



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

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

ITA No.362/Rpr/2014
Assessment Year : 2010-2011

DCIT, 1(2), Aayakar Bhavan, Central Revenue Building, Civil Lines, Raipur.	Vs.	Hira Industries Ltd., 557A, Urla Industrial Area, Raipur
PAN/GIR No.AABCH 2868 P		
(Appellant)	..	(Respondent)

Assessee by : None
Revenue by : Shri R.M. Mujumdar, DR

Date of Hearing : 16/01/ 2018
Date of Pronouncement : 17 /01/ 2018

ORDER

Per Pavan Kumar Gadale, JM

This is an appeal filed by the revenue against the order of the CIT(A)-
Raipur, dated 26.9.2014 for the assessment year 2010-2011.

2. The revenue has raised the following grounds of appeal:

"1. Whether in law and facts & circumstances of the case, the
CIT(A) has erred in restricting the disallowance of Rs.51,165/-
on account of CSR/donation expenses thereby giving relief of
Rs.76,50,000/-.

2. Whether in law and on facts & circumstances of the case, the
CIT(A) has erred in deleting the disallowance of Rs.50,77,701/-
u/s.14A of the I.T.Act, 1961."



3. The respondent-assessee has filed an adjournment petition to adjourn the appeal on the ground that the Id counsel for the assessee engaged to represent the case on behalf of the assessee will proceed to Mumbai for attending the part heard matters in Mumbai Benches and will not be available to argue the case. We find that the reason for adjournment is not plausible one, hence the adjournment petition is rejected and the matter is heard and disposed of on the basis of materials available on record and after hering Id D.R.

4. Apropos Ground No.1 of appeal, the facts are that the Assessing Officer found that the assessee has debited a sum of Rs.94,51,165/- to the profit and loss account under the head "Corporate Social Responsibility expenses". The Assessing Officer required the assessee to justify the claim. The assessee submitted that the amounts were donated to Akandsha Lions School for mentally handicapped, Mikki Memorial Trust, a charitable institute for eye treatment, Sitapur Shiksha Sanstan, an institute for education of poor and needy children. The Assessing officer observed that Akandsha Lions School for mentally handicapped is not registered with the Income Tax Department, therefore, he disallowed Rs.59,00,000/-. As regards to donation to Mikki Memorial Trust of Rs.25,00,000/-, a charitable institute for eye treatment, and Rs.10,00,000/- to Sitapur Shiksha Sanstan, the



Assessing officer observed that both these institutions are registered u/s. 80G, therefore, he allowed 50% of the donation and disallowed balance 50% of the donation. As regards to donation of Rs.36,165/- and Rs.15,000/- paid to Ganesh Puja, Durga Puja, Cricket tournament, etc, the Assessing officer disallowed the same. Hence, in sum and substance, he disallowed Rs.77,01,165/- out of total expenses claimed by the assessee.

5. On appeal, the CIT(A) allowed part relief to the assessee by allowing Rs.76,50,000/- and disallowed Rs.51,165/-.

6. Ld D.R. submitted that the CIT(A) has erred in restricting the addition on account of donation of Rs.51,165/- and allowing substantial relief to the assessee. Ld D.R. emphasized that the decisions relied on by the CIT(A) are not relevant to the facts of the assessee's case. The expenses claimed by the assessee cannot be allowed as the same are not wholly and exclusively incurred for the business purposes of the assessee. Ld D.R. submitted that the assessee has not complied with the requisite conditions u/s.37(1) of the Act to claim the deduction. He also submitted that the assessee has not shown any nexus between the current benefit and future benefit for the assessee in making such huge donations in the institutions.

7. We have heard Ld D.R, perused the orders of lower authorities and materials available on record. We find the assessee has made donations to



the respective institutes, such as Akanksha Lions School for mentally handicapped, Mikki Memorial Trust, a charitable institute for eye treatment, Sitapur Shiksha Sanstan, an institute for education of poor and needy children. It is not in dispute that the assessee has not made donations to the above said institutions. The expenses are incurred for welfare of community, which ultimately improves the corporate image and enhance goodwill in public. Schedule VII of the Companies Act prescribes activities towards which CSR expenditure should be incurred like slum development, eradicating poverty, promoting health care, gender equality ,taking education initiatives, One of the main things that come to fore is what is the effect of CSR commitments from tax deductibility perspective. The general norm has been to allow a deduction for donations, contributions, etc., made for charitable purposes under Section 80G of the Income-tax Act, 1961. The corporate houses were expecting relief under section 37 (1) of the Income-tax Act, 1961. It is a residuary section in the Act to allow business expenditure which is done in the normal course of business and profession. The requirement is that it should have a nexus with business objectives and should not be of a personal nature. In the instant case, the assessee has donated the amounts to the institutions, which are engaged in medical treatment; school for mentally handicapped and education for poor and needy children. These itself prove that the expenditure incurred by the



assessee are for charitable purposes. Hence, the deduction under section 37 of the Income-tax Act, 1961 is to be allowed.

8. We also find that the CIT(A) has relied on the decision of Hon'ble Karnataka High Court in the case of CIT vs. Infosys Technologies Ltd., 360 ITR 714 (Kar) has held that the expenditure incurred on social responsibility was laid out or expended wholly and exclusively for purposes of business. The CIT(A) has referred to the amendment made in Finance Act (No.2) 2014 w.e.f. 1.4.2015 in Section 37, wherein, it is declared that for the purposes of sub-section(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession. The CIT(A) has held that there was no such embargo for the preceding years. In view of above, the CIT(A) held that the disallowance cannot be sustained. We are of the considered opinion that the CIT(A) has rightly considered the decision and deleted the addition made by the Assessing Officer and Ground No.1 of appeal of the revenue is dismissed.

9. The next issue relates to deletion of Rs.50,77,701/- u/s.14A of the Act.



10. The Assessing Officer noticed that the assessee has made investment of Rs.1,96,52,176/- in the shares of Hira Ferro Alloys Ltd., a group company. As on 31.3.2010, the total investment made by the assessee company in share stood at Rs.18,39,22,128/-. In response to Assessing Officer's query, the assessee has submitted that the assessee company has earned cash profit of Rs.1.30 crores and has not incurred any direct or indirect expenditure for making such investment, therefore, provisions of section 14A of the Act are not applicable. The Assessing Officer observed that dividend income from the investment is exempt from tax and, therefore, the corresponding interest out of interest expenditure claimed on borrowed funds is not allowable u/s.14A of the Act. Therefore, he disallowed Rs.50,77,701/-.

11. On appeal, it was submitted that the assessee has earned dividend income of Rs.46.86 lakhs on the investments made by the company in its associate companies Hira Ferro Alloys Ltd., in which the assessee is holding almost 40% of shares. The investment in the company is out of borrowed fund from Hira Steels Ltd., and Jagdamba Power and Alloys Ltd., and the interest amounting to Rs.1,96,52,371/- attributable to the amount of investment of Rs.16.37 crores has been added to the cost of improvement, thereby interest on borrowed fund of Rs.1,96,52,371/- was not debited to



profit and loss account. It was also submitted that by adding interest expenditure of Rs.1,96,52,371/- to the cost of investment means reducing the interest expenditure by that amount resulting overall increase of the total income of the assessee, therefore, further disallowance on account of interest of Rs.50,77,644/- is not correct.

12. The CIT(A) observed that interest on borrowed funds which is attributable to the investment in the share capital of associated companies has been added to the cost of investment and as such the total interest debited to the profit and loss account has been reduced to that extent. Therefore, disallowance u/s.14A does not arise at the entire interest expenses attributable to the investment made in the associated companies. Therefore, he deleted the addition made by the Assessing Officer.

13. The contention of Id D.R. is that the assessee has made investment in shares and has been receiving dividend income and claimed exempt from tax. The assessee has been utilizing borrowed funds for investment and, therefore, the interest component to the extent of exempt income cannot be allowed. He submitted that the CIT(A) has erred in allowing the claim of the assessee without considering all these facts.



14. After hearing Id D.R. and perusing the materials available on record, we find that the Assessing Officer has made addition applying section 14A r.w. 8D of the Act in respect of investment made by the assessee in the group companies and the investment was for making profit and for future benefit of the assessee company. The Assessing Officer noticed that the assessee has incurred certain expenditure towards interest and also these investments were made out of borrowed funds in the group companies and, therefore, applying the provisions of section 14A r.w.s 8D, the Assessing Officer made disallowance. Whereas, the CIT(A) found that the assessee has made investment in the sister concern out of its non-interest bearing funds, which is not disputed by Id D.R. and also the investments have been made with profit motive. In these circumstances, the CIT(A) found that the disallowance is not in order. Considering the facts of the case, we are inclined to uphold the order of the CIT(A) and reject the ground of appeal of the revenue.

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

Order pronounced on 17 /01/2018.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Raipur; Dated 17 /01/2018



B.K.Parida, SPS

Copy of the Order forwarded to :

1.	The Appellant : DCIT, 1(2), Aayakar Bhavan, Central Revenue Building, Civil Lines, Raipur
2.	The Respondent. Hira Industries Ltd., 557A, Urla Industrial Area, Raipur
3.	The CIT(A)- Raipur
4.	Pr.CIT- Raipur
5.	DR, ITAT, Raipur
6.	Guard file. //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Raipur