

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH : KOLKATA

[Before Hon'ble Shri S.S. Godara, JM & Hon'ble Shri Dr. Arjun Lal Saini, JM ]

I.T. A No. 637/Kol/2017 A.Y 2011-12

D.C.I.T, Circle-6(1), Kolkata  
(Appellant)

V/s.

M/s. Integrated Coal Mining Ltd  
PAN: AAACI5584L  
(Respondent)

For the Appellant : Shri Robin Choudhury, Addl. CIT, Id. DR

For the Respondent : Shri Pratyush Jhunjhunwala, Advocate, Id.AR

Date of Hearing : 22-04-2019

Date of Pronouncement: 15-05-2019

**ORDER**

Shri S.S. Godara, JM :

1. This Revenue's appeal for assessment year 2011-12 arises against the CIT(A), 6, Kolkata's order dated 24-01-2017 passed in case no. 275/CIT(A)-6/Kol/15-16 involving proceedings u/s 143(3) of the I.T Act, 1961 (in short 'Act').

Heard both the parties. Case file perused.

2. The Revenue's sole substantive grievance raise in the instant appeal is that the CIT(A) has erred in law and in facts deleting addition under section 14A/R.W.R 8D of the I.T Rules, 1962 of Rs. 2,06,56,864/- made by the Assessing Officer in his assessment order dt. 24-03-2014. The CIT(A)'s detailed discussion to this effect reads as under:-

*3.2 I have considered the facts of the case and the appellant's submissions. The AO disallowed an amount of Rs. 2,03,05,012/- under section 14A computed in accordance with Rule 8D. The appellant has contended that the issue is covered in its favour by the two orders of Hon'ble ITAT, Kolkata dated 30.11.2015 and 16.09.2016 for the A.Y. 2008-09 and A. Y. 2009-10 respectively. The appellant's basic objections to the disallowance are that the AO has summarily disallowed Rs. 2,03,05,012/- u/s. 14A without giving any cogent reasons for not accepting the disallowance u/s. 14A computed by the appellant and no borrowed fund*

*had been utilized by the appellant in making investments, income from which had been considered exempt. It was also clarified that in the revised return filed on 28th March 2013, the appellant withdrew its claim for exemption and, therefore, no disallowance u/s. 14A could be made but during the course of the assessment proceedings, the appellant had submitted that the expenditure of Rs. 3,51,852/- as shown in the tax Audit Report could be considered for disallowance u / s. 14A. I find that the AO has mentioned in order that he IS not satisfied with the explanation given by the AR on the correctness of the claim made by the appellant in respect of such expenditure inadmissible u/s. 14A of the Act. However, in the absence of any cogent reasons for recording such a finding, such a satisfaction has no meaning. Moreover, the AO has not given any finding as to whether any borrowings have been used for making the investments which have yielded exempt dividend income. The AO has also treated the dividend income of Rs. 31,95,365/ - as exempt although the appellant has offered the same for taxation in the revised return of income. As explained by the appellant in the detailed submission extracted above for ready reference and throwing proper light on the relevant facts, the Hon'ble ITAT has held in favour of the appellant for A.Y. 2008-09 (order dated 30.11.2015 in ITA No. 1146/Kol/2012) and A.Y. 2009-10 (order dated 16.09.2016 in ITA No.1758/Kol/2013) and deleted the disallowance u/s. 14A as the AO had not given any cogent reasons for rejecting the appellant's claim and the appellant had not given sufficient own funds for making the relevant investment i.e., investment in CESC Ltd and UTI Mutual Fund from which the appellant had earned dividend income. It was also held in the said orders that when no income is claimed as exempt, there is no scope for provisions of section 14A to operate. The facts for the year under appeal are similar. No borrowed funds were utilised for making the relevant investments as explained clearly by the appellant. Moreover, in the revised return of income, no dividends have been claimed as exempt. Therefore, respectfully following the decisions of the Hon'ble jurisdictional tribunal in the appellant's own case for A.Y. 2008-09 and AY 2009-10, the disallowance u / s. 14A made by the AO is deleted and the AO is directed to bring to tax the dividend income of Rs. 31,95,365/- offered by the appellant as taxable income in the revised return. “*

3. We have given our thoughtful consideration to the rival contentions. Mr. Robin Choudhury, Addl. CIT/ Id.DR vehemently contends during the course of hearing that the Assessing Officer has rightly made the impugned disallowance on account of assessee's huge investment in exempt income yielding investments. He invited our attention to the CIT(A)'s findings that assessee has nowhere claimed any exempt income in its revised return. His case is that the Assessing Officer had wrongly accepted the revised return. We find no merit in the Revenue's instant arguments. A perusal of the paper book reveals that the assessee had filed earlier computation declaring exempt income of Rs.30.40 lakhs at the first instance. It then revised in its return on 28-3-2013, withdrawing the said exempt income. The same stands accepted by the Assessing Officer. We observe in these facts that it is too late for the Revenue to dispute correctness of assessee's revised return. Next question as to whether the impugned disallowance u/s.14A/R.W.R 8D of the I.T Rules, 1962 applies or not in absence of any exempt income stands answered negative by the hon'ble jurisdictional high court's decision in Ashika Global Securities Ltd., GA No. 2122 of 2014 dt. 11. 06.2018 against the Revenue. We therefore go by the hon'ble jurisdictional high court's decision to affirm the CIT(A)'s findings under challenge.

4. This Revenue's appeal is dismissed.

Order pronounced in the Court on 15 -05-2019

Sd/-

[ A.L. Saini ]  
Accountant Member  
Dated :15-05-2019

Sd/-

[ S.S.Godara ]  
Judicial Member

**\*\*PRADIP, Sr. PS**

Copy of the order forwarded to:

1. Appellant/Revenue: The DCIT, Circle-6(1), Kolkata
2. Respondent/Assessee: M/s. Integrated Coal Mining Ltd. .
- 3..C.I.T(A).- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

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By Order

Assistant Registrar  
H.O.O/D.D.O Kolkata