

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI D.T. GARASIA (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2804/MUM/2014
Assessment Year: 2010-11**

M/s Arshiya FTWZ Ltd., 402, Level-4, Ceejay House, Shiv Sagar Estate, F-Block, Dr. Annie Besant Road, Worli, Mumbai-400018	Vs.	ACIT-8(1), Aayakar Bhavan, Mumbai.
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PAN No. AAGCA7862D

Appellant

Respondent

Assessee by	: Mr. Navnit Chaudhary, AR
Revenue by	: Mr. Rajesh Kumar Yadav, Sr. DR

Date of Hearing	: 28/12/2017
Date of pronouncement	: 14/02/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-16[in short 'CIT(A)'], Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal raised by the assessee read as under:

1. On the facts and in the circumstances of the case, the Assessing Officer (AO) has erred in law and in fact in adding the amount of Rs.4,050/- incurred on account of miscellaneous expenses.

2. On the facts and in the circumstances of the case, the AO has erred in law and in fact in disallowing the expenditure amounting to Rs.52,36,349/-
 - a) Under section 14A.
 - b) Under section 36(1)(iii) of the Act
 - c) Under section 37(1) of the Act.

3. The 1st ground in this appeal relates to the disallowance of Rs.4,050/- made by the AO which in appeal was confirmed by the Ld. CIT(A). We find that the assessee had incurred Rs.100/- on account of stamp papers and another sum of Rs.3,905/- on account of franking charges grouped as 'bank charges' claimed under the head 'miscellaneous expenses' debited to the P&L account. As these expenses were for the purpose of business, the disallowance of Rs.4,050/- made by the AO is deleted.

4. The 2nd ground is against the order of the Ld. CIT(A) confirming the disallowance of expenditure of Rs.52,36,349/-. Briefly stated, the facts of the case are that the AO, on perusal of the comparative balance sheets as on 31.03.2009 and 31.03.2010 noticed that the assessee-company had shown to have invested its funds in equity shares of its subsidiaries, which stood at Rs.25,00,000/- at the beginning of the year and Rs.86,25,00,000/- at the end of the year. However, the assessee had not attributed any expenses which had been incurred to carry out the activity of investment. In response to a query raised by the AO, the assessee vide its written submission dated 05.10.2012 contended that it had not earned any exempt income and therefore, the provisions of section 14A are not applicable to it. However, the AO was not convinced with the above explanation of the assessee and made a disallowance of

interest expenditure of Rs.52,35,349/- u/s 14A r.w. Rule 8D(2)(i) of the Income Tax Rules 1962, which is in dispute before us. Without prejudice to the above, the AO also held that the same interest expenditure is not allowable u/s 36(1)(iii) and 37(1).

5. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) has confirmed the disallowance of Rs.52,35,349/- made by the AO u/s 14A and concluded that:

“In respect of expenditure not being allowable even u/s 36(1)(iii), the AO has rightly pointed out that the entire interest expenditure of Rs.52,35,349/-, having been admittedly incurred wholly and exclusively for the purposes of making investment in equity shares. Similar is the position regarding disallowability u/s 37(1) since the appellant has not established the business or commercial expediency for the interest expenditure. In any event, since disallowance u/s 14A has been confirmed, the issue of allowability u/s 36(1)(iii) or u/s 37(1) remains of academic interest.”

6. Before us, the Ld. counsel of the assessee submits that the assessee-company has not earned any income on its investments forming part of the total income. As such, the provisions of section 14A are not applicable. Reliance is placed by him *inter alia* on the decision in *Cheminvest Ltd. v. CIT* (2015) 378 ITR 33 (Del), *Bellwether Microfinance Pvt. Ltd. v. ITO* (2014) 47 taxmann.com 260 (Hyderabad-Trib.).

6.1 With regard to the disallowance of the above sum u/s 36(1)(iii), the Ld. counsel submits that the assessee had invested the borrowed funds in the share capital of its subsidiary companies, which are into the

business of Free Trade Warehousing Zone, Special Economic Zone (FTWZ-SEZ). Since, these subsidiaries could not justify their requirements on a standalone basis due to their inadequate net worth, they had no option but to seek support to bridge the net worth gap. Considering the financial situation of the subsidiaries, the assessee in order to protect its investment in its subsidiaries, deemed it prudent to bailout its subsidiaries by granting business advances by way of 'quasi equity'. The assessee had raised the funds on account of unsecured loans from its holding company M/s Arshiya International Ltd. aggregating to Rs.86.14 crores for investing the funds in the subsidiaries. It is submitted by him that the company had interest-bearing funds in the form of unsecured loan from its Holding company and there was sufficient justification for not charging interest to the aforesaid subsidiary companies. The grant of loans and advances to the subsidiary companies is for the purpose of business and consequently, interest on such advances should not be disallowed. Reliance is placed by him on the decision in *S.A. Builders Ltd.* [2007] 288 ITR 1 (SC), *CIT v. M/s Delite Enterprises* dated 26th February, 2009 by Bombay High Court, *Tata Industries Ltd.* [2017] 82 taxmann.com 227 (Mumbai-Trib.) and *Venus records & Tape (P) Ltd.* [2013] 33 taxmann.com 49 (Mumbai-Trib.)

6.2 Regarding the disallowance of the above sum made by the AO u/s 37(1), the Ld. counsel submits that the interest expenses incurred for the business purpose are covered u/s 36(1)(iii) and accordingly, the provisions of section 37 are not applicable. It is stated by him that the assessee-company was merged with the Holding company i.e. Arshiya

International Ltd. w.e.f. 01.04.2012. Consequently, the assessee-company is no more in existence. He filed a copy of the order the High Court. It is further stated by him that Arshiya FTWZ Ltd., being promoter of its subsidiaries is duty bound to infuse funds either as loan or equity to promote the business operation of the assessee-company. Consequently, the question of disallowance of interest expenditure incurred does not arise.

7. On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

8. We have heard the rival submissions and perused the relevant materials on record. We find that the assessee had submitted before the AO (para 6.2 of page 4 of the assessment order dated 22.10.2012) as well as the Ld. CIT(A)[para 3.1 of page 3 of the appellate order dated 14.02.2014] that it had not earned any exempt income on its investments during the year under consideration and therefore, the provisions of section 14A are not applicable to it.

In the case of *CIT v. Shivam Motors (P) Ltd.* (2015) 55 taxmann.com 262 (All), it has been held that in absence of any tax free income earned by the assessee, disallowance u/s 14A could not be made. In a similar vein, it has been held in *Cheminvest Ltd.* (supra) that section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

In view of the above position of law, we delete the disallowance of interest expenses of Rs.52,35,349/- made by the AO u/s 14A r.w. Rule 8D(2)(i).

8.1 However, we find that the Ld. CIT(A) has not adjudicated the matter relating to the disallowance u/s 36(1)(iii) or u/s 37(1) as she confirmed the same u/s 14A.

In view of the above facts, we set aside the order of the Ld. CIT(A) and restore the matter to him/her to pass an order afresh in respect of the disallowance made by the AO u/s 36(1)(iii) or u/s 37(1) of the Act after giving a reasonable opportunity of being heard to the assessee. We direct the assessee to file the relevant documents/evidence before the Ld. CIT(A).

As the matter has been restored to the Ld. CIT(A), we are not adverting to the case laws relied on by both sides.

9. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 14/02/2018.

Sd/-
(D.T. GARASIA)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 14/02/2018

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai