

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH “B”, HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.735/Hyd/2018
Assessment Year: 2014-15**

**DCIT,
Circle-16(2),
Hyderabad.**

(Appellant)

**Vs. Pitti Electrical Equipment
Private Limited,
Hyderabad.
PAN: AACCP 8334 P
(Respondent)**

Assessee by: Sri Laxminiwas Sharma
Revenue by: Smt. V. Rajitha, DR

Date of hearing: 12.09.2018
Date of pronouncement: 03.10.2018

ORDER

PER Smt. P. Madhavi Devi, J.M.:

This is Revenue's appeal for the Assessment Year 2014-15 filed against the order of the Learned Commissioner of Income Tax (Appeals)-4, Hyderabad dated 22.02.2018.

2. The Revenue has raised the following grounds of appeal:-

- “1. The CIT(A) erred in restricting the disallowance u/s 14A from Rs. 92,27,343/- to Rs. 34,90,601/-.
2. The CIT (A) erred in holding that the disallowance u/s 14A shall be restricted to the exempt income earned by the assessee.”

3. Brief facts of the case are that the assessee-company engaged in trading of iron & steel filed its return of income electronically for the assessment year 2014-15 on 27.10.2014 admitting NIL total income and

current year loss Rs. 82,23,103/-. The book loss was declared u/s 115JB of the Act at Rs. 46,35,650/-. During the assessment proceedings u/s 143(3) of the Act, the A.O. observed that the assessee has earned dividend income of Rs. 34,90,601/- and claimed it as exempt from tax. He also observed that the assessee has claimed an amount of Rs. 2,66,15,974/- as interest paid during the year. Therefore, A.O. was of the opinion that a disallowance is to be made u/s 14A read with Rule 8D of the IT Rules, 1962. Accordingly he made the disallowance of Rs. 92,27,343/- u/s 14A and brought it to tax.

Aggrieved, the assessee preferred an appeal before the CIT(A), who followed the decision of TGV Projects and Investments (P) Ltd vs. ACIT in ITA No. 846/Hyd/ 2016 wherein it was held that the disallowance u/s 14A is to be restricted to the exempt income earned by the assessee. Accordingly, CIT(A) restricted the disallowance to Rs. 34,90,601/-. Against the relief granted by the CIT(A), the Revenue is in appeal before us.

While the Learned Departmental Representative supported the order of the A.O, the Learned Counsel for the Assessee placed reliance upon the decision of the CIT(A) and also placed reliance upon various precedents on the issue which are as under:-

1. Capital Fortunes Private Limited vs Dy. Commissioner of Income Tax, Circle1(2), Hyderabad - ITAT Hyderabad - ITA No. 1165/HYD/2017 - order dated 31.07.2018.
2. VBC Ferro Alloys Ltd. Versus Income-Tax Officer, Ward -17 (1), Hyderabad ITAT Hyderabad - ITA No. 1541/Hyd/2017 - order dated 31.07.2018 Copy enclosed.
3. Jasper Industries P. Ltd. Vs. DCIT, Central Circle-1(2), Hyderabad - ITAT Hyderabad - ITA No. 283/HYD/2017 - order dated 15.06.2018
4. TGV Projects and Investments (P) Ltd. Versus The ACIT, Circle-2 (3) Hyderabad ITAT Hyderabad - ITA.No.846/HydI2016 - order dated 28.02.2017
5. ITO, Ward- 2(1), Hyderabad Vs. Sri Krishna Kishore Kuchipudi - ITAT Hyderabad - ITA No. 1805/Hyd/2012

(b) Other High Courts and Tribunals.

1. Commissioner Of Income Tax - Vadodara - 2 Versus Vision Finstock Ltd Gujarat High Court - Tax Appeal No 486/2017 - order dated 31.07.2017

2. Principal Commissioner of Income Tax I, Chandigarh Versus Mis Empire Package Pvt. Limited - Punjab and Haryana High Court - ITA No.415 of2015 - order dated 12.01.2016
3. Joint Investment Pvt. Ltd Vs. CIT - Delhi High Court - ITA NO.117/2015order dated 25.02.2015
4. Vikrangee Ltd Vs. Dy.CIT, Cent.Cir.4(2), Mumbai - ITAT Mumbai - ITA No. 5792 & 5834 /Mum/2016
5. Indian Sugar Exim Corporation Ltd. Vs. ITO, Ward-II(4) - ITAT Delhi - ITA No. 2490/Dell2014
6. Joint Commissioner of Income-tax Vs. Priyaraj Electronics Ltd. - ITAT Bangalore - ITA No. 867/Bang/2016
7. S.V. Sreenivasen Vs. The Deputy Commissioner of Income Tax, Corporate Circle 2 - ITAT Chennai - ITA No. 892/Mds12017
8. Inox Leisure Limited Vs. Deputy Commissioner of Income Tax, Circle - 1(2), Vadodara - ITAT Ahmedabad - ITA No. 3330/Ahd/2015
9. Chengmari Tea Co. Ltd. Vs. DY/ACIT, Circle-4(1), - ITAT Kolkata - ITA No. 1932/Koll2017

4. Having regard to the rival contention and the material on record, we find that in the case of VBC Ferro Alloys Ltd vs. ITO (2018) 8 TMI 130 – ITAT Hyderabad, coordinate Bench of this Tribunal to which both of us are the signatories, have followed the precedents on the issue to hold that the disallowance u/s 14A read with Rule 8D cannot exceed exempt income. The relevant portion is reproduced hereunder for the sake of reference.

“10. Considered the rival submissions and perused the material on record. The issue in dispute is squarely covered by the decision of the coordinate bench of this Tribunal in the case of SNJ Synthetics Ltd. (supra) wherein the coordinate bench has observed as under:

6. We have considered the rival contentions and perused the facts on record and the case law relied upon. As seen from the order of the AO as well as the CIT(A), there is no finding that assessee has incurred any expenditure for earning the said dividend income. There was no diversion of borrowed funds, hence there is no disallowance interest under rule 8d(2)(ii). The disallowance was only under Rule 8D(2)(iii).

6.1. Coming to the disallowance of % of average value of investment, some proportionate expenditure can be disallowed but in no case, it should exceed the amount earned claiming exemption. The Hon'ble High Court of Punjab & Haryana in the case of Pr. Commissioner of Income Tax Vs. Empire Package Pvt. Ltd., (supra), answered the question raised by Revenue in negative, wherein the Revenue has raised whether in the facts and circumstances of the case, the Hon'ble Tribunal is justified in law to hold the disallowance made u/s. 14A r.w. Rule 8D cannot exceed the exempt income in the absence of any such restriction being there in the relevant section or rule. Similar opinion was also expressed by the Hon'ble Delhi High Court in the case of Joint Investments Pvt. Ltd., Vs. CIT (supra), wherein the Hon'ble Delhi High Court has clearly held that the proportionate or portion of the tax exempt income surely cannot swallow the entire amount as happened in this case. The Co-ordinate Bench in the case of M/s. Kamadhenu Sukrit Pvt. Ltd., Vs. ITO (supra) relied on another decision in the case of Sahara India Financial Corpn. Ltd., Vs. DCIT [41 taxmann.com 251] (Delhi-Trib) and has held as under:

8.1. As can be seen from the nature of expenditure, there is no indication even that the above expenditure is expended for earning dividend income. AO without giving any satisfactory reason, just invoked Rule 8D(iii) and disallowed the amount.

9. The Co-ordinate Bench in the case of Sahara India Financial Corpn. Ltd., Vs. DCIT(supra) has held in para 81 as under: We have heard the rival contentions and perused the material

available on record. It has not been disputed that the administration, expenses and books of account of investment division are separately carried out and maintained by the assessee. No infirmity has been found by the department in this behalf. One of the main issue is on whom lies the onus to establish nexus of available funds with free and taxable income. 5 ITA No. 1541/Hyd/17 VBC Ferro Alloys Ltd., Hyd. Similarly courts have held that a finding in objective terms about assessee working being unsatisfactory is to be recorded by AO in the order. Chandigarh Bench of the Tribunal in the case of Punjab State Co-op. & Marketing Fed. Ltd. (supra) has held that in any case the disallowance u/s 14A cannot exceed tax free income of the assessee. If mechanical method of rule 8D is applied, it leads to manifestly absurd results in as much as for tax free income of Rs.68,37,583/- disallowance of Rs.2,16,51,917 (enhanced by CIT(A) at Rs. 2,19,47,772) is made u/s 14A which is way too much than the exempt income. As the interpretation of provisions of sec. 14A r/w rule 8D is leading to unanticipated absurdities which cannot be the intention of legislature. Under these circumstances help of external aids of construction for interpretation of statute is called for. Looking at the varying interpretation offered by various courts and benches of tribunal in relation to sec. 14A, it is quite arduous to precisely decide the issue. In given facts and circumstances without going into all the issues, in our view it is appropriate to take guidance from Chandigarh bench judgment in the case of Punjab State Co-opt Marketing Fed. Ltd. (supra) holding that the disallowance of expenditure in any case cannot exceed the income earned. In our view this judgment takes a holistic view that disallowance in terms of sec. 14A can be maximum to the extent of exempt income, there is no dispute that in this case which is at Rs. 68,37,583/-. This judgment implies that reasonable expenditure less than the exempt income can be disallowed. In our considered opinion, in the interest of justice, it will be reasonable to estimate and disallow, 50% of exempt) income (Rs.68,37,583/-) as relatable to exempt income u/s 14A r/w rule 8D. We do not go into various plea taken by both sides offering diverse views based on judicial citations. This ground of the assessee is partly allowed.

10. Respectfully following the above principles, as the disallowance made by AO has resulted in absurd situation of disallowing genuine other business expenditure, on which assessee earned more than Rs. 19 Lakhs income (as against Rs. 8,100/- of dividend), I am satisfied that the disallowance u/s. 14A should be restricted to the income earned of Rs. 8,100/-. AO is directed accordingly.

6.2. Respectfully following the principles laid down in various judgments of the Hon'ble High Courts and the decisions of the Co-ordinate Benches, we are of the opinion that the disallowance under Rule 8D cannot exceed the dividend income earned and claimed as exempt. Therefore, the disallowance worked out under Rule 8D(iii) being administrative expenditure is restricted to the amount of dividend earned. AO is directed to modify accordingly. Ground is partly allowed." As the issue under consideration is materially identical to the said decision, following the conclusions drawn therein, we direct the AO to 6 ITA No. 1541/Hyd/17 VBC Ferro Alloys Ltd., Hyd. delete the disallowance made u/s 14A r.w.r. 8D(2)(iii) as the disallowance u/s 14A cannot exceed the exempt income. Ground No. 2 is allowed."

5. Respectfully following the same, the Revenue's appeal is dismissed.

6. Pronounced in the open Court on 03rd October, 2018.

Sd /-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 03rd October, 2018
OKK

Copy to:-

- 1) DCIT, Circle-16(2), 2nd Floor, "B" Block, IT Towers, A.C. Guards, Masab Tank, Hyderabad.
- 2) M/s. Pitti Electrical Equipment Private Limited, 6-3-648/401, 4th Floor, Padmaja Landmark, Somajiguda, Hyderabad.
- 3) The CIT(A)-4, Hyderabad
- 4) The Pr. CIT-4, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File