

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES 'A', CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

ITA Nos.1652 & 1653/Chd/2017
Assessment Years: 2013-14 & 2014-15

The ACIT, Circle 5(1), Chandigarh Vs. M/s Indrason Precision Engineering Private Limited, SCO 604, Ist Floor, Keshoram Complex, Sector 45-C. Chandigarh

PAN No. AAACB5917E

(Appellant)

(Respondent)

Appellant By : Shri K.S. Bains, Addl CIT
Respondent By : Sh. Tej Mohan Singh, Advocate

Date of hearing : 18.04.2018
Date of Pronouncement : 18.04.2018

ORDER

Per Sanjay Garg, Judicial Member:

The present appeals have been preferred by the Revenue against the order dated 20.09.2017 of the Commissioner of Income Tax (Appeals), [hereinafter referred to as CIT(A)]-2, Chandigarh.

2. The only issue involved in both the appeal is relating to the disallowance made u/s 14A of the Income-tax Act, 1961 (in short 'the Act') read with Rule 8D(2)(ii) of the I.T. Act.

3. At the outset, Ld. Counsel for the assessee has invited our attention to the impugned order of the CIT(A) and pointed out that

for both the assessment years there was no tax exempt income earned by the assessee. The Ld. CIT(A) following the principles laid down by the Hon'ble Jurisdictional High Court of Punjab & Haryana in the case of 'CIT, Faridabad Vs. Lakhani Marketing Inc.' 226 Taxman 45 (P&H) deleted the additions made by the Assessing officer on this issue. The Ld. counsel has further submitted that the issue is now squarely covered by the numerous decisions of the various High Courts including that of the Jurisdictional High Court of Punjab and Haryana in the case of 'CIT Vs. Winsome Textiles' (2009) 319 ITR 204 (P&H), Hon'ble Delhi High Court in the case of 'Cheminvest Ltd Vs. ITO' (2015) 378 ITR 33 (Delhi) and of the Hon'ble Gujarat High Court in the case of 'Corrtech Energy P. Ltd. (2014) 45 Taxman.com 116' and further of the Hon'ble Allahabad High Court in the case of 'CIT Vs. M/s Shivam Motors (P) Ltd' (2014) 272 CTR (All) 277 and various other case laws. In all the above referred to case laws, the Hon'ble High Courts have been unanimous to hold that no disallowance is attracted u/s 14A of the Act in case the assessee has not earned any income not forming part of the total income.

4. The Ld. DR, however, on the other hand, has submitted that the CIT(A) while deleting the disallowance had not followed the circular of CBDT No. 5/2014 dated 11.2.2014 wherein it has been provided that even in the absence of any exempt income, disallowance u/s 14A is to be made.

5. The Ld. Counsel for the assessee at this stage has relied upon the decision of the Coordinate Bench in the case of 'M/s Vardhman Chemtech Private Ltd Vs. Addl. CIT', ITA Nos. 545/Chd/2015 and 488/Chd/2015 vide order dated 22.4.2016 wherein the Coordinate Bench of the Tribunal while relying upon the decision of the Hon'ble Supreme Court in the case of 'Commissioner of Central Excise Vs. M/s Ratan Melting & Wire Industries' in Civil Appeal No. 4022 of 1999 dated 14.10.2008 has held that the decision of the Hon'ble High Court and Supreme Court would overrule circulars issued by the Boards. The relevant finding of the Tribunal in this regard is reproduced as under:-

"We do not find any infirmity in the order of the Ld. CIT(A), who deleted the disallowance made following the decision of the jurisdictional High Court in the case of Lakhani Marketing (supra). The argument of the Ld. DR that the CBDT Circular No. 5/2014 dt. 11/02/2014 stating that even in the absence of any exempt income disallowance under section 14A has to be made, is binding on the Revenue authority, we find has no merit. The Hon'ble Supreme Court in the case of Commissioner of Central Excise, Bolpur Vs. M/s Ratan Melting & Wire Industries in Civil Appeal No. 4022 of 1999 dt. 14/10/2008, has categorically held that decision of the High Court / Supreme Court would overrule Circulars issued by the Boards. The Hon'ble Court held at para 6 of its order as follows:

"Circulars and instruction issued by the Board are not doubt binding in law on the authorities under the respective statutes, but when the Supreme Court of the High Court declares the law on (he question

arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications / circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive, Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in Law.

In view of the above, we reject the contention of the Ld. DR in this regard.”

6. In view of this, the issue is squarely covered by the aforesaid decisions of the Hon'ble Jurisdictional High Court and other High Courts as discussed above.

There is no merit in the appeals of the Revenue and the same are accordingly dismissed.

Order pronounced in the Open Court.

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 18.04.2018

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Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT*
4. *The CIT(A)*
5. *The DR*

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER