricted on the basis of volume of business use and volume of personal use. The condition to be satisfied is that the asset should be owned by the assessee and it should be used for the business or profession. Both the conditions are satisfied here. Personal use of the car cannot be fetter for the granting of statutory allowance. Therefore, the disallowance made on account of depreciation was deleted.

12. In view of the above submission of the assessee and the decision of the Mumbai Benches of the Tribunal in the case of Mukesh K. Shah (supra), the CIT(A) directed the Assessing Officer to allow depreciation as claimed by the assessee.

13. During the course of hearing, Id D.R. relied on the order of the Assessing Officer but could not point out any specific error in the order of the CIT(A). He also could not cite any contrary decision to that relied by

the CIT(A) while allowing the claim of depreciation. Therefore, we find no reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of revenue is dismissed.

14. In Ground No.3 of the appeal, the grievance of the revenue is that the CIT(A) erred in deleting the peripheral development expenses as allowable deductions as business expenditure u/s.37(1) of the Act.

15. The brief facts of the case are that the Assessing Officer found that the assessee has claimed Rs.45,92,088/- as expenditure towards periphery development. The Assessing Officer further noted that although the expenditure was made towards social causes yet it was not an expenditure which could be safely classified as business expenditure. The Assessing Officer considered it as "non-business expenditure" and disallowed the amount thereby adding the same to the total income of the assessee.

16. Before the CIT(A), the assessee submitted that all the expenditure during the year for peripheral development are incurred only on the direction of Block Development Officer as well as local Panchayat Officer. The assessee further submitted vouchers in support of the expenditures along with order of local authority. The assessee submitted that the CIT(A),Cuttack vide order No.3275 dated 2009-10 for AY 2007-08 deleted the addition made by the Assessing Officer for peripheral development expenditures relying upon the order of the Cuttack Bench of the Tribunal in

the case of Mahanadi Coalfields Ltd., in ITA No.275/CTK/2004 for assessment year 1999-2000. As per his observation, the amount has been spent on the direction of Block Development Officer and the decision taken by the Panchayat Samiti Office..

17. The CIT(A) after considering the submissions of the assessee held as under:

"" I have perused the order of the Hon'ble ITAT,Cuttack and the order of the CIT(A), Cuttack supra. The Hon'ble ITAT.Cuttack in the case of Mahanadi Coalfields Ltd. (ITA No.275/CTK/2004 for assessment year 1999-2000; ITA No.276/CTK/2004 for the assessment year 2000-01; ITA No.750/CTK/2004 for the assessment year 2001-02 & ITA No.97/CTK/2006 for the assessment year 2002-03 passed on 02.01.08 held the following:

"In our considered view that whenever the assessee is able to establish that the assessee company has incurred the expenditure on the directions/instructions of the Central/State Government and other Govt, organizations which are having direct control over the business of the assessee company then the same are allowable as deductions as business expenditure u/s.37(l) of the Income Tax Act,1961."

Incidentally the appellant had claimed an amount of Rs.1,91,062/- regarding construction of borewell under peripheral development expenses. The appellant had produced the copy of the letter recording meeting in the chamber of Sub-Collector, Bonai regarding repairs of Kaleposh Chowk to Barsuan road. As per the letter the appellant had paid Rs.10,00,000/- on this account and had produced the evidence of payment of the same. Besides through letter dated 14.12.2010 of the Block Development Officer, Koira, the appellant had undertaken setting up borewell at four places, construction of community centre, construction of AWC and boundary wall for which the appellant had spent Rs.2,19,816/- and Rs.9,46,739/-. The AO is directed to allow the amount of Rs.21,66,555/-(Rs.10,00,000 + Rs.2,19,816 + Rs.9,46,739). Regarding the rest of the amount as claimed by the appellant under this head, the appellant submitted that he had constructed CC Road at Koira Bhanja Palli as per the letter of BDO.Koira dated 28.07.2010 for which the appellant had submitted details of expenditure amounting to Rs.34,25,533/- for the impugned financial year."

18. Ld D.R. relied on the order of the Assessing Officer. He could not point out any specific error in the order of the CIT(A). Hence, we confirm the order of the CIT(A) and dismiss the ground of appeal of the revenue.

19. In the result, the appeal filed by the revenue is dismissed

Order pronounced on 28 /07/2017.

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 28 /07/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : DCIT, Circle 1(1), Cuttack
2. The Respondent. Jitendra Nath Patnaik,
Boneikela, Joda, Keonjhar
3. The CIT(A) Cuttack
4. Pr.CIT, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.

//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack