

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC – B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.677/Bang/2019
Assessment year : 2014-15

M/s. Chayadeep Enterprises LLP, Star-2, Opp. IIMB Bangalore, Bannerghatta Road, Bilekahalli, Bangalore – 560 076, PAN: AAGFC 8406J	Vs.	The Income Tax Officer, Ward 4(3)(3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheetal Borkar, Advocate
Respondent by	:	Shri Satyasai Rath, Addl CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	25.06.2019
Date of Pronouncement	:	28.06.2019

ORDER

This is an appeal by the Assessee against the order dated 07.02.2019 of the CIT(Appeals), Bangalore-12, Bangalore relating to assessment year 2014-15.

2. The Assessee is a Limited Liability Partnership (LLP) firm carrying on the business of investments in various start-up ventures and investments in shares and securities. The Assessee filed return of income for AY 2014-15 declaring total income of 27,26,134. The computation of total income declared by the Assessee in the return of income is as follows:-

COMPUTATION OF INCOME**I INCOME FROM BUSINESS:**

Net profit as per P&L a/c	26,89,285
Add: Share of Loss from partnership firm	36,850
Less: STCG	31,32,622
	(4,06,488)

II. Income from Capital Gain 31,32,622

TAXABLE INCOME 27,26,134

3. The AO was of the view that since share income (Loss) from the partnership firm was debited in the profit & Loss account, there was exempt income which formed part of the total income under the Act and therefore the AO worked out the disallowance in terms of sec.14A of the Income Tax Act, 1961(Act) at Rs.14,53,484/-. The manner in which such disallowance was computed by the AO is not discernible from the order of assessment.

4. The share of loss from the partnership firm of which the Assessee was a partner was no doubt debited in the profit and loss account, but had been excluded from the total income in the computation of total income. This would be clear from the earlier part of this order wherein, I have set out the computation of total income by the Assessee in the return of income filed. The Assessee therefore submitted before CIT(A) that there was no exempt income whatsoever earned by the Assessee and therefore there could be no disallowance of expenses incurred in earning exempt income which calls for disallowance u/s.14A of the Act.

5. The CIT(A) however placed reliance on CBDT Circular No.5/2014 dated 11-2.-2014 which clarified that section 14A would apply even when exempt income was not earned in a particular Assessment year and confirmed the action of the AO in making disallowance u/s.14A of the Act.

The Assessee is in appeal before the Tribunal against the disallowance u/s.14A of the Act and consequent addition to the total income.

6. At the time of hearing of this appeal, it was brought to our notice by the Id. counsel for the assessee that the admitted factual position in the present case is that there was no dividend income or other exempt income earned by the assessee during the relevant previous year. The Id. counsel for the assessee drew our attention to the decision of the Bangalore Bench of ITAT in the case of *M/s UB Infrastructure Projects Ltd., Vs. DCIT 2098/Bang/2016 (asst. year 2012-13) order dated 22/12/2017*, wherein this Tribunal took the view that there can be no disallowance of expenses u/s 14A of the Act, if there is no exempt income earned during the relevant previous year. The following are the relevant observations of the Tribunal in this regard:-

“3. Having carefully examined the orders of authorities below, we find that undisputedly the assessee has not earned any exempted income. Now it is settled position of law that whenever assessee did not earn any exempt income, no disallowance could be made u/s. 14A of the Act. The Hon’ble Delhi High Court in the case of *Cheminvest Ltd. v. CIT, 378 ITR 33 (Del)* has categorically held that section 14A envisages that there should be actual receipt of income which was not includible in the total income during the relevant previous year for the purpose of disallowing any expenditure in relation to the said income. Wherever there is no exempt income includible in the total income of the assessee, the provisions of section 14A cannot be invoked. The relevant observations of the judgment of the Hon’ble Delhi High Court are extracted hereunder:-

“15. Turning to the central question that arises for consideration, the court finds that the complete answer is provided by the decision of this court in *CIT v. Hololcim India (P) Ltd.* (decision dated 5th September 2014, in I.T. A. No. 486 of 2014). In that case, a similar question arose, viz., whether the Income-tax Appellate Tribunal was justified in deleting the disallowance under section 14A of

the Act when no dividend income had been earned by the assessee in the relevant assessment year ? The court referred to the decision of this court in Maxopp Investment Ltd. (supra) and to the decision of the Special Bench of the Income-tax Appellate Tribunal in this very case, i.e., Cheminvest Ltd. v. CIT [2009] 317 ITR (AT) 86 (Delhi) [SB]. The court also referred to three decisions of different High Courts which have decided the issue against Revenue. The first was the decision in CIT v. Lakhani Marketing Incl. (decision dated April 2, 2014, of the High Court of Punjab and Haryana in I. T. A. No. 970 of 2008)--since reported in [2015] 4 ITR-OL 246 (P&H)--which in turn referred to two earlier decisions of the same court in CIT v. Hero Cycles Ltd. [2010] 323 ITR 518 (P&H) and CIT v. Winsome Textile Industries Ltd. [2009] 319 ITR 204 (P&H). The second was of the Gujarat High Court in CIT v. Corrtch Energy (P.) Ltd. [2014] 223 Taxmann 130 (Guj) ; [2015] 372 1TR 97 (Guj) and the third of the Allahabad High Court in CIT v. Shivam Motors (P) Ltd. (decision dated 5th May, 2014, in T.A. No. 88 of ITA No.1 1071Bang12016 2014). These three decisions reiterated the position that when an assessee had not earned any taxable income in the relevant assessment year in question "corresponding expenditure could not be worked out for disallowance."

4. This was also examined by the Tribunal in the assessee's own case for assessment year 2010-11 and held that when there is no exempt income, provision of section 14 of the Act cannot be applied.

5. In the light of the aforesaid judgment, the provisions of section 14A cannot be invoked as there is no exempt income in the hands of the assessee. Accordingly, we find no infirmity in the order of the CIT(Appeals) who has rightly deleted the addition”

7. The learned DR, however, placed reliance on the order of the CIT(A) and the circular of the CBDT on which the CIT(A) had placed reliance.

8. I am of the view that in the light of the decision of the Tribunal referred to earlier which in turn is based on decisions of Hon'ble Delhi High Court in the case of *Cheminvest Ltd. (supra)* the disallowance of expenditure u/s 14A of the Act deserves to be deleted. I may also add that the High Court of Delhi in the case of *Prl.CIT Vs. IL & FS Energy Development Co.Ltd. (2017) 84 taxmann.com 186(Delhi)* has held that CBDT Circular upon which extensive reliance is placed by revenue does not refer to rule 8D(1) at all but only refers to the word "includible" occurring in the title to rule 8D as well as the title to section 14A. The Circular concludes that it is not necessary that exempt income should necessarily be included in a particular year's income for the disallowance to be triggered. The Court held that the process of interpretation adopted by the CBDT will be a truncated reading of section 14A and rule 8D particularly when rule 8D(1) uses the expression 'such previous year'. Further, it does not account for the concept of 'real income'. It does not note that under section 5, the question of taxation of 'notional income' does not arise. For all of the aforementioned reasons, the Court held that the CBDT Circular dated 11-5-2014 cannot override the expressed provisions of section 14A, read with rule 8D.

9. I may however add that Special Bench ITAT Ahmedabad in the case of *Vishnu Anand Mahajan v. ACIT (TS-396-ITAT-2012) (Ahd) (SB)* had to consider the issue, whether given that a firm pays tax on its profits, whether the share of profit received by a partner from the firm, which is exempt in his hands u/s 10(2A), can be said to be *not "tax-free"* so as to *not attract s. 14A*. The Special Bench held that though a firm and its partners are not different entities in general law, under the Act, they are treated as separate entities. The salary and interest paid by the firm to the partners is deductible in the hands of the firm and taxable in the hands of the partners u/s 28(v). The balance profits are taxed in the hands of the firm and exempt

in the hands of the partners u/s 10(2A). As s. 10(2A) provides that the share of profit of the partner shall not be included in his total income, **it is not possible to hold that the share income is not excluded from the total income of the partner because the firm has already been taxed thereon.** When s. 10(2A) speaks of its exclusion from the total income it means the total income of the person whose case is under consideration i.e. the partner. **As the share income is excluded from his total income, s. 14A would apply** and any expenditure incurred to earn the share income will have to be disallowed.

10. In the result, appeal by the Assessee is allowed.

Pronounced in the open court on this 28th day of June, 2019.

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 28th June, 2019.
/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.