

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G", MUMBAI**

BEFORE SHRI B.R. BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 4434/MUM/2017
Assessment Year: 2014-15**

M/s Weizmann Forex Ltd. (Previously known as Chanakya Holding Ltd.d) Empire House, 214, Dr. D.N. Road, Ent. A.K. Nayak Marg, Fort, Mumbai - 400001 PAN: AABCC7143A	Vs.	The Dy. Commissioner of Income Tax, Range-1(3)(2), Room No. 564, AayakarBhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by : Shri AnujKisnadwala (CA)
Revenue by : Shri V. Vidhyadhar (DR)

Date of Hearing: 16/07/2018
Date of Pronouncement: 10/08/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against order dated 27.04.2017 passed by the Ld. Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-3, Mumbai, for the assessment year 2014-15, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee company engaged in the business of sale of foreign currency and travelers cheques, filed its return of income for the assessment year under consideration declaring the total income of Rs. 31,09,73,081/-. The case was selected for scrutiny and in response to the notices u/s 143(2) and 142(1) the assessee furnished the details called for.

Since the assessee had made investments in equity shares value of which was Rs. 19,79,000/- as on 31.03.2013 and 21,04,04,697/- as on 31.03.2014 and the assessee had not made any disallowance, the AO asked the assessee to explain as to why disallowance u/s 14 A read with Rule 8D should not be made in respect of investment made. The assessee contended that since the assessee did not earn any exempt income under the assessment year under consideration, no question of addition u/s 14A read with rule 8D does arise. So far as investment is concerned since some of the investments are in foreign subsidiary therefore, the income there from is not exempt. Investments in cooperative banks do not yield exempt income and investment of 21.04 crores after reducing investment in foreign company and cooperative banks are in subsidiaries and associate companies as strategic investment. However, the AO did not accept the contention of the assessee and referring to the clarification issued by CBDT vide circular no. 5/2014 dated 11.02.2014 which contemplates that section 14A can be invoked even in those cases where no exempt income has been earned by the assessee, computed the disallowance u/s 14A read with rule 8D at Rs. 5,30,960/-.

3. The assessee challenged the impugned order before the CIT (A) . The Ld. CIT (A) after hearing the assessee rejected the appeal and confirmed the addition made by the AO u/s 14A read with rule 8D . The assessee is in appeal against the said order.

4. The assessee has preferred this appeal before the Tribunal on the following effective grounds:-

“Ground No. 1:

“On the facts and in the circumstances of the case and in law, the learned CIT (A) grossly erred in upholding the disallowance of expenses under section 14A of the Act read with Rule 8D made by the AO, of Rs. 5,30,960/- under the normal provisions of the Act in absence of any exempt income. The appellant prays that the said disallowance is unjustified and may please be deleted.

Ground No. 2:

On the facts and in the circumstances of the case and in law, the learned CIT (A) grossly erred in upholding the disallowance of expenses under section 14A of the Act read with Rule 8d made by the AO, of Rs. 5,30,960/- under section 115JB of the Act in absence of any exempt income. The appellant prays that the said disallowance is unjustified and may please be deleted.”

5. Before us, the Ld. counsel for the assessee submitted that the assessee has not earned/claimed any exempt income during the assessment year under consideration. Since, the assessee has not claimed any exempt income, the question of disallowance does not arise. The Ld. counsel further submitted that this issue is covered by the judgment of the Nagpur Bench of the Hon'ble Bombay High Court *PCIT Nagpur vs. M/s Ballarpur Industries Ltd., Income Tax Appeal No. 51 of 2016* and Hon'ble Delhi High Court in *Cheminvest Ltd vs. CIT 281 CTR 447 (Del.)*. Since, the impugned order is not in accordance with the ratio laid down by the Hon'ble jurisdictional High Court, the same is liable to be set aside.

6. On the other hand the Ld. departmental representative relied on the findings of the authorities below.

7. We have gone through the orders passed by the authorities below in the light of the contention of the assessee. The Hon'ble Bombay High Court has decided the identical issue in favour of the assessee in the case of *PCIT Nagpur vs. M/s Ballarpur Industries Ltd.(supra)* holding as under:-

“On hearing the learned Counsel for the Department and on a perusal of the impugned orders, it appears that both the Authorities have recorded a clear finding of fact that there was no exempt income earned by the assessee. While holding so, the Authorities relied on the judgment of the Delhi High Court in Income Tax Appeal No. 749/2014, which holds that the expression “does not form part of the total income” in Section 14A of the Income Tax Act, 1961 envisages that there should be an actual

receipt of the income, which is no includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. The Income Tax Appellate Tribunal held that the provisions of Section 14A of the Income Tax Act, 1961 would not apply to the facts of this case as no exempt income was received or receivable during the relevant previous year. It is not the case of the Assessing Officer that any actual income was received by the assessee and the same was includible in the total income. In the facts of the case, the Authorities held that since the investments made by the assessee in the sister concern were not the actual income received by the assessee, they could not have been included in the total income.

The findings of facts recorded by both the Authorities do not give rise to any substantial question of law.

Since no substantial question of law arises in this income tax appeal, the income tax appeal is dismissed with no order as to costs.”

8. In the present case the assessee has not received any exempt income during the year relevant to the assessment year under consideration and the Ld. CIT(A) has upheld the disallowance in question on the basis of the CBDT circular referred in the order. Since, the jurisdictional High Court has decided the identical issue in favour of the assessee in the case referred above and since the impugned order is contrary to the ratio laid down by the Hon’ble High Court, we set aside the impugned order by following the ratio of law laid down by the Hon’ble High Court and direct the AO to delete the addition.

In the result, appeal filed by the assessee for assessment year 2014-2015 is allowed.

Order pronounced in the open court on 10th August, 2018.

Sd/-

(B.R. BASKARAN)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 10/08/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेशप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरण,मुंबई/ DR, ITAT,
Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण,मुंबई / **ITAT, Mumbai**