

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" : HYDERABAD**

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

**I.T.A. No. 1576/HYD/2018**

Assessment Year: 2013-14

Mak Projects Private Limited,  
HYDERABAD  
[PAN: AAECM6145K]

Vs Assistant Commissioner of  
Income Tax,  
Circle-16(2)  
HYDERABAD

**(Appellant)**

**(Respondent)**

For Assessee : NONE

For Revenue : Ms. Esther N. Hangal, DR

Date of Hearing : 28-11-2018

Date of Pronouncement : 15-02-2019

**ORDER**

**PER Smt. P. MADHAVI DEVI, J.M. :**

This is assessee's appeal against the order of the Commissioner of Income Tax (Appeals)-4, Hyderabad, dated 09-05-2018.

2. Brief facts of the case are that, assessee-company, engaged in the business of construction of residential villas/apartments, filed its return of income electronically on 28-09-2013 declaring a taxable income of Rs. 36,14,540/- under the normal provisions and Rs. 59,71,380/- u/s. 115JB of the Income Tax Act [Act].

3. During the assessment proceeding u/s. 143(3) of the Act pursuant to the selection by CASS, the Assessing Officer observed that the assessee-company has made its investments in M/s. Sunway Mak International Private Limited to the tune of Rs. 14 Crores as on 31-03-2013. But the assessee has not claimed any expenditure in the P&L A/c in relation to investments made by it. The Assessing Officer was of the opinion that the provisions of Section 14A are applicable to the case of the assessee. Thus, a show cause notice was issued to the assessee as to why the disallowance u/s. 14A should not be made. Assessee vide letter dt. 04-12-2015 submitted that during the year, there is no increase in investments when compared to the earlier year and that no part of the investment is made out of the borrowed funds and therefore, disallowance of expenditure u/s. 14A does not arise. Further, vide letter dt. 11-03-2016, the assessee reiterated the above submissions and submitted that as has been done in the earlier years, 0.50% of the average investments can be taken as disallowance u/s. 14A of the Act to cover other indirect costs. Assessing Officer, however, was not satisfied with the contentions of assessee and held that assessee has not demonstrated that it has interest free funds available on the assets side of the Balance Sheet as on the date of making tax free investments. Therefore, he held that disallowance u/s. 14A is to be made. Accordingly, he made disallowance under Rule 8D(ii) and 8D(iii) and brought it to tax.

3.1. Aggrieved, assessee preferred an appeal before the CIT(A), stating that during the year, the assessee-company has not received any dividend income from the said investment and that there is no direct or indirect cost and further that 0.5% of the average investment can be disallowed u/s. 14A of the Act, to cover other indirect cost. CIT(A) was not convinced with the assessee's contentions and dismissed the appeal of assessee on the ground that none appeared for the assessee. She did not decide the appeal on merits. Assessee has thus raised the following grounds of appeal before us:

*"1. The Order of the learned Commissioner of Income-Tax (Appeals)-4, is erroneous and unjustifiable both in law and in facts.*

*2. The learned Commissioner of Income-Tax erred in confirming the disallowance of Rs.15,49,347/- (Portion of interest cost) u/s 14A totally ignoring the fact that the entire interest cost for the year is on loans borrowed for working capital.*

*3. The learned Commissioner of Income-Tax failed to note that the investment in equity shares were made long before the year relevant to the assessment year under consideration out of own funds and not out of borrowed funds.*

*4. The learned Commissioner of Income-Tax grossly erred in confirming above addition and dismissing the appeal on the ground of Non-appearance for hearing during the appeal proceedings. The learned Commissioner of Income-Tax ought to have considered the adjournment application as the AR could not appear on the appointed date as he was out of the country.*

*5. Any other grounds which may be raised at the time of hearing".*

4. The case was fixed for hearing on 28-11-2018, but none appeared for assessee. We find that this issue is covered in favour of assessee. The Hon'ble Delhi High Court in the case

of Cheminvest Ltd., in (2015) [378 ITR 33] (Del) and the Hon'ble Madras High Court in the case of Redington (India) Ltd., Vs. Addl. CIT in TCA No. 520/2016 dt. 26-06-2015 have held that *the disallowance u/s. 14A cannot be made where there is no exempt income during the relevant assessment year.* Therefore, we set aside the order of Ld.CIT(A) and direct the AO to delete the addition made by him. Since there is no dividend income earned from the investments, no disallowance u/s. 14A is called for. Therefore, the disallowance u/s. 14A r.w. Rule 8D(iii) is deleted.

5. In the result, the appeal of assessee is accordingly allowed.

*Order pronounced in the open court on 15<sup>th</sup> February, 2019*

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

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

Hyderabad, Dated 15<sup>th</sup> February, 2019

*Copy to :*

- 1. Mak Projects Private Limited, C/o. Reddy A.V. & Co., Chartered Accountants, 206, Srinilaya Estate, Ameer Pet, Hyderabad.*
- 2. Asst. Commissioner of Income Tax, Circle-16(2), Hyderabad.*
- 3. CIT(Appeals)-4, Hyderabad.*
- 4. Pr.CIT-4, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*