

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

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND**

SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No.	Asst. Year	Appellant	Respondent
1383/Hyd/18	2011-12	M/s. Bhaskar Transport Private Limited, HYDERABAD [PAN: AACCB0423F]	Deputy Commissioner of Income Tax, Central Circle-2, HYDERABAD
1384/Hyd/18	2012-13		Deputy Commissioner of Income Tax, Central Circle- 1(2), HYDERABAD
1385/Hyd/18	2013-14		Income Tax Officer, Ward-1(3), HYDERABAD
1386/Hyd/18	2014-15		

For Assessee : Shri P. Murali Mohan Rao, AR
For Revenue : Shri Pawan Kumar, DR

Date of Hearing : 05-11-2018
Date of Pronouncement : 15-11-2018

ORDER

PER BENCH :

These appeals filed by the assessee are directed against the orders of the Commissioner of Income Tax (Appeals)-1, Hyderabad, for the AYs. 2011-12, 2012-13, 2013-14 & 2014-15. Since the issues are almost common in all these appeals, we have heard all these appeals together and

adjudicated by this common order. For the sake of convenience, the facts in ITA No. 1383/Hyd/2018 for the AY. 2011-12 are discussed in detail here under.

2. Brief facts of the case are that assessee-company is engaged in the business of transportation. The return of income for the AY. 2011-12 was filed on 29-09-2011 declaring total income of Rs. 34,95,000/-. Notices u/s.143(2) and 142(1) of the Income Tax Act [Act] were issued to the assessee- company. The assessee-company had duly complied with the said notices. The assessment proceedings u/s. 143(3) were completed on 06-03-2014 by making the addition as under:

A. Disallowance of interest u/s 14A:

i. The Assessing Officer while completing the assessment u/s. 143(3) of the Act, observed that the provisions of Section 14A are applicable to the assessee-company which states that when any expenditure is found to have been claimed as deduction under any of the heads of the income in relation to income which does not form any part of the total income under the Income Tax Act that will fall in the consideration zone of Section 14A for disallowance which is a special provision. Accordingly, the Assessing Officer has, by applying the provisions of Section 14A read with Rule 8D, disallowed an amount of Rs.9,69,174/-. Therefore, against the above said order, assessee preferred an appeal before the CIT(A).

ii. Before the Ld.CIT(A), it was the submission that the assessee-company has already submitted that during the Financial Year 2010-11, the company has debited the interest

expenses to the Profit & Loss account and the same was credited as interest income. Therefore, the said interest was already offered to taxable income. Since there is no exempt income in respect of the interest, the disallowance u/s. 14A is not attracted by the assessee-company. It is an established position of law that, if there is no exempt income earned, which does not form part of the total income of the assessee then, the provisions of Section 14A do not apply. Accordingly, during the current financial year, the assessee-company has not earned any exempt income which does not form part of the total income and hence, no disallowance u/s. 14A can be made.

iii. Further, it is submitted that during the year under consideration, assessee-company obtained loan from UCO Bank and the balance outstanding as on 31st March, 2011 was Rs. 4,04,47,045/- and the interest paid during the FY. 2010-11 was Rs. 68,29,520/-, which was debited to the Profit & Loss account as interest expenses.

iv. Subsequently, the loan obtained by Bhaskar Transport from UCO Bank was given to Jasper Industries and Jasper Industries has paid interest amount of Rs. 68,33,480/- to Bhaskar Transport and the same was recorded as interest income in the financial statements of Bhaskar Transport Private Limited for the Financial Year 2010-11.

v. Since both the interest expenses and interest income are passed through the books in case of assessee-company and further since the interest income has already been offered to tax, there is no reason for making the disallowance u/s. 14A for a sum of Rs.9,69,174/-. Therefore, it was submitted that the

disallowance made may be deleted as Section 14A not applicable in the present case.

vi. It was further submitted that, the assessee-company has not earned any exempt income which does not form part of total income of the company. Since there is no exempt income, the disallowance u/s. 14A is not attracted to the assessee-company. It is an established position of law that, if there is no exempt income earned, which does not form part of the total income, then the provisions of Section 14A do not apply. Accordingly, during the current financial year, the assessee-company did not earn any exempt income, which does not form part of the total income and hence, no disallowance u/s. 14A can be made.

3. In this connection, Ld.AR of the assessee relied on the following case law:

- a. *Yatish trading Co. Pvt Ltd Vs. CIT (2011) [129 ITD 237/9]* held that *"When it is possible to determine actual expenditure 'in relation to' exempt income or when no expenditure has been incurred 'in relation to' exempt income, the principal of apportionment embedded in section 14A or rule 8(D) has not application"*.
- b. *Shree Shyam Kamal Finance & Leasing Company (P) Ltd Vs. ITO (2008) [21 SOT 42] (Mum-Tribunal) (SMC)* stated that *"Where the interest bearing funds are invested in shares which have yielded no dividend income, assessing officer cannot disallow interest paid on such loans by invoking section 14A."*

In view of above explanation, Ld.AR submitted that the Assessing Officer has erred in disallowance of interest expenditure of Rs. 9,69,174/- u/s. 14A of the Ac, without appreciating the fact and explanation submitted.

B. It was further argued that the Assessing Officer further erred by initiating penalty proceedings u/s. 271(1)(c) of the Act without considering the fact that the assessee-company has neither concealed income nor furnished any inaccurate particulars of income.

4. After considering the submissions and various grounds raised by assessee-company, Ld.CIT(A) dismissed the appeal of the assessee.

4.1. Aggrieved with the order of Ld.CIT(A), assessee is in appeal before us with the following grounds of appeal:

"1. The order of the CIT (A) is erroneous both on facts and in law.

2. The Ld. CIT(A) erred in confirming the disallowance made u/s 14A of Rs. 9,69,174/- without properly appreciating the facts of the case.

3. The Ld.CIT(A) ought to have appreciated that no disallowance u/s.14A of the Act can be made by the AO in the assessee's case since the AO has not recorded his dissatisfaction with regard to the assessee's claim that no expenditure has been incurred to earn exempt income having regard to the accounts of the assessee as stipulated in Rule 8D (1) of the Income Tax Rules, 1962.

4. The Ld.CIT(A) ought to have appreciated that the Assessing Officer has not established any direct nexus between the investment made with sister concerns and the expenditure incurred.

5. The Ld.CIT(A) ought to have appreciated that the interest free funds are available with the assessee which are larger as compared to the advances given to the sister concerns.

6. The Ld.CIT(A) ought to have appreciated that if there is no expenditure incurred in earning exempt income, no disallowance

u/s.14A of the Act read with sub-rule (2) of rule 8D of the I.T. Rules,1962 can be made.

7. The Ld.CIT(A) ought to have appreciated that there are no fresh investments made by the assessee in the sister concerns during the year under consideration.

8. The Ld.CIT(A) ought to have appreciated that the assessing Officer has not established any nexus between the borrowed funds and the investment made in sister concerns.

9. The Ld.CIT(A) ought to have appreciated that for the purpose of computing the average value of investments, the investments that yield exempt income during the year under consideration are only to be considered.

10. The Ld.CIT(A) erred in invoking the provisions of sec 14A of the Act, without appreciating the fact that the investments made by the appellant company are for the purpose of business expediency.

11. The Ld.CIT(A) ought to have appreciated that no interest bearing funds were used for the purpose of investments made by the appellant and no expenditure had been incurred by the assessee in relation to the funds invested.

12. The Ld.CIT(A) ought to have appreciated that Rule 8D of IT Rules,1962 cannot be applied when the assessee has maintained the books of account, got them audited by a chartered accountant and that there is no mistake or infirmity noticed in the maintenance of books of account.

13. The Ld.CIT(A) ought to have appreciated that the finance cost of Rs.68,29,520 debited in P&L account has no nexus with the investments held by assessee company.

14. The Ld.CIT(A) ought to have appreciated that during the year under consideration, the appellant company has not earned any exempted income and hence the provisions of section 14A are not applicable.

15. The assessee may add, alter or modify any other points to the grounds of appeal at any time before or at the time of hearing of the appeal”.

5. Ld. DR supported the orders of the Revenue authorities.
6. Considered the rival submissions and material on record. Ld. AR of the assessee relied on various case laws including the decision of ITAT, Hyderabad in ITA No. 1302/Hyd/2015 for AY 2011-12, order dated 29/04/2016 (where JM was one of the signatory) wherein the Bench has held as under:

“6. Having regard to the rival contentions and the material on record, we find that section 14A clearly stipulates that the expenditure incurred for earning of any income which does not form part of the total income alone can be disallowed. In the case before us, when the assessee has not earned any exempt income, there can be no disallowance under section 14A of the Act. The Hon’ble Delhi High Court in the case of Cheminvest Ltd., reported in (2015) 378 ITR 33 (Del.) has held that section 14A will not apply where no exempt income is received or receivable during the relevant assessment year. In view of the same, assessee’s appeal on this ground is allowed.”

6.1 In the case under consideration, we find that the investments were made purely on account of commercial necessity and as no exempt income was earned from the investment so made, the provisions of Section 14A will not be applicable to the case of assessee. Therefore, following the said decisions of the coordinate bench, we set aside the order of the CIT(A) and allow the grounds raised by the assessee on this issue.

7. As the facts and grounds raised in AYs 2012-13 to 2014-15 are materially identical to that of AY 2011-12, following the conclusions drawn therein, we allow the grounds raised in these years.

8. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 15th November, 2018

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

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

Hyderabad, Dated 15th November, 2018

Copy to :

- 1. M/s. Bhaskar Transport Private Limited, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, 1st Floor, Somajiguda, Hyderabad.*
- 2. The Deputy Commissioner of Income Tax, Central Circle-2, Hyderabad.*
- 3. The Deputy Commissioner of Income Tax, Central Circle-1(2), Hyderabad.*
- 4. The Income Tax Officer, Ward-1(3), Hyderabad.*
- 5. CIT(Appeals)-1, Hyderabad.*
- 6. Pr.CIT-1, Hyderabad.*
- 7. D.R. ITAT, Hyderabad.*
- 8. Guard File.*

S.No.	Details	Date
1	Draft dictated on	05-11-18
2	Draft placed before author	06-11-18
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	