



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.505/CTK/2017

Assessment Year : 2011-2012

Sanjeev Kumar Kapoor,, Barpali, Rajgangpur.	Vs.	JCIT, Uditnagar, Rourkela
PAN/GIR No.ABUPK 0291 J		
(Appellant)	..	(Respondent)

Assessee by : Shri P.R.Mohanty, AR
Revenue by : Shri Subhendu Datta, DR

Date of Hearing : 27/08/ 2018
Date of Pronouncement : 27/08/ 2018

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of the CIT(A), Sambalpur dated 4.9.2017 for the assessment year 2011-12.

2. The sole issue involved in this appeal is that the CIT(A) erred in confirming the addition of Rs.56,95,726/- made by the Assessing Officer u/s.14A r.w. Rule 8D of IT Rules, 1962.

3. The brief facts of the case are that the Assessing Officer observed that the assessee has not shown any amount in column 17(L) of the audit report as amount disallowable u/s.14A. In the balance sheet of the assessee, it is seen that the assessee has shown investment of Rs.10,67,74,909/- which were the same in the preceding year also. Therefore, he made disallowance u/s.14A of the Act r.w. 8D of IT Rules, 1962 of Rs.56,95,726/-.

4. On appeal before the CIT(A), the assessee argued that the provisions of section 14A are not applicable to the assessee as during the year under consideration, the assessee has not claimed any exempt income u/s.10(34) of the Act.

5. The CIT(A) did not accept the submission of the assessee on the ground that even if no exempt income has been earned during the relevant previous year, disallowance u/s.14A of the Act is called for in view of the CBDT Circular No.5 of 2014 dated 11.2.2014.

6. Before us, Id A.R of the assessee argued and submitted that Hon'ble Delhi R High Court in the case of Pr CIT vs IL&FS Energy Development Ltd (2017) 399 ITR 483 (Del) has held that no disallowance of expenditure u/s.14A can be made when no exempt income is claimed by the assessee.

7. On the other hand, Id D.R. submitted that in view of CBDT Circular No.5 of 2014 dated 11.2.2014, disallowance of expenditure u/s.14A has to be made even if the assessee has not earned any exempt income from the investment made by it.

8. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. The undisputed facts of the case are that the Assessing Officer observed that in the return of income filed, the assessee has not disallowed any expenditure u/s.14A of the Act. According to him, the assessee is having investment of Rs.10,67,74,909/- as at the year ended on 31.3.2011. Therefore, he made disallowance u/s.14A r.w. 8D of I.T.Rules, 1962 of Rs.56,95,726/-.

9. On appeal, the CIT(A) confirmed the same holding that the disallowance u/s.14A has to be made even where the assessee has not earned any exempt income, for which, he relied on the CBDT Circular No.5 of 2014 dated 11.2.2014.

10. Before us, Id A.R. of the assessee relying on the decision of Hon'ble Delhi High Court in the case of IL&FS Energy Development Ltd (supra) submitted that no disallowance of expenditure u/s.14A of the Act can be made where no exempt was earned by the assessee.

11. Ld D.R. has supported the orders of lower authorities.

12. Now it is settled position of law that whenever assessee did not earn any exempt income, no disallowance could be made u/s. 14A of the Act. The Hon'ble Delhi High Court in the case of *Cheminvest Ltd. v. CIT, 378 ITR 33 (Del)* has categorically held that section 14A envisages that there should be actual receipt of income which was not includible in the total income during the relevant previous year for the purpose of disallowing any expenditure in relation to the said income. Wherever there is no exempt income includible in the total income of the assessee, the provisions of section 14A cannot be invoked. The relevant observations of the judgment of the Hon'ble Delhi High Court are extracted here under: -

"15. Turning to the central question that arises for consideration, the court finds that the complete answer is provided by the decision of this court in CIT v. Holcim India (P) Ltd. (decision dated 5th September 2014, in I. T. A. No. 486 of 2014). In that case, a similar question arose, viz., whether the Income-tax Appellate Tribunal was justified in deleting the dis allowance under section 14A of the Act when no dividend income had been earned by the assessee in the relevant assessment year ? The court referred to the decision of this court in Maxopp Investment Ltd. (supra) and to the decision of the Special Bench of the Income-tax Appellate Tribunal in this very case, i.e., Cheminvest Ltd. v. CIT [2009] 317 ITR (AT) 86 (Delhi) [SB]. The court also referred to three decisions of different High Courts which have decided the issue against Revenue. The first was the decision in CIT v. Lakhani Marketing Incl. (decision dated

April 2, 2014, of the High Court of Punjab and Haryana in I. T. A. No. 970 of 2008)–since reported in [2015] 4 ITR-OL 246 (P&H)– which in turn referred to two earlier decisions of the same court in CIT v. Hero Cycles Ltd. [2010] 323 ITR 518 (P&H) and CIT v. Winsome Textile Industries Ltd. [2009] 319 ITR 204 (P&H). The second was of the Gujarat High Court in CIT v. Corrttech Energy (P.) Ltd. [2014] 223 Taxmann 130 (Guj) ; [2015] 372 ITR 97 (Guj) and the third of the Allahabad High Court in CIT v. Shivam Motors (P) Ltd. (decision dated 5th May, 2014, in I . T. A. No. 88 of ITA No. 1107/Bang/2016 2014). These three decisions reiterated the position that when an assessee had not earned any taxable income in the relevant assessment year in question “corresponding expenditure could not be worked out for dis allowance.”

13. As it is not in dispute that the assessee has not earned any exempt income during the year, therefore, we respectfully following the above quoted decision of Hon’ble Delhi High Court, set aside the orders of lower authorities and delete the disallowance of expenditure of Rs.56,95,726/- and allow the ground of appeal of the assessee.

14. In the result, appeal filed by the assessee is allowed.

Order pronounced on 27/08/2018.

Sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Cuttack; Dated 27/08/2018
B.K.Parida, SPS

sd/-

(N.S Saini)
ACCOUNTANT MEMBER



Copy of the Order forwarded to :

1. The Appellant : Sanjeev Kuamr Kapoor, Barpali,
Rajgangpur
2. The Respondent. JCIT, Uditnagar, Rourkela
3. The CIT(A)- Sambalpur
4. Pr.CIT- Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

**Sr. Pvt. Secretary,
ITAT, Cuttack**