

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री भागचन्दादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 340/JP/2018
निर्धारण वर्ष/Assessment Years : 2011-12.

The Asstt. Commissioner of Income-tax, Circle-1, Kota.	बनाम Vs.	Smt. Manisha Agarwal, 12-A, Talawandi, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ABJPA 3031 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri Raj Mehra (JCIT)

निर्धारिती की ओर से / Assessee by : None

सुनवाई की तारीख / Date of Hearing : 15.05.2018.

घोषणा की तारीख / Date of Pronouncement : 16/05/2018.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the revenue is directed against the order dated 7th December, 2017 of Id. CIT (A), Kota for the assessment year 2011-12. The revenue has raised the following grounds of appeal :-

“ On the facts and in the circumstances of the case, the Id. CIT (A) has erred in :-

(i) On the facts and circumstances of the case, the CIT (A) has erred in deleting the addition of Rs. 84,289/- made by the AO u/s 14A r.w. Rule 8D.

(ii) The appellant craves liberty to raise additional ground and to modify/amend the ground of appeal at the time of hearing.

The issue falls under exception as mentioned in para 8(b) of Board's Circular No. 21/2015.

2. None has appeared on behalf of the assessee when this appeal was called for hearing despite the notice issued to the assessee through RPAD. Accordingly we propose to hear and dispose off the appeal ex parte.

3. We have heard the Id. D/R and carefully considered the relevant material on record. During the course of assessment proceedings, the AO noted that as per the Balance Sheet as on 31st March, 2011 there was an investment to the tune of Rs.1,31,36,659/- and income from the said investment is not taxable. Therefore, the AO issued a show cause notice to the assessee as to why an addition under section 14A of the Income Tax Act should not be made. In reply, the assessee pointed out that the figure as mentioned in the show cause notice regarding exempted investment is not correct because the interest income on most of the investments are taxable. The assessee has further explained that only the investment to the tune of Rs. 84,28,973/- is exempted investment. The assessee further contended that no addition is required under section 14A as the assessee has not incurred any expenditure in respect of the said investment and further the assessee has maintained separate financial statements of business income as well as personal affairs, investment and balance sheet. The AO accepted the correctness of the amount of investment. However, he made a disallowance of Rs. 84,289/- under section 14A read with Rule 8D on account of indirect administrative expenditure being 1% of average investment. On appeal,

the Id. CIT (A) has deleted the addition on the ground that the assessee has not earned any income during the year under consideration. The relevant finding of the Id. CIT (A) is at pages 16 to 18 as under :-

"As regards **Ground of appeal no 4**, it is seen that the appellant has not earned any exempt income but the A.O has still made a pro rata disallowance.

HIGH COURT OF MADRAS in Commissioner of Income-tax; Central 1, Chennai v. Chettinad Logistics (P) Ltd 80 taxmann.com 221 (Madras) recently held-

Section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (General principle) - Assessment year 2011-12 - Whether section 14A can only be triggered, if, assessee seeks to square off expenditure against income which does not form part of total income under Act; rule 8D only provides for a method to determine amount of expenditure incurred in relation to income, which does not form part of total income of assessee and it cannot go beyond what is provided in section 14A - Held yes - Whether where no exempt income i.e., dividend, was earned in relevant assessment year by assessee, section 14A could not be invoked - Held yes

The High Court elaborated as under-

The provisions of section 14A were inserted as a response to the judgments of the Supreme Court in Commissioner of Income Tax v. Maharashtra Sugar Mills Limited f19711 82 ITR 452 and Rajasthan State Ware Housing Corporation v. Commissioner of Income-tax /20021 242 17R 450 in terms of which, expenditure incurred by an assessee carrying on a composite business giving rise to both taxable as well as non-taxable income, was allowable in entirety without apportionment. It was thus that s.14A was inserted providing that no deduction shall be allowable in respect of expenditure incurred in relation to the earning of income exempt from taxation. As observed by the Supreme Court in the judgment in the case of Commissioner of Income-tax v. Walfort Share and Stock Brokers (P) Ltd. 120101 326 ITR 1

.... The mandate of s.14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of an exemption of exempt income

without making any apportionment of expenses incurred in relation to exempt income.'

10. The provision this is clearly relatable to the earning of actual income and not notional or anticipated income. The submission of the Department to the effect that s.14A would be attracted even to exempt income 'includable' in total income would entail the assessment of notional income, assumed to be exempt in the future, in the present assessment year. The computation of total income in terms of s. 5 of the Act is on real income and there is no sanction in law for the assessment of admittedly notional income, particularly in the context of effecting a disallowance in connection therewith.

11. The computation of disallowance in terms of Rule 8D is by way of a determination involving direct as well as indirect attribution. Thus, accepting the submission of the Revenue would result in the imposition of an artificial method of computation on notional and assumed income. We believe this would be carrying the artifice too far. (Emphasis is ours)"

THE ITAT DELHI BENCH 'A' in the case of Ms. Amita Verma v. Assistant Commissioner of Income-tax, Central Circle-13, New Delhi71 taxmann.com 91 (Delhi - Trib.) held that-

Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income (Dividend) - Assessment years 2006-07 to 2010-11 - Assessee contended that during year it had no exempt income and, therefore, no disallowance under section 14A could be made - Assessing Officer relying upon decision of Tribunal rendered in case of Cheminvest Ltd. v. ITO 120091 121 ITD 318 (Delhi) (SB) rejected assessee's contention - Whether since above decision of Tribunal had been reversed by jurisdictional High Court in case of Cheminvest Ltd. v. CIT 12015] 378 ITR 33/234 Taxman 761/ 61 taxinann.com 118 (Delhi), it would have to be held that no disallowance under section 14A can be made, where there is no exempt income - Held, yes

Thus relying on the position in this regard as was also applicable for the year under appeal, I am of the view that the disallowance could not be made as the appellant had not earned any exempt income in the year.

The disallowance of Rs. 84,289/- is directed to be deleted."

Thus it is clear that the Id. CIT (A) has decided this issue by following the decision of Hon'ble Madras High Court in case of CIT vs. Chettinad Logistics (P) Ltd., 80 taxmann.com 221 (Madras) as well as the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT, 378 ITR 33 (Delhi). Having regard to the facts and circumstances of the case and since the assessee has not earned any exempted income during the year under consideration, therefore, we do not find any error or illegality in the impugned order of Id. CIT (A).

4. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 16/05/2018.

Sd/-

(भागचन्द)
(BHAGCHAND)

लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 16/05/2018.
das/

Sd/-

(विजय पाल राँव)
(VIJAY PAL RAO)

न्यायिक सदस्य / Judicial Member

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

1. अपीलार्थी / The Appellant-The ACIT Circle-1, Kota.
2. प्रत्यर्थी / The Respondent-Smt. Manisha Agarwal, Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 340/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

