

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

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

**ITA No.1138/Hyd/2017
Assessment Year: 2013-14**

Indur Avenues & Foods Pvt vs. ACIT,
Ltd., Circle-1
Nizamabad. Nizamabad.

PAN – AABCI0260Q

(Appellant)

(Respondent)

Assessee by : Shri T. Chaitanya Kumar
Revenue by : Smt. B.K Vishnu Priya

Date of hearing : 26-04-2018
Date of pronouncement : 27-04-2018

ORDER

PER P. MADHAVI DEVI, J.M.:

This is assessee's appeal for the A.Y 2013-14, against the assessment order passed by the CIT(A)-5, Hyderabad, dated 27.02.2017.

2. Brief facts of the case are that the assessee company, engaged in the business as builders and developers, e-filed its return of income for the A.Y 2013-14 on 24.09.2013 admitting a total income of Rs. 84,82,740/-. The return was initially processed u/s 143(1) of the IT Act. Subsequently, the case was selected for scrutiny under CASS and the assessment u/s 143(3) of the IT Act was taken up. During the assessment proceedings u/s 143(3) of the IT Act , the assessee was directed to produce the books of

accounts and other related documents and the same were produced by the Assessee. On verification of records so produced, the A.O, observed that the assessee has made investment in unlisted equities of various companies i.e M/s Knowledge Matrix Ind Pvt Ltd., Hyderabad Media House, Bijay Finance & Investments Pvt Ld., Kapil Agro Farm India Pvt Ld., & Kapil Health Club Pvt Ld., and that the income from such investments is exempt from taxation u/s 10 of the IT Act. Observing that the assessee has claimed substantial interest expenses in the profit and loss account, the A.O asked the assessee to show cause as to why the provisions of Sec. 14A of the IT Act should not be applied.

3. In response, the assessee filed a letter dated 9.02.2016 submitting that the investments were made out of its own funds and that the assessee earned the interest income from the debenture investments and Sec. 14A of the IT Act is not applicable to the interest expenditure claimed by the assessee. It was also submitted that no exempt income is earned from the said investments. The A.O however, was not convinced with the contentions of the assessee and held that the investments are likely to give rise to exempt income, and hence the disallowance u/s 14A of the IT Act is to be made, irrespective of whether income has been earned during the year or not. Accordingly, he worked out the disallowance u/s 14A of the IT Act at Rs. 15,74,198/- and brought it to tax.

Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the order of the A.O, and the assessee is in second appeal before us.

4. The Ld. Counsel for the assessee submitted that the assessee had sufficient funds to make investments and further that it has not earned any dividend income during the relevant assessment year and therefore there is no claim of exempt income and the disallowance u/s 14A is not called for. He submitted that this issue is covered in favour of the assessee by the decision of the Hon'ble Delhi High Court in the case of M/s Cheminvest Ltd. Vs. CIT-IV, New Delhi 378 ITR 33 (Delhi) and also the various other decisions of the Tribunal.

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

6. Having regard to the rival contentions and material on record, we find that this issue is covered in favour of the assessee by the decision of Hon'ble Delhi High Court in the case of M/s Cheminvest Ltd. Vs. ITO (supra), wherein it has been held that disallowance u/s 14A of the IT Act cannot be made if the assessee has not earned any exempt income during the relevant assessment year. The Coordinate benches of this Tribunal have also followed the said decision in a number of cases to which both of us are signatories. Respectfully following the same, this appeal of the assessee is allowed.

7. In the result the appeal filed by the assessee is allowed.

Pronounced in the open court on 27th April, 2018.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 27th April, 2018

KRK

- 1 Indur Avenues & Food Pvt Ltd., C/o Shri T. Chaitanya Kumar, Flat No. 102, Gouri Apartment, H. No. 3-6-195/B, Urdulane, Himayatnagar, Hyd-29
- 2 The ACIT, Circle-1, Nizamabad.
- 3 The CIT(A)-5, Hyderabad.
- 4 The Pr. Commissioner of Income tax-5, Hyderabad.
- 5 The DR, ITAT Hyderabad
- 6 Guard File