

**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. 1738/Hyd/2017 and CO No. 4/Hyd/2018  
Assessment Year: 2013-14**

Asst. Commissioner of Income-tax, Circle – 16(1), Hyderabad.      Vs.      Nekkanti Sea Foods Ltd.,  
Hyderabad.

PAN – AAACN4664J

(Appellant)

(Respondent/Cross Objector)

Revenue by :      Shri Nil anjan Dey  
Assessee by :      Shri V. Raghavendra Rao

Date of hearing :      11/10/2018  
Date of pronouncement :      15/11/2018

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.:**

This appeal filed by the Revenue is directed against the order of CIT(A) – 4, Hyderabad, dated 31/08/2017 for AY 2013-14. The assessee also filed CO.

2. Brief facts of the case are, the assessee company engaged in the business of manufacturing/process of marine products. It filed its return of income for the AY 2013-14 on 21/09/2013 declaring total income at Rs. 18,09,92,500/- and book profit u/s 115JB at Rs. 19,36,26,011/-, which was processed u/s 143(3) of the I.T. Act. Subsequently, the case was selected for scrutiny and accordingly, notices u/s 143(2) and 142(1) of the Act were issued to the assessee. Assessment u/s 143(3) was completed by making disallowance of Rs. 58,92,004/- u/s 14A of the Act.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) observed that as per the statement of facts and details like

P&L Account furnished by the AR of the assessee were verified and found that there is no dividend income. He further observed that in assessee's own case for AY 2012-13, he dealt similar issue in favour of the assessee since there is no dividend income. He, therefore, deleted the disallowance made by the AO u/s 14A of the Act.

4. Aggrieved by the order of CIT(A), the revenue is in appeal before us raising the following grounds:

*"1. The CIT(A) erred in deleting the disallowance u/s 14A of Rs. 58,92,004/-.*

*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 Hon'ble 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 the 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."*

5. Brief facts relating to the issue are, the AO observed that during the year under consideration, the assessee company has shown an amount of Rs.21,24,78,808/- towards investment in unquoted equity shares of associates & others and mutual funds as against Rs.15,42,78,808/- of last year. The dividend income earned from these investments is exempt. Further, it is seen that the assessee company debited an amount of Rs.2,04,32,375/- towards finance costs. During the course of assessment proceedings, the AO asked the assessee company to furnish the details of expenditure incurred in relation to the above investments and show cause as to why the provisions of section 14A r.w. Rule 8D may not be invoked. In response, the assessee company stated that section 14A of the Income Tax Act, 1961 is not applicable in their case as it had not invested said amount from any borrowed funds.

5.1 After considering the submissions of the assessee, the AO observed that as per the provisions of section 14A, expenditure incurred in relation to income which does not form part of total income shall be disallowed. Further, the provisions of the section also apply to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income as per sub-section (3) of section 14A. He observed that the CBDT vide its Circular No.5/2014 dated 11.02.2014 clarified that the Rule 8D read with section 14A of the Income Tax Act, 1961 also provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income. Accordingly, the AO computed the disallowance u/s 14A r.w. Rule 8D as under:

I	Expenditure directly related to exempt income		0
II	Apportionment of expenditure not directly related to exempt income		
(A)	Interest expenditure	2,04,32,375/-	
(B)	Average value of investments	18,33,78,808	
(C)	Average total assets	75,31,21,993	
	Expenditure not directly related to exempt income (A*B/C)		49,75,110
III	½% of average value of investment		9,16,894
	Total expenditure to be disallowed u/s 14A of the income Tax act, 1961 (I+II+III)		58,92,004

5.2 As mentioned above, the CIT(A) deleted the disallowance made u/s 14A.

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.

6.1 In the case under consideration, after going through the financial statements filed by the assessee, we find that there is no dividend income received by the assessee. Therefore, we uphold the order of CIT(A) and dismiss the grounds raised by the revenue.

7. The assessee also filed C.O, wherein the following objections were raised:

*"1. Learned CIT(A) ought to have considered the other grounds of appeal also while passing the appellate order.*

*2.(a) The learned AD is not justified in invoking the provisions of Sec 14A of the IT Act and disallowing there by interest expenditure to the extent of Rs. 58,92,004/- of the IT Act.*

*(b) The learned AD did not record or reach the satisfaction u/ s 14A of the IT Act which is a condition before the provisions of Sec 14A can be invoked.*

*3.(a) The learned AO is not justified in invoking the provisions of Sec 14A of the IT Act because the share capital along with reserves and surplus which amount to over nearly 51,04,42,375/- is far more than the investments made and therefore no funds are borrowed or interest incurred on account of making investments.*

*(b). CIT(A) ought to have given a finding that there is no nexus between the borrowals from banks which were for specific purpose and the investments in equity capital and that therefore provisions of Sec 14A do not come into play.*

*(c). The learned CIT(A) and the AO failed to notice that each of the items in financial costs relates directly for loans for business purposes. None of the loans / packing credit has been used for purposes of investment towards share capital."*

8. On perusal of record, we find that there was a delay of 92 days in filing this C.O. by the assessee, for which an application for condonation of delay was filed by the assessee, wherein, inter-alia, the assessee stated that since there was a delay in getting the

signatures of the MD of the company who is functioning at Vizag as well as Saturday & Sunday and the festival Sriramanavami fell before filing of the C.O., the delay occurred, which may be condoned as the reasons for delay are bona fide and not intentional.

8.1 As the assessee was prevented by sufficient cause for not filing the CO within the due date, we condone delay and admit the CO for adjudication.

9. As we have upheld the action of CIT(A) in deciding the revenue's appeal, the CO filed by the assessee becomes infructuous and the same is dismissed as infructuous.

10. In the result, both the appeal of the revenue and CO filed by the assessee are dismissed.

Pronounced in the open Court on 15<sup>th</sup> November, 2018.

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

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 15<sup>th</sup> November, 2018

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Copy to:-

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- 2) M/s Nekkanti Sea Foods Ltd., G-4, Mahara Block, Garden Towers, Masab Tank, Hyderabad.
- 3) CIT(A) – 4, Hyderabad.
- 4) Pr. CIT - 4, Hyd.
- 5) The Departmental Representative, I.T.A.T., Hyderabad.
- 6) Guard File