

**THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER  
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1241/Hyd/2015  
Assessment Year: 2011-12**

Suryajyoti Infotech Limited, vs. Income Tax Officer, Ward  
Secunderabad. - 3(2), Hyderabad.

PAN - AAEC6875J  
(Appellant) (Respondent)

**ITA No. 1278/Hyd/2015  
Assessment Year: 2011-12**

Income Tax Officer, Ward - vs. Suryajyothi Infotech  
3(4), Hyderabad. Limited, Secunderabad.

PAN - AAEC6875J  
(Appellant) (Respondent)  
Assessee by : Shri V. Siva Kumar  
Revenue by : Smt N. Swapna

Date of hearing : 05-03-2018  
Date of pronouncement : 16-03-2018

**ORDER**

**PER P. MADHAVI DEVI, J.M.:**

Both are cross appeals for the A.Y 2011-12, filed by the assessee as well as the revenue against the order of the CIT(A)-3, Hyderabad dated 05.08.2015.

2. Brief facts of the case are that, the assessee company, engaged in the business of development and maintenance of computer software, filed its return of income for the A.Y

2011-12 on 29.09.2011, admitting a total income of Rs. 1,01,412/- after claiming an exemption of Rs. 77,99,926/- u/s 10A of the IT Act. During the course of assessment proceedings u/s 143(3) of the IT Act, the assessee was required to file certain details. After verifying the books of accounts and the information filed by the assessee, the A.O proposed to make:

*(a) Disallowance of interest of Rs. 20,27,350/- u/s 14A from out of the expenditure claimed under the head "Interest to others" in view of its investment in preference shares of M/s. Suryajyoti Spinning Mills Ltd.*

*(b) Disallowance of balance interest of Rs. 14,84,556/- from out of the expenditure claimed under the head "Interest to others" in view of advancing of Rs. 1,53,27,055/- of interest free loans and advances.*

*(c) Disallowance U/s 40(a)(ia) of Rs. 31,54,388/- paid to Mrs. Sandhya Prakash towards liasioning, in the absence of proof of her status of residence, her qualifications and technical competence, nature of works she had performed for assessee company and the resultant business contracts.*

3. The assessee filed its detailed objections to the proposed disallowance. The A.O, was however, not convinced with assessee's contentions and made the disallowance u/s 14A of the interest to the tune of Rs. 22,84,481/- and also the balance interest of Rs. 12,27,425/- u/s 36(1)(iii) of the Act. He also made the addition of Rs. 31,54,388/- paid to Mrs Sandhya Prakash u/s 40(a)(ia) of the IT Act. Aggrieved by these additions,

the assessee preferred an appeal before the CIT(A) who deleted the addition of Rs. 20,27,588/- but confirmed the addition of Rs. 2,56,893/- made under Rule 8D(2)(iii) of the Rules. The CIT(A) also confirmed the disallowance made by the A.O u/s 36(1)(iii) and the commission paid to Mrs. Sandhya Prakash u/s 40(a)(ia) of the Act. Aggrieved by the relief granted by the CIT(A), the Revenue is in appeal before us and against the confirmation of the additions, the assessee is in appeal before us.

4. The grounds of the appeal raised by the assessee are as under:

*“1. The order of the CIT(3)-3, Hyderabad dated 05.08.2015 is erroneous, contrary to law and facts of the case.*

*2. CIT(A) is not justified in the confirming the disallowance of Rs. 2,56,893/- applying Sec. 14A r.w.r 8D(2)(iii) made by the A.O, when investment made by the Appellant is only in preference shares in its sister company which did not yield any income during the year and did also not incur any expenditure for making such investment as it is only a sister company.*

*3. CIT(A) is not justified in directing the A.O to cause necessary enquiries as to allowability of interest of Rs. 12,27,425/- disallowed while making assessment in view of the findings given in para 5.4 of the Appellate order that loans taken in earlier year on which interest was paid, was partly repaid. Hence CIT(A) erred in directing the A.O to cause necessary enquiries regarding use of funds and decide the matter.*

*4. Commissioner of Income Tax is not justified in confirming the disallowance of Rs. 31,54,388/- u/s 40(a)(ia) made by the A.O. CIT(A) ought to have seen that commission paid was to a*

*non-resident for procuring business outside India and therefore would not be covered under the provisions of Sec. 195 as it is not earned in India and therefore this expenditure cannot be disallowed u/s 40(a)(ia).*

*5. For all of the above and such other grounds as may be urged at the time of hearing it is mot respectfully prayed that the Hon'ble Tribunal be pleased to direct the A.O to delete the disallowances in the interest of justice.*

5. The grounds of the appeal raised by the Revenue are as under:

*“1. Ld. CIT(A) erred on both law and facts of the case.*

*2. Ld. CIT(A) erred in deleting the addition made u/s read with Rule 8D(2)(ii) to the tune of Rs. 20,27,588/-.*

*3. Ld. CIT(A) erred in holding that no disallowance is called for Rule 8D(2)(ii) without appreciating that no facts have been brought on record by the assessee to prove that tax free investments were made from interest free unsecured loans available with the assessee.*

*4. Ld. CIT(A) erred in holding that no disallowance is called for under rule 8D(2)(ii) without appreciating the facts that investments were made out of a common pool of funds available with the assessee but not out of any dedicated source of funds.*

*5. Any other ground(s) that may be urged at the time of hearing.*

6. The issue in the sole ground in the Revenue's appeal, and the ground No. 2 in assessee appeal, is the disallowance of interest u/s 14A of the IT Act. In the assessment order, it is clearly brought out by the A.O, that the assessee has not earned any dividend income from the investments during the relevant assessment year. It is also observed that the entire interest expenditure claimed by

the assessee is interest paid by the assessee towards the secured loan taken by it from SBI against the sundry debtors. The total interest paid was Rs. 35,11,906/- which consisted of interest of Rs. 32,89,412/- and the bank charges of Rs. 2,22,494/-.

7. As regards the applicability of Sec. 14A of the IT Act, where the assessee has not earned any dividend income which is exempt from tax is concerned, we find that this issue is covered in favour of the assessee by various decisions including the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd., Vs CIT reported in 378 ITR 33 and by the Hon'ble Gujarath High Court in the case CIT Vs Corrttech Energy Pvt Ltd., reported in 372 ITR 97. Further it is also pointed out by the Ld. Counsel for the assessee, that in the earlier and subsequent assessment years also, there was no disallowance u/s 14A of the Act even though the investments were made by the assessee. Therefore, respectfully following the decisions of the High Courts (cited supra), we hold that the provisions of Sec. 14A are not applicable to the case of assessee, as it has not earned any exempt dividend income during the relevant assessment year. Thus, grounds of appeal of the

Revenue are rejected and the assessee's ground of appeal No. 2 is allowed.

8. As regards grounds of appeal No. 3 of the assessee's appeal, we find that it is against the disallowance of the balance of the interest expenditure which has not been disallowed u/s 14A of the IT Act. It is clearly seen that the entire interest expenditure is only interest paid to SBI. From the submissions of the assessee before the A.O, it is noticed that the assessee has taken a secured loan from SBI, Commercial Branch, Hyderabad, which was outstanding at Rs. 1,96,60,668/- as on 31.03.2011 and that it is the only interest bearing loan on which interest of Rs. 32,89,412/- was paid during the year and that this loan was secured by hypothecation of current assets of the company which included Rs. 4,48,10,873/- as on 31.03.2011 and thus the entire secured loan was covered by sundry debtors. Such being the case, the directions of the CIT(A) to the A.O to cause necessary enquiries and take action as per the directions of the Hon'ble Special Bench at Mumbai in the case of HP Shaw limited in ITA No. 3694/Mum/2006 dated 15.01.2009 is unwarranted. The assessee has given interest free loans to its sisters

concerns but the advances are not out of interest bearing funds and the nexus between the loan taken from SBI on the hypothecation of sundry debtors is clearly proved. Therefore, we do not see any reason as to why the CIT(A), should have remitted the matter back to the A.O for verification. Ground of appeal No. 3 accordingly allowed.

9. As regards ground No. 4, it is the case of the Ld. Counsel for the assessee, that the payments have been made to the non-resident outside India, for the services rendered by her outside India and hence therefore the income of Mrs. Sandhya Prakash, is not chargeable to tax in India and therefore there is no requirement to make TDS and hence the disallowance u/s 40(a)(ia) is not called for. In the alternative, it is also submitted that the disallowance u/s 40(a)(ia) of the IT Act, presupposes that the amount is allowable u/s 37 of the IT Act and it is only due to not making of TDS by the assessee, the provisions of Sec. 40(a)(ia) of the IT Act are invoked. Further, without prejudice to the above arguments, the Ld. Counsel for the assessee also submitted that the assessee is ready to prove the nature of services rendered by Mrs. Sandhya Prakash

to the assessee company to justify the payment of commission.

10. Ld. DR, on the other hand, supported the orders of the authorities below.

11. Having regard to the rival contentions and the material on record, we find that the assessee has paid commission to Mrs. Sandhya Prakash for the liaisoning work done by her outside India. The argument of the assessee that for making disallowance u/s 40(a)(ia) of the IT Act, the presumption is that the same is allowable u/s 37 of the IT Act was not raised by the assessee before the authorities below. Even if the same is acceptable and the said expenditure is allowable u/s 37 of the Act, the applicability of Sec. 40(a)(ia) of the IT Act requires the assessee to prove that the income of the recipient is not taxable in India. None of the authorities below have examined this issue and the assessee has also not filed any documents to disprove the finding of the Revenue. Therefore, accepting the assessee's plea that the assessee, may be given an opportunity to produce the relevant documents to prove that Mrs. Sandhya Prakash has rendered services to the assessee warranting the payment

of commission, we deem it fit and proper to remand this issue to the file of the A.O with a direction to the assessee to produce all the relevant documents before the A.O within a period of two months from the date of communication of this order and thereafter, the A.O shall consider the issue afresh de-novo, in accordance with law. Needless to mention that the assessee shall be given a fair opportunity of hearing. In the result, the ground of appeal No. 4 is treated as allowed for statistical purposes. The grounds of appeal No. 1 and 5 are general in nature and need no adjudication. In the result, the assessee's appeal is partly allowed for statistical purpose.

12. In the result, the appeal filed by the assessee in ITA No. 1241/Hyd/2015 is partly allowed for statistical purposes and the appeal filed by the Revenue in ITA No. 1278/Hyd/2015 is dismissed.

Pronounced in the open court on 16<sup>th</sup> March, 2018.

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Hyderabad, Dated: 16<sup>th</sup> March, 2018.

KRK

- 1) *M/s Suryajoyti Infotech Limited, 105, 2<sup>nd</sup> Floor, Surya Towers, S.P Road. Secunderabad – 500 003.*
- 2) *ITO, Ward – 3(2), Hyderabad.*
- 3) *ITO, Ward – 3(4), Hyderabad.*
- 4) *CIT -3, Hyderabad*
- 5) *PCIT-3, Hyderabad*
- 6) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 7) *Guard File*