

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

ITA No.5265/Mum/2017
(Assessment Year:2012-13)

Asst. CIT, Circle 6(2)(1) R. No. 504, 5 th Floor, Aaykar Bhavan, M. K. Road, Mumbai-400 020	Vs.	Essar Properties P. Ltd. Essar House, 11 K. K. Marg, Mahalaxmi, Mumbai-400 034
PAN/GIR No. AAACE 0893 Q		
(Appellant)	:	(Respondent)
Appellant by	:	Shri R. Manjunatha Swamy
Respondent by	:	Shri Anuj Kisnadwala
Date of Hearing	:	20.11.2018
Date of Pronouncement	:	04.02.2019

ORDER

Per Shamim Yahya, A. M.:

This appeal by the Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals)-12, Mumbai (‘ld.CIT(A) for short) dated 12.05.2017 and pertains to the assessment year (A.Y.) 2012-13.

2. The grounds of appeal read as under:

1. On the facts and circumstances of the case and in law the ld. Commissioner of Income Tax (Appeals) erred in deleting the disallowance made u/s.14A r.w.r. 8D if Rs.32,08,70,603/- ignoring the CBDT circular No.5/2014 dated 11.02.2014 that disallowance u/s. 14A has to be made irrespective of the fact whether any exempt income has been earned during the year by the assessee or not.

3. We have heard both the counsel and perused the records. We find that in this case, the ld. CIT(A) has granted relief to the assessee by following the ITAT order in the assessee’s own case for the proposition that the amount of disallowance u/s.14A cannot exceed the amount of exempt income.

4. Against the above order, the Revenue is in appeal before us.

5. We have heard both the counsel and perused the records. We find that the issue is covered by the decision of ITAT in assessee's own case earlier for A.Y. 2009-10 vide order dated 19.07.2016. In the said order, the ITAT has held as under:

4. We have heard both the counsel and perused the orders of the Revenue Authorities as well as judgment of the Hon'ble Delhi High Court in the case of Joint Investments Pvt. Ltd. (supra) and the cited decisions of the Tribunal (supra). On perusal of the cited decisions, we find the same are relevant for the proposition that *the exempt income surely cannot swallow the entire amount and the disallowance u/s. 14A read with Rule 8D cannot exceed the exempt income* [para 2.2 of the Tribunal's order in the case of Daga Global Chemicals P. Ltd. (supra) is relevant in this regard]. Considering the settled legal position of the issue, we are of the opinion that the disallowance under the said provisions of 14A read with Rule 8D should be restricted to the exempt income. We direct the A.O. accordingly. Thus, the ground raised by the assessee is allowed.

6. We further note that as mentioned above, the issue is covered in favour of the assessee. Respectfully following the precedent, we uphold the order of the Id. CIT(A).

7. In the result, this appeal by the Revenue stands dismissed.

Order pronounced in the open court on 04.02.2019

Sd/-

Sd/-

(Ram Lal Negi)
Judicial Member

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 04.02.2019

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai