

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

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

**ITA Nos. 2242 & 2226/Hyd/2018
Assessment Years: 2013-14 & 2014-15**

Dy. Commissioner of Income-tax, Circle – 16(2), Hyderabad. vs. Mercury Projects Pvt. Ltd., Hyderabad.

(Appellant) PAN – AADCM 9019R
(Respondent)

Revenue by : Shri Y.V.S.T. Sai
Assessee by : Shri P. Murali Mohan Rao

Date of hearing : 08/05/2019
Date of pronouncement : 31/05/2019

ORDER

PER S. RIFAUR RAHMAN, A.M.:

Both these appeals filed by the Revenue are directed against the orders of CIT(A) – 4, Hyderabad, both dated 28/09/2018 for AYs 2013-14 and 2014-15. As identical issue is involved in both these appeals, they were clubbed and heard together and therefore, a common order is passed for the sake of convenience.

2. Brief facts as taken from AY 2014-15 in ITA No. 2242/Hyd/18 are, the assessee company, engaged in the business of construction and trading activities, filed its e-return of income for the AY 2014-15 on 28/11/2014 admitting total income of Rs. 3,69,095/- and the same was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, the case was selected for scrutiny through CASS and accordingly, notices u/s 143(2) and 142(1) were issued to the assessee. In response to the said notices, the AR of the assessee furnished the relevant information.

2.1 On verification of the information filed by the assessee, the AO observed that an amount of Rs. 1,73,97,55,000/- was shown by the assessee under the head 'investments' as on 31/03/2014 and no income was offered in the computation of income from the said investments apparently for the reason that the same is exempt from tax. When the AO asked the assessee as to why the finance cost should not be disallowed u/s 14A, the AR of the company vide its letter dated 12/12/2016 submitted that the company had invested 173.97 crores in its associate companies out of its net worth of Rs. 210.91 crores and no borrowed funds were used for investment. These are long term strategic investments and are not for earning the dividend income but having control and business purpose. No dividend was received by the assessee company on these investments during the AY 2014-15. It was further submitted that the company had earned interest income of Rs. 12.04 crores by deploying the borrowed funds and the same were offered to tax, hence, expense of Rs. 11.45 crores is eligible expense incurred for earning the interest income of Rs. 12.04 crores and need to be allowed.

2.2 After considering the submissions of the assessee as well as referring to the provisions of section 14A, the AO held that the case of the assessee is a fit case for invoking the provisions of section 14A read with rule 8D(ii) even though the assessee has not claimed any exempt income during the year. Accordingly, the AO computed the disallowance u/s 14A rwr 8d(ii) and 8D(iii) of the Act, at Rs. 4,97,05,199/-.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A).

4. Before the CIT(A), the assessee, inter-alia, submitted that no dividend income was earned from the investment made in group companies and therefore, no disallowance can be made u/s 14A. For

this proposition, it relied on various decisions including the decision of the coordinate bench of ITAT, Hyderabad in the case of Prathista Industries Ltd. Vs. DCIT in ITA No. 1302/Hyd/2015.

4.1 Further, it was submitted that the company has made investment out of the internal accruals of the company and interest expenditure amounting to Rs. 11,45,31,000/- was incurred on borrowed funds and there is no nexus with the investment made. Also it was submitted that no expenditure is directly or indirectly connected with the investment, the income therefrom which is exempt. It was submitted that the AO invoked wrongly the provisions of section 14A rwr 8D, as the AO has not identified any relatable expenditure nor was there any recording of his dissatisfaction of the correctness of the claim of the expenditure. In this regard, the assessee relied on the decision of the P&H High Court in the case of CIT Vs. Hero Cycles Ltd., [2010] 323 ITR 518.

5. After considering the submissions of the assessee, the CIT(A) following the decision of the coordinate bench of this Tribunal in the case of Prathista Industries Ltd. (supra) deleted the addition made by the AO u/s 14A by holding that since there is no dividend income during the year, there cannot be any disallowance u/s 14A.

5. Aggrieved by the order of CIT(A), the revenue is in appeal before us raising the following grounds of appeal, which are common in both the appeals under consideration except the quantum of disallowance:

“1. The CIT(A) erred in deleting the disallowance u/s 14A of the Act.

2. The CIT(A) erred in ignoring CBDT's circular No. 5 of 2014.

3. The CIT(A) erred in ignoring the 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 way of exempt income without making any apportionment of expenses incurred in relation exempt income.

4. Without prejudice to the above, the CIT(A) erred in ignoring that this expenditure incurred in relation to exempt income is also not allowable u/s 37(1) of IT Act as it cannot be said to be incurred wholly and exclusively for the assessee's business as claimed.

5. Any other ground that may be raised at the time of hearing.

6. Before us, Id. DR relied on the grounds of appeal and CBDT Circular.

7. On the other hand, Id. AR relied on the order of CIT(A).

8. 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. It is the consistent view of the Hyderabad Benches and accordingly the grounds raised by the revenue are dismissed.

8.1 Moreover, in assessee's own case for AY 2011-12, in ITA No. 450/Hyd/2017 (appeal filed by the revenue) vide order dated 18/07/2018 (wherein both the Members are party), similar ground raised by the revenue was dismissed upholding the order of CIT(A), who followed the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs. CIT, 378 ITR 33 (Del.), deleted the disallowance made by the AO u/s 14A.

9. In the result, appeal of the revenue is dismissed.

10. As the grounds and facts in AY 2013-14 are materially identical to that of AY 2014-15 (supra), following the decision therein, we uphold the order of CIT(A) in deleting the disallowance made by the AO u/s 14A and dismiss the grounds raised by the revenue in this regard.

11. To sum up, both the appeals of revenue are dismissed.

Pronounced in the open Court on 31st May, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 31st May, 2019

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Copy to:-

- 1) *DCIT, Circle – 16(2), 2nd Floor, B Block, IT Towers, AC Guards, Masab Tank, Hyderabad.*
- 2) *M/s Mercury Projects Pvt. Ltd., Plot No. 4, Software Units Layout, Hitech city, Madhapur, Hyderabad – 81*
- 3) *CIT(A) – 4, Hyderabad.*
- 4) *Pr. CIT - 4, Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*