

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

I.T.A. No. 1799/HYD/2017

Assessment Year: 2013-14

M/s. BTT Industries Private Limited, HYDERABAD [PAN: AABC6846R]	Vs	Deputy Commissioner of Income Tax, Circle-1(2), HYDERABAD
--	----	--

(Appellant)

(Respondent)

For Assessee : Shri V.G. Tarak Nath, AR
For Revenue : Smt. Suman Malik, DR

Date of Hearing : 09-01-2018
Date of Pronouncement : 19-01-2018

ORDER

PER B. RAMAKOTAIAH, A.M. :

The issue in this appeal by assessee against the order of the Commissioner of Income Tax (Appeals)-1, Hyderabad, dated 31-07-2017 is with reference to disallowance u/s. 14A r.w. Rule 8D, when assessee did not earn any tax free dividend.

2. Briefly stated, assessee-company is engaged in manufacturing of mild steel billets. Assessee filed its return of income for the AY. 2013-14 admitting total loss of Rs. 8,34,35,800/-, but declared profits u/s. 115JB of the Income Tax

Act [Act] at Rs. 60,22,272/-. The Assessing Officer (AO) issued a show cause notice asking why the disallowance u/s. 14A cannot be made as assessee has shown investments of Rs. 98,77,350/- in equity of a related company. It was also noted by AO that assessee has taken huge interest bearing loans for which it has paid an interest of Rs. 3,43,21,754/-. Assessee submitted that it had not earned any dividend during the year on the investments made in the related company and submitted that the provisions of Section 14A are not applicable. However, ignoring assessee's submissions, AO invoked the provisions of Section 14A and disallowed proportionate interest under Rule 8D(2)(ii) to an extent of Rs. 7,21,490/- and 0.5% of average investments under Rule 8D(2)(iii) at Rs. 49,386/-, thus, making a total disallowance of Rs. 7,70,877/- under the normal computation and also u/s. 115JB.

3. Before the Ld.CIT(A), assessee contested that the borrowals are for the purpose of business and no dividend income was earned during the year. Hence, no disallowance can be made. Ld.CIT(A), however, did not agree and confirmed the action of AO.

4. After considering the rival contentions, we notice that this issue is covered in favour of assessee by following the various decisions:

- i. *CIT-1 Vs. Cortech Energy Pvt. Ltd., [45 taxman.com 116] (Gujarat);*
- ii. *CIT, Faridabad Vs. Lakhani Marketing Inc. [49 taxmann.com 257] (Punjab & Haryana);*

- iii. *CIT Vs. Shivam Motors (P) Ltd.*, [55 taxmann.com 262] (Allahabad);
- iv. *Cheminvest Ltd., Vs. CIT-IV* [61 taxmann.com 118] (Delhi);
- v. *Redington (India) Limited Vs. Addl. CIT, Co. Range-V, Chennai* [77 taxmann.com 257] (Madras);
- vi. *CIT, Central-1, Chennai Vs. Chettinad Logistics (P) Ltd.*, [80 taxmann.com 221] (Madras);
- vii. *Principal CIT-04 Vs. IL & FS Energy Development Company Ltd.*, [84 taxmann.com 186] (Delhi);
- viii. *CIT Vs. Vireet Investment (P) Ltd.*, [82 taxmann.com 415] [Delhi-Trib (SB)];
- ix. *Pratishta Industries Ltd., Secunderabad Vs. DCIT-16(3), Hyderabad* [ITA No. 1302/Hyd/2015] [Hyderabad-Trib];
- x. *Dy. Commissioner of Income Tax Vs. Gautam Chand Jain* [ITA No. 1295/Hyd/2016] [Hyderabad-Trib];

4.1. In the case of Cortech Energy Pvt. Ltd., [45 taxman.com 116] Hon'ble Gujarat High Court has held that where assessee has not sought any income exemption, there cannot be any expense there against to be disallowed. Similar view is also expressed by the Hon'ble Punjab & Haryana High Court in the case of CIT, Faridabad Vs. Lakhani Marketing Inc., [49 taxmann.com 257] wherein it was held that unless and until there is receipt of exempt income for the assessment year, Section 14A cannot be invoked. Hon'ble High Court of Allahabad in the case of CIT Vs. Shivam Motors (P) Ltd., [55 taxmann.com 262] held that in the absence of any tax free income earned by assessee, disallowance u/s. 14A could not be made. Hon'ble High Court of Delhi in the case of Cheminvest Ltd., Vs. CIT-IV [61 taxmann.com 118] also held that

where there is no exempt income in relevant year, there cannot be a disallowance of expenditure under the head 14A in relation to any assumed income. Similar view is also taken by the Hon'ble Madras High Court in the case of Redington (India) Limited Vs. Addl. CIT, Co. Range-V, Chennai [77 taxmann.com 257] where the Hon'ble High Court has considered that Section 14A cannot be invoked where no exempt income was earned in relevant assessment year. The Special Bench of ITAT also in the case of CIT Vs. Vireet Investment (P) Ltd., [82 taxmann.com 415] also held that there cannot be any disallowance u/s. 14A, when there is no exempt income claimed by assessee in the relevant assessment year. The coordinate benches also followed the same principle. Respectfully following the principles laid down in the above referred cases, we are of the opinion that the action of AO in disallowing the amounts u/s. 14A when assessee has not earned/claimed any exempt income during the year is not correct. Therefore, we have no hesitation in deleting the same from both from normal computation and also under Section 115JB computation. Grounds are accordingly considered allowed.

5. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 19th January, 2018

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(B. RAMAKOTIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 19th January, 2018

Copy to :

- 1. M/s. BTT Industries Private Limited, C/o. M/s. V.S. Rao & Co., Chartered Accountants, 6-3-609/136, Anand Nagar, Hyderabad.*
- 2. The Deputy Commissioner of Income Tax, Circle-1(2), Hyderabad.*
- 3. CIT(Appeals)-I, Hyderabad*
- 4. Pr.CIT-1, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*