

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'SMC', KOLKATA
[Before Shri P.M. Jagtap, AM]

I.T.A. No. 2286/Kol/2017
Assessment Year: 2012-13

A.C.I.T, CIR – 3(3) Kolkata.....Appellant
Aayakar Bhawan Poorva,
E.M. By Pass,
4th Floor, 110, Shantipally,
Kolkata – 700107

M/s. Cygnus Investment & Finance Pvt. Ltd.Respondent
Cygnus House,
51, Panchanna Gram,
Kolkata – 700 039
[PAN : AAACN 8468 L]

C.O. No. 3/Kol/2018
(Arising out of ITA No. 2286/Kol/2017)
Assessment Year: 2012-13

M/s. Cygnus Investment & Finance Pvt. Ltd.Cross-objector
Cygnus House,
51, Panchanna Gram,
Kolkata – 700 039
[PAN : AAACN 8468 L]

A.C.I.T, CIR – 3(3) Kolkata.....Appellant
Aayakar Bhawan Poorva,
E.M. By Pass,
4th Floor, 110, Shantipally,
Kolkata – 700107

Appearances by:

Shri Sanjoy Mukherjee, Addl. CIT appearing on behalf of the Revenue
Shri Sunil Surana, Advocate appearing on behalf of the Assessee

Date of concluding the hearing : January 29, 2018

Date of pronouncing the order : January 31, 2018

ORDER

PER P.M. JAGTAP, AM

This appeal is preferred by the revenue against the order of Ld. CIT (A) – 16, Kolkata dated 07.09.2017 and the same is being disposed of along with the cross-objection filed by the assessee being C.O. No. 3/Kol/2018.

2. The solitary common issue involved in this appeal of the revenue and the cross-objection of the assessee relates to the disallowance under section 14A r/w rule 8D and the same is raised by way of the following grounds:

Grounds raised in the revenue's appeal

1. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law to hold that disallowance under section 14A read with rule 8D will not apply where no exempt income is received or receivable during the relevant previous year by ignoring the provision of Rule 8D that provides for computation of expenditure in respect of not only those investments, income from which does not form part of total income but also those investments, income from which shall not form part of total income.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law in deciding that disallowance u/s 14A read with Rule 8D cannot be made in a year in which no exempt income has been earned or received by the assessee without considering the CBDT's Circular No. 5/2014 dated 11.02.2014.

3. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in law in holding that the issue in dispute is in the line with the decision of the ITAT Kolkata Benches in the case of REI Agro Ltd. vs CIT in ITA No. 1331/Kol/2011 order dated 19.06.2013 which has been subsequently approved by the Hon'ble Delhi High Court, Calcutta wherein such issues were not even considered and adjudicated by the Hon'ble High Court in its order dated April 09, 2014.

4. That on the facts and in the circumstances of the case and in the law, the Ld. CIT(A) has erred in deleting disallowance of Rs. 38,50,262/- u/s 14A read with Rule 8D by interpreting these provisions.

5. That the revenue reserves their rights to substantiate, modify, delete, supplement and / or alter the grounds at the time of hearing.

Grounds raised in assessee's cross-objection

1. For that the Ld. CIT(A) was justified in deleting the addition made u/s 14A when no satisfaction as required under the law was recorded that

any expenses have been incurred so as to attract the provisions of section 14A.

2. For that on the facts of the case the Ld. CIT(A) was fully justified in deleting the addition.

3. The assessee in the present cases is an investment and finance company. The return of income for the year under consideration was filed by it on 25.09.2012 declaring a total income of Rs. 8,53,920/-. As noted by the A.O. during the course of assessment proceedings, the assessee company had made investment of Rs. 17.37 crores in shares. According to the A.O., since the dividend income from the said investment in shares was exempt from tax, the expenditure incurred in relation thereto was liable to be disallowed in accordance with section 14A of the Act. He accordingly worked out such expenditure by applying Rule 8D at Rs. 38,50,262/- and made a disallowance to that extent under section 14A in the assessment completed under section 143(3) vide an order dated 28.03.2015.

4. Against the order passed by the A.O. under section 143(3), an appeal was preferred by the assessee before the Ld. CIT (A) and keeping in view the fact that the assessee company had not earned any dividend income during the year under consideration, the Ld. CIT(A) deleted the disallowance made by the A.O. under section 14A of the Act. For this conclusion, the Ld. CIT(A) derived support from the decision of this Tribunal in the case of REI Agro Ltd. vs CIT in ITA No. 1331/Kol/2011. Aggrieved by the order of the Ld. CIT(A), the revenue has preferred this appeal before the Tribunal while the assessee company has also filed its cross-objection.

5. I have heard the arguments of both the sides and also perused the relevant material available on record. As rightly submitted by the learned counsel for the assessee, the issue involved in the present case relating to the disallowance under section 14A is squarely covered in favour of the assessee by the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs CIT 378 ITR 33 wherein it was held that the assessee having not earned any exempt income in the relevant year, no disallowance could be made under section 14A of the Act. Respectfully following the said decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. (supra), we uphold the impugned order of the Ld. CIT(A) deleting the disallowance made by the A.O. under section 14A and dismiss ground no 1 of the revenue's appeal.

6. As a result of our decision rendered on ground no 1 of the revenue's appeal confirming the order of the Ld. CIT(A) deleting the disallowance made by the A.O. under section 14A, other grounds raised in the revenue's appeal as well as the solitary ground raised in the assessee's cross-objection have become infructuous. The same are accordingly dismissed.

7. In the result, the appeal of the revenue as well as cross-objection of the assessee are dismissed.

Order Pronounced in the Open Court on 31st January, 2018.

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 31/01/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Cygnus Investment & Finance Ltd., Cygnus House, 51, Panchanna Gram, Kolkata – 700 039.
2. ACIT, Circle – 3(3), Aayakar Bhawan Poorva, E.M. By Pass, 110, Shantipally, 4th Floor, Kolkata – 700 107.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata