

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'A'**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA Nos.411 & 412/Bang/2017
(Asst. Years - 2011-12 & 2012-13)

The Dy. Commissioer of Income-tax,
Circle-6(1)(2),
Bengaluru.

. Appellant

Vs.

M/s Subramanya Constructions & Development
Co Ltd.,
No.4/1, Tumkur Road,
Yeshwanthpur,
Bengaluru.

. Respondent

Appellant by : Shri Nambirajan S Pillai, Add. CIT
Respondent by : Shri S.V Ravishankar, Advocate

Date of Hearing : 1-3-2018

Date of Pronouncement : 9-3-2018

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

These appeals by the Revenue are directed against the orders of the CIT(A)-6, Bangalore dated 25.11.2016 for Assessment Years 2011-12 and 2012-13.

2. Briefly stated, the facts relevant for disposal of these appeals are as under:-

2.1 The assessee is a company engaged in business as builders and developers. For both asst. years 2011-12 and 2012-13, the assessments in these case were concluded u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act') vide orders dated 20/2/2014 and 22/1/2015 respectively; wherein the incomes were determined at Rs.4,92,23,004/- and Rs.10,16,54,633/-. In these orders of assessment the only disallowance made by the AO was u/s 14A r.w Rule 80(2)(ii) and (iii) of Rs.2,73,55,043/- for both asst. year 2011-12 and asst. year 2012-13.

2.2 Aggrieved by the orders of assessment dated 20/2/2014 for asst. year 2011-12 and dated 22/1/2015 for asst. year 2012-13, the assessee preferred appeals before the CIT(A)-6, Bangalore. The ld CIT(A) allowed the assessee's appeals vide the impugned order dated 25/11/2016. The ld CIT(A) deleted the aforesaid disallowances made u/s 14A r.w Rule 8D(ii) and (iii) following these judicial pronouncements:-

(i) the decision of the co-ordinate bench of this Tribunal in the assessee's own case in ITA No.404/Bang/2013 and CO:89/Bang/2013 for asst. year 2009-10 dated 20/2/2015 and rendering the finding of fact that the investments were made during Fin Year 2005-06 and also that the assessee had substantial own/interest free funds which were higher than investments made.

(ii) Since the assessee had earned no exempt/tax free interest income during these two years under consideration, the ld CIT(A) held that no disallowance u/s 14A of the Act could be made. In doing so she followed the decision of the co-ordinate bench in the case of Bhuwalkha Steel Investments Ltd., in ITA No.349/Bang/2013 dated 4/7/2014.

3.1 Aggrieved by the separate orders of the CIT(A)-6, Bangalore dated 25/11/2016 for asst. years 2011-12 and 2012-13, Revenue has preferred these appeals for both asst. years raising the following identical grounds:-

“1. The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.

2. On the facts and in circumstances of the case, the CIT(A) erred in deleting the disallowance made by the Assessing Officer, without appreciating the fact that the assessee company had tax exempt investment in the form of shares and the provisions of Section 14A read with Rule 8D(2)(i), 8D(2)(ii) and 8D(2)(iii) are applicable in this case.

3. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.

4. The appellant craves leave to add, alter, amend or delete any of the

grounds that may be urged at the time of hearing of the appeal.”

3.2.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record. It is a matter of record that the assessee had not earned any exempt income in the two asst. years under consideration and this fact is admitted by both the authorities below in the impugned orders. The applicability of the provisions of section 14A of the Act is in respect of expenditure incurred in relation to the earning of income not includible in total income. A plain reading of the provisions of section 14A of the Act envisages that there should be an actual receipt of income which is not includible in the total income. Therefore, the provisions of section 14A of the Act will not apply where no exempt income is received or receivable by the assessee during the relevant previous year. This proposition was upheld by the Hon'ble Delhi High Court in the case of Chemninvest Ltd. vs. CIT [(2015) 61 taxmann.com 118] (Del) vide order dated 02.09.2015; wherein at para 23 thereof their Lordships have held as under:-

“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 of the envisages that there should be an

actual receipt of income, which is not includible in the total income, during the relevant previous year of 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.”

3.2.2 In the case on hand admittedly, the factual position was that the assessee had not earned or received any exempt income in the two previous years relevant to assessment years 2011-12 and 2012-13. In these circumstances, in our considered view, the ratio of the decision of the Hon’ble Delhi High Court in the case of Chemninvest Ltd. (supra) would apply squarely to the case on hand. The Hon’ble High Court in the aforesaid judgement held that no disallowance under section 14A of the Act could be made in a year in which no exempt income had been earned or received by the assessee. It was held that the expression ‘does not form part of the total income’ in section 14A of the Act envisages that there should be an actual receipt of income which is not includible in the total income during the relevant previous years for the purpose of disallowing any expenditure incurred in relation to the said exempt income. A similar view has been taken by a co-ordinate bench of this Tribunal in the case of Tanglin Retail Reality Developments Private Limited v DCIT in ITA No. 265/Bang/2016 dated 31.03.2017, considering the decisions of the

Hon'ble Karnataka High Court in the case of CCI Ltd. (supra) and of ITAT, Mumbai in Fair Exports (India) P. Ltd.(supra). Therefore, in the factual matrix of the case on hand, as discussed above, we, respectfully following the decisions of the Hon'ble Delhi High Court in the case Cheminvest Ltd. (supra) and the co-ordinate bench in Tanglin Retail Reality Developments Private Limited (supra), hold that no disallowance under section 14A of the Act can be made in the case on hand for both the assessment years 2011-12 and 2012-13 since the assessee had not earned or received any exempt income in these years and therefore we uphold the orders of the Id CIT(A) in directing the AO to delete the disallowance of expenditure made under section 14A of the Act. Consequently, the Revenue's grounds at S.Nos. 1 to 4 are dismissed.

4. In the result, the Revenue's appeal for Assessment Year 2011-12 and 2012-13 are dismissed.

Order pronounced in the open court on **9th March, 2018.**

Sd/-
(SUNIL KUMAR YADAV)
JUDICIAL MEMBER

Bangalore

Dated : 9/3/2018

Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR 6. GF

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

By order

Sr. Private Secretary, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr. P. S.....
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.