

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' B '**

**BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

I.T. A. No.1423/Bang/2017
(Assessment Year : 2012-13)

M/s. Aditi Technologies Private Limited,
(now known as Harman Connected Services
Technologies Private Limited,
No.C-4, Block, Wing A,
Manyata Embassy Business Park,
Outer Ring Road, Bangalore-560 011.

.... Appellant.

Vs.

Dy. Commissioner of Income Tax,
Circle 1(1)(1), Bangalore.

..... Respondent.

Appellant By : Shri L. Bharath, C.A.

Respondent By : Smt. Padma Meenakshi, JCIT (D.R)

Date of Hearing : 22.05.2018.

Date of Pronouncement : 25.05.2018.

O R D E R

Per Shri Inturi Rama Rao, A.M. :

This appeal is filed by the assessee-company directed against the order of Learned Commissioner of Income Tax (Appeals)-1, Bangalore dt.11.4.2017 for the Assessment Year 2012-13.

2. The assessee raised the following grounds :

1. The order of the Hon. CIT(A) and LAO is bad in law to the extent it is prejudicial to the interest of the Appellant.
2. The Hon. CIT(A) and LAO have erred in law and in fact in not accepting the relief as computed and claimed made by the Appellant under section 10AA of the Act. The Hon. CIT(A) and LAO erred in reducing from the export turnover, telecommunication charges and travel expenses incurred in foreign currency.
3. The LAO erred in invoking the provisions of section 14A read with rule 8D in respect of investment in mutual funds and investments in shareholding of the subsidiary company. The CIT(A) erred in confirming the said action of the LAO.
 - a) The LAO erred in failing to appreciate that the provisions of section 14A could be invoked only when Appellant has actually derived exempt income during the assessment year from its various investments. The LAA erred in confirming the said action of the LAO.
 - b) The LAO erred in failing to appreciate that in the absence of any expenditure incurred by the Appellant the provisions of section 14A could not have been invoked and applied to the Appellant's case. The LAA erred in confirming the said action of the LAO.
 - c) Without prejudice to the above, the LAO further erred in failing to appreciate that there is no direct linkage between the borrowing, expenditure incurred towards the said borrowing and the investment in the mutual funds or subsidiary company. The LAA erred in confirming the said action of the LAO.
3. Brief facts of the case are that the assessee is a company incorporated under the provisions of Companies Act, 1956. The assessee is engaged in the business of rendering IT Enabled Services. The return of income was filed for the Assessment Year 2012-13 on 30.11.2012 declaring a loss of Rs.10,92,63,254 belatedly after claiming deduction

under Section 10AA of the Income Tax Act, 1961 (in short 'the Act') of Rs.16,26,03,245. The return of income was revised on 13.1.2014 declaring income of Rs.38,19,476 after claiming deduction under Section 10AA of the Act of Rs.10,58,30,802 and under Section 80 IAB of Rs.4,12,84,995. Against the said return of income, the assessment was completed vide order dt.24.3.2015 passed under Section 143(3) of the Act determining total income of Rs.88,43,225. While doing so, the Assessing Officer made the following disallowances :-

i)	Disallowance of excess claim u/s.10AA	10,52,302
ii)	Disallowance of Belated remittance of employees contribution to PF / ESI	25,38,277
iii)	Disallowance u/s.40(a)(ia)	7,92,590
iv)	Disallowance u/s.14A r.w. Rule 8D	5,61,876
v)	Disallowance of donations as discussed	7,704
	Total :	49,52,749

Being aggrieved, the assessee filed appeal before the CIT (Appeals) who vide impugned order granted relief in respect of belated remittances of PF contribution of the employees and in respect of the disallowance of excess claim under Section 10AA of the Act, the learned CIT (Appeals) directed the Assessing Officer to reduce the telecommunication expenses, insurance incurred in foreign currency from both total

turnover as well as export turnover following the law laid down in the case of CIT Vs. Tata Elxsi Ltd. 349 ITR 98 (Kar). The learned CIT (Appeals) however confirmed the addition under Section 14A of the Act. Being aggrieved, the assessee is in appeal before us in raising the present grounds of appeal.

4. Ground No.1 is general in nature and does not require any adjudication.

5. Ground No.2 challenges the finding of the learned CIT (Appeals) that the expenditure incurred on travel, insurance and telecommunication in foreign currency should not have been reduced from both export turnover and total turnover as they are not incurred in connection with the rendering of technical services.

6. We find that from perusal of the orders of assessment as well as first appellate order, this contention was never raised by the assessee at any stage of proceedings nor raised any additional ground of appeal before us. In any event, this is an issue which requires verification of facts and therefore cannot be entertained at this stage of proceedings. Hence this ground of appeal filed by the assessee is dismissed.

7. The third ground of appeal challenges the addition under Section 14A of the Act on the ground that no exempt income was earned by the assessee.

8. From the perusal of the assessment order as well as the CIT (Appeals) order, it is clear that the assessee had been contending that the assessee had not earned exempt income and therefore Section 14A cannot be invoked. This proposition had been approved by the Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs. CIT 61 taxmann.com 118 & Special Bench of ITAT, Hyderabad in the case of ACIT Vs. Progressive Constructions Ltd. 92 taxmann.com 104 (Hyderabad – Trib.) (SB) and therefore we allow this ground of appeal of assessee.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on the 25th day of May, 2018.

Sd/-
(N.V. VASUDEVAN)
Judicial Member

Sd/-
(INTURI RAMA RAO)
Accountant Member

Bangalore,
Dt.25.05.2018.

*Reddy gp

Copy to :

1	Appellant	4	CIT(A)
2	Respondent	5	DR. ITAT, Bangalore
3	CIT	6	Guard File

Senior Private Secretary
Income Tax Appellate Tribunal
Bangalore.