

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 831/JP/2014  
निर्धारण वर्ष/Assessment Year : 2010-11

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| M/s Prime Gold Infra Steel Ltd.<br>5/2, Punjab Bagh Extn.,<br>Club Road, Delhi | बनाम<br>Vs. | The ACIT,<br>Central Circle,<br>Alwar. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCK3370P                             |             |  |
| अपीलार्थी / Appellant  |             | प्रत्यर्थी / Respondent                |

निर्धारिती की ओर से / Assessee by : Shri S.L. Podar (Adv.)  
राजस्व की ओर से / Revenue by : Shri. P.P. Meena (J.CIT)

सुनवाई की तारीख / Date of Hearing : 15/01/2018  
उदघोषणा की तारीख / Date of Pronouncement: 25/01/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 14.11.2014 of Id. CIT(Appeals) for the assessment year 2010-11. The assessee has raised the following grounds:-

- "1. Under the facts and circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 7,10,681/- on account of long term capital gain by invoking the provision of section 50C of the IT Act, 1961.*
- 2. That under the facts and circumstances of the case the Learned CIT(A) has erred in confirming the disallowing for Rs. 20,06,902/- u/s 14A of the IT Act, 1961 without going into the detailed calculation and actual facts.*

- 3. That under the facts and circumstances of the case the Learned CIT(A) has erred in upholding the action of the Learned Assessing Officer in disallowing of preliminary expenses written off for Rs. 48,286/-*
- 4. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing."*

2. Ground No. 1 is regarding the addition made by the AO and confirmed by the Id. CIT(A) by invoking the provisions of Section 50C of the Act in respect of the capital gain arising from sale of agricultural land held by the assessee as business asset. The assessee sold the land for Rs. 5,50,000/- which was acquired for a sum of Rs. 4,48,420/-. The assessee declared business loss of Rs. 40,419/- from the sale of land. The AO noted that the assessee claimed the land as business asset but applied index cost for computing gain arising from the sale of the said land. Accordingly, the AO held that the land was a capital asset and profit on sale of land was calculated under the head long term capital gain by applying the provisions of section 50C of the Act. Accordingly, the AO made an addition of capital gain of Rs. 7,10,681/-. The assessee challenged the action of the AO before the CIT(A) and contended that the land in question was shown as business asset in the balance sheet and therefore, the profit arises on sale of the said land is business profit

and not capital gain. The Id. CIT(A) did not accept the contention of the assessee and confirmed the action of the AO.

3. Before us, the Id. AR of the assessee has submitted that the department has not disputed that this land in question was held by the assessee as business asset and therefore, the same being an agricultural land outside the limit of the Municipal Corporation cannot be held as capital assessee u/s 2(14) of the IT Act. Thus, the Id. AR has contended that the gain/ profit on sale of the business asset is business profit and not capital gain. He has further contended that the land in question is situated beyond 12 KM from municipal limits and therefore, the same cannot be held as capital asset.

4. On the other hand, Id DR has submitted that the assessee itself has computed the profit on sale of land by applying index cost which shows that the assessee accepted the land in question as a capital asset. The deletion of capital asset includes any property held by the assessee whether or not connected with his business or profession. When the property in question does not fall in the exclusion clause of section 2(14) of the Act then, the same is capital asset for the purpose of section 48 and section 50C of the Act. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. The exemption from income tax provided on sale of agricultural land is an incentive to promote the agricultural operations and to keep the land use for agricultural purpose. Therefore, the scheme and objects of excluding the agricultural land from the definition of the capital asset is to provide an incentive for preserve the land for agriculture use and character of agricultural land unchanged. It is undisputed fact that after acquisition of this land in question the assessee never carried out any agricultural operations on the same and it was held as business asset. Therefore, the true character and nature of the land must be seen whether the land has been or intended to be used for agricultural purpose for a reasonable span of time period the relevant date and the land was intended put to be use for agricultural purpose in future also. Therefore, when the land was neither used for agricultural purpose nor it was intended to be used for agricultural purpose after it was sold by the assessee then in the absence of cultivation and agricultural operations are the land in question the same cannot be held as agricultural land for the purpose of section 2(14) of the Act.

6. The next objection of Id. AR of the assessee is that since the assessee has held this land as business asset, therefore, the provisions of section 50C cannot be applied. We find that as per the definition u/s 2(14) of the Act the capital asset means property of any kind held by the assessee whether or not connected with his business or profession. The section itself has provided exclusion of certain assets from the definition of capital asset. Since, the land in question does not fall exclusion provided u/s 2(14) of the Act, therefore, then the same is nothing but a capital asset as per the definition provided u/s 2(14) of the Act. As regards the applicability of section 50C of the Act the capital asset in the nature of land and building falls under the scope of section 50C of the Act and therefore, the full value consideration of such capital asset has to be adopted as per the valuation adopted by the stamp duty Valuation Authority. In view of the above facts and circumstances of the case, we do not find any error or illegality in the orders of the authorities below qua this issue.

7. Ground No. 2 is regarding disallowance made under 14A of the Income Tax Act. The AO noted that the assessee has made investment in the shares of sister concerns of Rs. 3,62,74,400/- and investment in mutual funds of Rs. 1 lacs. The dividend income earned on their

investments was exempt from tax. Accordingly the AO invoked the provisions of section 14A r.w.r. 8D and made a disallowance of Rs. 20,06,902/-. The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

8. Before us, the Id. AR of the assessee has submitted that the investment in shares of sister concern was made in the earlier years and no fresh investment was made by the assessee during the year under consideration. Therefore, no disallowance is called for the assessment year under consideration when no such disallowances were made by the AO in the earlier years. He has further contended that the assessee has not received any dividend income on the shares of the sister concern. The dividend income earned by the assessee of Rs. 3,669/- is only on the Mutual Funds investment. Thus, the Id. AR as contended that when no dividend income was earned then no disallowance is called for u/s 14A of the Act so far as the investment made in the shares of sister concerns. He has further submitted that the entire investment was made in the earlier years during the assessment years 2002-03 to 2007-08. Therefore, in the absence of any fresh investment no disallowance u/s 14A of the Act can be made. In support of his contention, he has relied upon the decisions of Hon'ble Delhi High

Court in case of Cheminvest Ltd. vs/ CIT 378 ITR 33 as well as decision of Mumbai Bench of Tribunal in case of Garware Wall Ropes Ltd. Vs. ACIT 65 SOT 86.

9. On the other hand, Id. DR has submitted that the assessee has made huge investment of Rs. 3,62,74,400/- in the shares of the sister concern. The assessee has also paid interest on borrowed funds, therefore, the proportionate disallowance u/s 14A of the Act is justified. He has relied upon the orders of the authorities below and submitted that the AO has computed the disallowance as per the formula provided under rule 8D.

10. We have considered the rival submissions as well as relevant material on record. We find from the details of investment that the assessee made the entire investment in the shares of the sister concern from the assessment years 2002-03 to 2007-08 and no fresh investment was made during the year under consideration. The assessee has earned the dividend income of Rs. 3.669/- on the investment in the Mutual Funds and no dividend income was occurred or eareded on the share of sister concern. The Hon'ble Delhi High Court in case of Cheminvest Ltd. vs. CIT(supra) while dealing with an issue of

disallowance u/s 14A when no exempt income was earned or received by the assessee has held in para 17 to 24 as under:-

**"17.** *On facts, it was noticed in Holcim India (P.) Ltd's. case (supra) that the Revenue had accepted the genuineness of the expenditure incurred by the Assessee in that case and that expenditure had been incurred to protect investment made.*

**18.** *In the present case, the factual position that has not been disputed is that the investment by the Assessee in the shares of Max India Ltd. is in the form of a strategic investment. Since the business of the Assessee is of holding investments, the interest expenditure must be held to have been incurred for holding and maintaining such investment. The interest expenditure incurred by the Assessee is in relation to such investments which gives rise to income which does not form part of total income.*

**19.** *In light of the clear exposition of the law in Holcim India (P.) Ltd's. case (supra) and in view of the admitted factual position in this case that the Assessee has made strategic investment in shares of Max India Ltd.; that no exempted income was earned by the Assessee in the relevant AY and since the genuineness of the expenditure incurred by the Assessee is not in doubt, the question framed is required to be answered in favour of the Assessee and against the Revenue.*

**20.** *Since the Special Bench has relied upon the decision of the Supreme Court in Rajendra Prasad Moody's case (supra), it is considered necessary to discuss the true purport of the said decision. It is noticed to begin with that the issue before the Supreme Court in the said case was whether the expenditure under Section 57(iii) of the Act could be allowed as a deduction against dividend income assessable under the head "income from other sources". Under Section 57(iii) of the Act deduction is allowed in respect of any expenditure laid out or expended wholly or exclusively for the purpose of making or earning such income. The Supreme Court explained that the expression "incurred for making or earning such income", did not mean that any income should in fact have been earned as a condition precedent for claiming the expenditure. The Court explained:*

*"What s. 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that is relevant in determining the applicability of s. 57(iii) and that purpose must be making or earning of income. s. 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of s. 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain natural construction of the language of s. 57(iii) irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure."*

**21.** *There is merit in the contention of Mr. Vohra that the decision of the Supreme Court in Rajendra Prasad Moody's case (supra) was rendered in the context of allowability of deduction under Section 57(iii) of the Act, where the expression used is 'for the purpose of making or earning such income'. Section 14A of the Act on the other hand contains the expression 'in relation to income which does not form part of the total income.' The decision in Rajendra Prasad Moody's case (supra) cannot be used in the reverse to contend that even if no income has been received, the expenditure incurred can be disallowed under Section 14A of the Act.*

**22.** *In the impugned order, the ITAT has referred to the decision in Maxopp Investment Ltd's. case (supra) and remanded the matter to the AO for reconsideration of the issue afresh. The issue in Maxopp Investment Ltd's. case (supra) was whether the expenditure (including interest on borrowed funds) in respect of investment in shares of operating companies for acquiring and retaining a controlling interest therein was disallowable under Section 14A of the Act. In the said case admittedly there was dividend earned on such investment. In other words, it was not a case, as the present, where no exempt income was earned in the year in question. Consequently, the said decision was not relevant and did not apply in the context of the issue projected in the present case.*

**23.** *In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression 'does not form part of the total income' in Section 14A envisages that there should be an actual receipt of income, which is 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.*

**24.** *Consequently, the impugned order of the ITAT is set aside and the appeal is allowed in the above terms. This Court should not be understood to have expressed any opinion on the issue of whether for the AY in question the interest expenditure incurred by the Assessee would be allowable as business expenditure under Section 36 (1)(iii) of the Act."*

Therefore, in view of the decision of Hon'ble Delhi High Court no disallowance is called for so far as the investment made by the assessee in the shares of the sister concerns on which no dividend income was earned or received by the assessee during the year under consideration. Accordingly, we set aside the orders of the authorities below and direct the AO to reconsider this issue for disallowance u/s 14A, if any, to be restricted only in respect of the investment in Mutual Funds.

11. Ground No. 3 is regarding disallowance of claim of preliminary expenses. At the time hearing, the Id. AR of the assessee has stated at bar that the assessee does not press ground No. 3 and the same may be dismissed as not pressed. The Id. DR has raised no objection to this ground of the assessee's appeal is dismissed as not pressed.

Accordingly the grounds No. 3 of the assessee's appeal is dismissed being not pressed.

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

Order pronounced in the open court on 25/01/2018

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 25/01/2018.

\*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Prime Gold Infra Steel Ltd., Delhi.
2. प्रत्यर्थी / The Respondent- ACIT. Central Circle, Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 831/JP/2014}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar