

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

**ITA Nos.38 & 39/Hyd/2018  
Assessment Years: 2013-14 & 2014-15**

**M/s. Penna Cement  
Industries,  
Laxmi Nivas, 705, Road  
No. 3, Banjara Hills,  
Hyderabad.**

**PAN: AABCP 2290 D**

**(Appellant)**

**Vs.**

**Income Tax Officer,  
Ward-16(3),  
I.T. Towers, A.C. Guards,  
Hyderabad.**

**(Respondent)**

Assessee by: Sri A.V. Raghuram

Revenue by: Sri P. Soma Sekhar Reddy, CIT-DR

Date of hearing: 28.08.2018

Date of pronouncement: 31.08.2018

**ORDER**

**PER INTURI RAMA RAO, A.M.:**

These appeals filed by the assessee-company are directed against the different orders of the Learned Commissioner of Income Tax (Appeals)-4, Hyderabad dated 12.05.2016 and 25.01.2017 for the assessment years 2013-14 and 2014-15 respectively.

2. Since the identical issues are involved in both the appeals, we dispose of the same vide this consolidated order.

3. For the sake of convenience and clarity, the facts relevant to the A.Y. 2013-14 are stated herein. The appellant raised the following grounds of appeal:-

- “1. *The order of the Ld. CIT(A) dismissing the appeal is not only erroneous both on facts and in law but is without application of mind to the facts brought out in the submissions that are made.*
2. *The Ld. CIT(A) erred in confirming the disallowance made u/s 14A of Rs. 7,75,07,109/- in spite of reference to the decision of the Supreme Court in the case of Godrej Boyce by referring to a decision of the I.T.A.T, contrary to the principles of judicial discipline.*
3. *The Ld. CIT(A) erred in confirming the disallowance made u/s 37(1) of Rs. 5,83,12,100/- merely placing reliance on A.O.’s stand in the assessment order without verifying whether it is correct or not and in spite of referring to the decision of the Supreme Court on advancing to sister company to be for business purposes.*
4. *Any other ground that may be urged at the time of hearing.”*

4. Briefly, the facts of the case are that the assessee is a company duly incorporated under the provisions of Companies Act, 1956. It is engaged in the business of manufacture of cement and power generation. The return of income for the A.Y. 2013-14 was filed on 29.11.2013 disclosing a total income of Rs. 161,30,62,430/- and this was revised on 30.11.2013 at a total income of Rs. 162,49,01,000/-. Against the said return of income, the assessment was completed by the ITO, Ward-16(3), Hyderabad vide order dated 31.03.2016 passed u/s 143(3) of the Act at a total income of Rs. 176,06,20,209/-. While doing so, the Learned Assessing Officer made a disallowance of Rs. 7,75,07,109/- invoking the provisions of section 14A read with Rule 8D of the Income Tax Rules, 1962. The Assessing Officer also made addition of Rs. 5,83,12,100/- on the ground that the appellant had diverted the borrowed funds for the purpose of investing in the sister concerns namely M/s. Anrak Aluminium Limited and also M/s. Pioneer Builders.

5. Being aggrieved by the above assessment order, an appeal was preferred before the Ld. CIT(A), who vide the impugned order had confirmed the addition holding that once there is an exempt income, the provisions of section 14A are applicable. As regards the disallowance of proportionate interest, the Ld. CIT(A) has rejected the contention of

the appellant by holding that the amounts of advances / investments exceeds the amount of reserves and profits made during the year. Being aggrieved, assessee is in appeal before us in the present appeal.

6. Learned Counsel for the Assessee, Mr. A.V. Raghuram, argued that the Assessing Officer as well as the Ld. CIT(A) ought not to have confirmed the addition u/s 14A, inasmuch as, the amount of disallowance cannot exceed the exempt income and without giving a finding as to how the working given by the appellant is wrong and also making addition of Rs. 7,75,07,109/- u/s 14A of the Act without furnishing any working as to how this amount of disallowance is arrived at. As regards to the disallowance of proportionate interest on account of investments made in the sister concerns viz., M/s. Anrak Aluminium Limited and also M/s. Pioneer Builders, it is contended that the investments are made out of the surplus generated by the appellant and out of the business expediency. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in the case of Hero Cycles (P) Ltd vs. CIT (379 ITR 347) and a decision of the coordinate Bench in the case of Mylan Laboratories Ltd vs. ACIT (ITA Nos. 362 & 452/Hyd/2017, dated 09.05.2018).

7. On the other hand, Learned Departmental Representative placed reliance on the orders of the lower authorities.

8. We have heard the rival submissions and perused the material on record. Grounds No.1 and 4 are general in nature and they do not require any adjudication. Ground No.2 challenges the addition of Rs. 7,75,07,109/- as confirmed by the Ld. CIT(A) u/s 14A of the Act. Now we shall deal with the same.

9. Undisputedly, the appellant had offered *suo motto* disallowance of Rs. 28,71,059/- u/s 14A read with Rule 8D of the IT Rules, 1962. The Assessing Officer made a disallowance of Rs. 7,75,07,109/- u/s 14A

read with Rule 8D of the IT Rules, 1962. However, the Assessing Officer had not given any finding as to who the working furnished by the appellant is incorrect and similarly the Assessing Officer without furnishing the working as to how he had arrived at the disallowance of Rs. 7,75,07,109/- in terms of Rule 8D of the IT Rules, 1962, made the disallowance. Another important fact to be noted is the exempt income earned by the appellant is only a sum of Rs. 3.75 Crs. In the light of the judgment of the ITAT, Hyderabad Special Bench in the case of ACIT vs. M/s. Progressive Constructions Pvt Ltd (ITA No.1845/Hyd/2014, dt. 14.02.2017), the disallowance u/s 14A cannot exceed exempt income. Therefore, considering the above settled position of law, we hold that the amount of disallowance cannot exceed the exempt income earned during the year. However, in the absence of finding by the Assessing Officer as well as the Ld. CIT(A) as to how the *suo motto* disallowance by the appellant is incorrect, in our considered opinion, the matter is required to be remanded to the file of the A.O. to workout the disallowance in accordance with Rule 8D by giving a reasonable opportunity of being heard to the appellant. However, we make it clear that the amount of disallowance cannot exceed the exempt income in the light of the above legal position. Thus, Ground No.2 is partly allowed for statistical purposes.

10. Ground No.3 challenges the addition of Rs. 5,83,12,100/- on account of disallowance of proportionate interest on borrowed funds. The addition is challenged primarily on two grounds i.e., (i) the amounts are advanced out of the business expediency and (ii) the investments in the sister concerns were made out of the own funds i.e., reserves and surplus of the appellant.

11. As regards the contention that the investments are made out of the business expediency. There can be no dispute on this legal principle

that once the loans and advances are made out of the business expediency, no partial disallowance of interest is required to be made. However, this is a matter of fact which requires to be proved by facts the factual foundation before the lower authorities. In the present case, no factual foundation was laid either before the lower authorities or before us. Therefore, the contention of the appellant cannot be accepted.

12. On perusal of the annual report placed at pages 38 to 92 of the paper book at page 60, wherein the Schedule-3 to the balance sheet was annexed, it is clear that there was a general reserve of Rs. 150.30 Crs and a credit balance to P & L Account of Rs. 1060.19 Crs and the profit generated during the year is Rs. 141.76 Crs whereas the investments made during the year is only to the extent of Rs. 20 Crs. Thus, the reserves and surplus far exceeds the investments and therefore it can be safely inferred that the investments made out of the own funds and in this regard reliance was placed on the decision of the Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd., (313 ITR 340) (Bom.). Thus, we hold that no disallowance of proportionate interest was called for.

13. In the result, both the appeals filed by the assessee are partly allowed for statistical purposes.

Pronounced in the open Court on 31<sup>st</sup> August, 2018.

Sd/-  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 31<sup>st</sup> August, 2018

**OKK**

Copy to:-

- 1) K. Vasantkumar, A.V. Raghu Ram, P. Vinod & M. Neelima Devi, Advocates, 610, Babukhan Estate, Basheerbagh, Hyderabad-1.
- 2) Income Tax Officer, Ward-16(3), I.T. Towers, A.C. Guards, Hyderabad.
- 3) The CIT(A)-4, Hyderabad
- 4) The Pr. CIT-4, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File