

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD**

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

ITA No. 1081/Hyd/2018
Assessment Year: 2014-15

Dy. Commissioner of Income-tax, Circle – 16(1), Hyderabad	vs.	NSL Energy Ventures Pvt. Ltd., Hyderabad. PAN – AACCV6236 C
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Appellant

Respondent

Revenue by: Shri D.J.P. Anand
Assessee by: None

Date of hearing: 15/10/2018
Date of pronouncement: 31/10/2018

ORDER

PER S. RIFAUR RAHMAN, AM:

This appeal is filed by the Revenue against order of CIT(A) - 4, Hyderabad, dated 07/03/2018 for AY 2014-15 wherein the revenue has raised the following grounds of appeal:

1. *The CIT(A) erred in deleting the disallowance u/s 14A of Rs. 1,16,46,064/-.*
2. *The CIT(A) erred in ignoring CBDT's Circular No.5 of 2014 dated: 11-02-2014.*
3. *The CIT(A) erred in ignoring the Supreme Court decision in the case of CIT Vs Walfort Share of Stock Brokers P Ltd [326 ITR 1] wherein it was held that the mandate of section 14A was to curb the practice of claiming deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of exempt income without making any apportionment of expenses incurred in relation to exempt income.*

4. Any other ground that may be urged at the time of hearing.

2. Brief facts of the case are that assessee engaged in the business of generation and transmission of power through renewable as well as conventional sources, filed its return of income for the AY 2014-15 on 27/09/2014 declaring loss of Rs. 11,06,27,438/-, which was processed u/s 143(1) of the income-tax Act, 1961 (in short 'the Act'). Subsequently, the case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued. In response to the said notices, the AR of the assessee filed the required information. After verification of the information furnished, the AO completed the assessment by making an addition of Rs. 1,16,46,064/- being disallowance of interest expenditure u/s 14A of the Act.

2.1 As regards Ground Nos. 1 to 3 regarding disallowance u/s 14A of Rs. 4,18,876/-, the AO observed that as per the balance sheet, an amount of Rs. 53,64,10,000/- was shown under the head investments as on 31/03/2013. Further, from the information furnished by the Assessee, the AO noticed that the assessee debited 'interest and finance cost' of Rs. 63,01,60,000/- and the assessee company had taken secured loans of Rs. 446,47,00,000/- and unsecured loans of Rs. 1354,01,30,000/-. When the assessee asked to justify as to why the interest expenditure should not be disallowed u/s 14A of the Act, the assessee submitted that since the it had not incurred any expenditure for earning exempt income, provisions of section 14A are not applicable and further it was submitted that the investments were strategically made in the group companies for achieving better business results but not for earning exempt income.

2.2. The AO observed that the assessee had shown an amount of Rs. 116,75,36,113/- towards investment in its group companies and the assessee company claimed interest amount of Rs. 13,38,59,785/-. The AO asked the assessee to explain as to why the disallowance u/s 14A read with Rule 8D should not be made. In response, the assessee furnished a note on applicability of section 14A r.w. Rule 8D. The AO referring to the provisions of section 14A as well as the CBDT Circular No. 5/2014, dated 11/02/2014, computed the disallowance u/s 14A r.w. rule 8D at Rs. 1,16,46,604/-.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and the assessee, inter-alia, submitted before the CIT(A) the assessee has not derived any exempt income from investments made in subsidiary/Associate companies, hence, there is no reason or justification to make a disallowance u/s 14A of the Act.

4. The CIT(A) following the decision of ITAT, Hyderabad Bench in the case of Prathista Industries Ltd. in ITA No. 1302/Hyd/2015, dated 29/04/2016, deleted the disallowance made by the AO u/s 14A observing that since the assessee has not earned any dividend during the relevant AY, the provisions of section 14A rw rule 8D are not applicable in this case.

5. The Id. DR relied on the order of AO while the Id. AR relied on the order of CIT(A).

6. Considered the rival submissions and perused the material on record. It is settled position of law that the provisions of section 14A can be applied to quantify the expenses in relation to exempt income. Since the exempt

income is Nil, section 14A will not apply. The Rule 8D can be applied only when there is difficulty in finding the expenditure relating to exempt income. The provisions of section 14A and Rule 8D will not apply to the present case and the grounds raised by the revenue are dismissed.

7. In the result, appeal of the revenue is dismissed.

Pronounced in the open court on 31st October, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 31st October, 2018

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Copy forwarded to:

1. DCIT, Circle – 16(1), Room No. 121, 1st Floor, 'B' Block, IT Towers, AC Guards, Masab Tank, Hyd.
2. M/s NSL Energy Ventures Pvt. Ltd., 8-2-684/2/A, NSL Icon, 4th Floor, Road No. 12, Banjara Hills, Hyd - 34
3. CIT(A) - 4 Hyderabad
4. Pr. CIT - 4, Hyderabad
5. The DR, ITAT, Hyderabad
6. Guard File