

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI R. C. SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.78/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2011-12)

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| ITO-2(2)(3) Aayakar Bhavan, R. No.542, M.K. Road, Mumbai | बनाम/ Vs. | Meditab Specialities Pvt. Ltd. 12, Gunbow Street Fort, Mumbai-400001 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACM6124A | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| Revenue by: | Shri T. A. Khan (DR) | |
| Assessee by: | Shri V. Mohan (AR) | |

सुनवाई की तारीख / Date of Hearing: 22.03.2018

घोषणा की तारीख /Date of Pronouncement: 04.05.2018

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 15.10.2015 passed by the Commissioner of Income Tax (Appeals) -5, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2011-12.

2. The revenue has raised the following grounds: -

- "1. *Whether on the fact and in circumstances of the case and in law, the Ld.CIT(A) has erred in directing the AO to exclude the expenditure income development- of SEZ for computing the disallowance u/s 14A without appreciating the fact that the Bombay High Court vide its order dt. 5.3.2013 for the AY,2007-08, has specifically stated that observations of the Tribunal in ITA No.6835 of Mum/2010 dt.8.6.2012 for*

AY.2007-08, are beyond the of the Appeal filed before the Tribunal and has directed the AO to independently apply his mind to the issue.

2. *The Appellant prays that the order of the Ld. CIT (A) be set aside 01 above grounds and that of the Assessing Officer be restored.*
3. *The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”*

3. The brief facts of the case are that the assessee filed its return of income on 30.09.2011 declaring total income to the tune of Rs.Nil/-. The return was processed u/s 143(1) of the Act. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued on 12.08.2013 which was served upon the assessee on 13.08.2013. Therefore, notice u/s 142(1) of the Act dated 22.08.2013 along with details questionnaire was issued and served upon the assessee. The assessee company was engaged in the manufacturing of pharmaceutical products. It was noticed that the assessee's investment was to the tune of Rs.240,58,36,369/- and the assessee earned the exempt income to the tune of Rs.29,87,453/-. Therefore, notice was given in connection with disallowance u/s 14A of the Act. By giving an opportunity of being heard to the assessee, the disallowance u/s 14A r.w. Rule 8D of the Act was made to the tune of Rs.71,00,400/-. The income of the assessee was assessed to the tune of Rs. 36,54,128/- and book profit to the tune of Rs.Nil. The assessee was not satisfied on account of disallowance of claim u/a 14A of the Act, therefore, filed an appeal before the CIT(A) and the CIT(A) directed the AO to exclude the amount of investment in the SEZ while assessing the expenditure to earn the exempt income in view of decision in the assessee's own case in **ITA No.6835/M/2010 dated 08.06.2012**. The revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The CIT(A) has directed the AO to exclude the investment in the SEZ for the purpose of assessing the expenditure to incur the exempt income u/s 14A of the Act in view of the decision in the assessee's own case in ITA. No. 6835/M/2010 dated 08.06.2012. The controversy has been decided by the CIT(A) on the decision of the Hon'ble ITAT in the assessee's own case in ITA. No. 6835/M/2010 dated 08.06.2012. Thereafter the matter of controversy went up before the High Court and the matter was restored before the Tribunal. While arguing the case, the Ld. Representative of the assessee has argued that to end the matter of controversy, the expenditure to earn the exempt income be restricted to the exempt income in view of the decision of Hon'ble ITAT in the assessee's own case in ITA. No.5604/M/2011 dated 18.08.2017. The finding of the Hon'ble ITAT in the said case is hereby reproduced below as under.: -

“8. We have patiently and carefully heard rival contentions and perused the material available on record. We have also applied our mind to the decisions relied upon by both the parties. At the outset, we must put it on record Chat, teamed Authorized Representative has restricted his contention on the disputed issue of disallowance made under section 14A r/w rule 8D only on the proposition trust the disallowance under section 14A cannot exceed the exempt income earned in a particular assessment year. In this context, the; leaned Authorized Representative has Financial a chart before us as per which the exempt income earned in the assessment years under are as under:-

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|--------------|-------------|
| A.Y. 2008-09 | Rs.6,04,377 |
| A.Y. 2010-11 | 9,130 |
| A.Y. 2012-13 | Nil |

In view of the aforesaid submission of the Ld. Authorized Representative, we are called upon to decide the limited issue, whether the disallowance u/s 14A rule 8D to be restricted to the exempt income earned in a particular assessment year. To counter the aforesaid proposition of the Ld. Authorised Representative, the learned Departmental Representative has submitted that the provisions of section 14A r/w rule 8D being mandatory in nature, the Assessing Officer has to compute the disallowance under section 14A terms of the method prescribed under section rule & 8D. We are unable to agree with the contention of the learned Departmental Representative. In the case of Cheminvest Ltd. v/s CIT, ITA 749/2014, dated 2 September 2015, the Hon'ble Delhi High Court has held that no disallowance under section 14A of the Act, can be made in the absence of exempt income. In case of CIT v/s Joint Investment Ltd., ITA r.Q.H7/20a5 dated 25th February 2015, the Hon'ble Delhi High Court has held the disallowance under section 14A cannot swallow the entire exempt income. Following the aforesaid ratio of the Hon'ble Delhi High Court, different Benches of the Tribunal have held that disallowance under section 14A r/w rule 8D cannot exceed third exempt income earned by the assessee in a particular assessment year. In fact, ITAT, Delhi Special Bench, in cases of ACIT V/s Vireet Investment Pvt. Ltd, (supra) has held that only investments yielding exempt income during the year can be considered for computing average value of investment. In contrast, the decisions relied upon by the Ld. Department Representative in no way contradict the aforesaid ratio. On a careful reading of the decision in case of Distributors (Baroda) Pvt. Ltd. (supra), Cloth Traders Pvt. Ltd. (supra) ACG Associated Capsules P. Ltd. (supra) we are convinced that these decisions are in no way connected to the issue in dispute in the present appeals. As far as the decisions in Walfort shares and Stock Brokers (supra), Godrej & Boyce Mfg. Co. Pvt. Ltd. (supra) are concerned though they are in the context of section 14A of the Act. however, these decisions cannot be said to be laying down the ratio that even in absence of exempt income disallowance under section. 14A can be made or the disallowance u/s 14A should not be restricted to the exempt income earned in a particular assessment year. Ld. Department Representative has failed to bring to our notice even a single decision which directly counters the proposition put forward by the Ld. Authorised Representative. In the aforesaid view of the matter, following the ratio laid down in the decisions referred to above by us, we hold that if in a

particular assessment year, the assessee has not earned any exempt income, no disallowance u/s 14A, can be made. Similarly, the disallowance u/s 14A can be made. Exceed the exempt income earned in a particular assessment year. In term of our aforesaid observations, we direct the AO to restrict the disallowance u/s 14A to %Rs.6,04,377 in A.Y. 2008-09 and Rs.9,130 in A.Y. 2011-12. In A.Y. 2012-13, assessee has not earned any exempt income, therefore, no disallowance u/s 14A can be made. In view of the our reasoning above, the grounds raised by the Department in its appeal have become redundant, hence, dismissed.

10. Before parting, we must clarify that we have not express we any opinion on the issue of applicability of section 14A to the investments made in SEZ, which is left open to be decided on its own merit, if it arises in any other assessment year.

11. In view of the aforesaid grounds raised by the assessee are partly allowed.

12. In the result, assessee's appeals are partly allowed and revenues appeals are dismissed."

5. On appraisal of the above mentioned order, we noticed that both the issues have been raised by the revenue before High Court against the order of Tribunal in A.Y. 2007-08 which have been set aside by High Court and the matter was restored back to the file of ITAT. However in the second round assessee did not press these grounds and Tribunal has restricted the disallowance to the extent of exempt income in the assessee's own case in ITA. No.5604/M/2011 vide order dated 18.08.2017. Accordingly, we restrict the disallowance u/s 14A r.w. Rule 8D of the Act to the extent of exempt income. Accordingly, we partly allowed the appeal of the revenue.

6. In the result, the appeal filed by the revenue is hereby allowed in part.

Order pronounced in the open court on 04.05.2018.

Sd/-
(R. C. SHARMA)
लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 04.05.2018
vijay

Sd/-
(AMARJIT SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai