

**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.02/Hyd/2016
Assessment Year: 2012-13**

**L & T Infocity Limited,
1Q4-A1, 1st Floor, Cyber
Towers, Hitech City,
Madhapur, Hyderabad-
500082.**

**Vs. DCIT,
Circle-16(1), Aayakar
Bhavan, Basheerbagh,
Hyderabad-500004.**

PAN: AAACL 5895 R

(Appellant)

(Respondent)

Assessee by: Shri Maitreya GBS

Revenue by: Shri Ravi Kiran, DR

Date of hearing: 12.09.2018

Date of pronouncement: 12.10.2018

ORDER

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

This is assessee's appeal for the Assessment Year 2012-13 filed against the order of CIT(A)-4, Hyderabad dated 24.11.2015. Assessee raised the following grounds of appeal:-

- “1. *The Ld. CIT(A) erred in confirming certain disallowances, additions, and / or denial of claims and / or relief, imposition of tax with reference thereto, the quantification of taxable income and tax liability made by the Learned Assessing Officer.*
2. *The Ld. CIT(A) erred in confirming that the Ld A.O. was justified in computing the disallowance of expenditure attributable to exempt income, by invoking the provisions of section 14A of the Act read with Rule 8D of the IT Rules, 1962.*
- 2.1 *Without prejudice to Ground no.2, the Ld. CIT(A) erred in confirming that Ld A.O. was justified in calculating and disallowing expenditure u/s 14A of the Act read with Rule D of the Rules*

amounting to Rs. 27,37,019/- by considering that the same is attributable towards earning exempt income.

3. *The Learned A.O. was not justified rather grossly erred, both in law and facts, in not granting credit for tax deducted at source amounting to Rs. 2,58,393/- without assigning any reasons.*
4. *The Learned A.O. has erred in levying interest u/s 234C of the Act amounting to Rs. 1,31,050/-."*

2. Brief facts of the case are that the assessee-company engaged in the business of development, maintenance and consultancy in respect of infrastructure facilities for information technology and related companies and development and selling of housing units, filed its return of income for the A.Y. 2012-13 on 29.09.2012 admitting total income of Rs. 45,77,36,000/- under normal provisions and book profit of Rs. 42,78,03,550/- u/s 115JB of the Act. During the assessment proceedings u/s 143(3) of the Act, A.O. observed that the assessee has made investment in shares and has received dividend income which is exempt from tax u/s 10(38) of the Act. By observing that that the expenditure has to be disallowed u/s 14A read with Rule 8D, he arrived at the disallowance of Rs. 27,37,019/- and brought it to tax.

3. Aggrieved, assessee preferred an appeal before the CIT(A) who confirmed the addition by following the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Company Limited vs. CIT (328 ITR 81) (Bom.). Aggrieved, the assessee is in second appeal before us. Ground No.1, being general in nature, needs no adjudication.

4. As regards Ground No.2, Learned Counsel for the Assessee, Shri Maitreya GBS, while submitting that the assessee has utilised its own funds for making the investment and has not utilised any interest bearing funds has also argued that the decision on which the CIT(A) has placed reliance upon has been overruled by the Hon'ble Supreme Court in the

case of Godrej & Boyce Manufacturing Company Limited (cited supra). He therefore submitted that the Assessing Officer without bringing on record as to why the assessee's books of account cannot be accepted, ought not to have made any disallowance u/s 14A of the Act. Without prejudice to the above argument, Learned Counsel for the Assessee also argued that the disallowance cannot exceed the exempt income earned by the assessee.

5. Learned Departmental Representative on the other hand supported the orders of the authorities below.

6. Having regard to the rival contentions and the material on record, we find that the Hon'ble Supreme Court in appeal against the order of the Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Company Limited vs. CIT has held that section 14A cannot be invoked in the absence of proof that expenditure has actually been incurred in earning the dividend income and if the A.O. has accepted for earlier years that no such expenditure has been incurred, he cannot take a contrary stand for later years if the facts and circumstances have not changed. Though the Learned Counsel for the Assessee has placed reliance upon this finding of the Hon'ble Supreme Court, we find that there is no material on record to show that the A.O. in the earlier years has accepted that there was no expenditure incurred by the assessee and also there is no material on record to show that assessee has not incurred any expenditure for earning of dividend income. However, we are in agreement with the alternative claim of the assessee that the disallowance u/s 14A should be restricted only to the exempt income earned by the assessee. We accordingly direct the A.O. to restrict the disallowance u/s 14A r.w. Rule 8D to the dividend income

claimed as exempt by the assessee u/s 10(38) of the I.T. Act, 1961. Accordingly, the Ground No.2 raised by the assessee is treated as partly allowed.

7. As regards Ground No.3, we remand the issue to the file of the A.O. for verification of the assessee's claim and to give TDS credit in accordance with law.

8. As regards Ground No.4, we find that levy of interest u/s 234C is consequential in nature. A.O. is therefore directed to recalculate the interest u/s 234C, in accordance with law.

9. In the result, appeal of the assessee is partly allowed for statistical purposes.

Pronounced in the open Court on 12th October, 2018.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 12th October, 2018

OKK

Copy to:-

- 1) L & T Infocity Limited, 1Q4-A1, 1st Floor, Cyber Towers, Hitech City, Madhapur, Hyderabad – 400082.
- 2) DCIT, Circle-16(1), Aayakar Bhavan, Basheerbagh, Hyderabad-500004.
- 3) The CIT(A)-4, Hyderabad
- 4) The Pr. CIT-4, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File