

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA No.3365/Bang/2018
Assessment year : 2015-16

The Income Tax Officer, Ward 1(1)(2), Bangalore.	Vs.	M/s. Atria Hydel Power Ltd., No.1, 1 st Floor, Commissionariat Road, Bangaluru – 560 025. PAN: AACCA 3754E
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, Advocate
Respondent by	:	Dr. P.V. Pradeep Kumar, Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	26.06.2019
Date of Pronouncement	:	28.06.2019

ORDER

Per N.V. Vasudevan, Vice President

This is an appeal by the Revenue against the order dated 20.08.2018 of the CIT(Appeals)-1, Bengaluru relating to assessment year 2015-16.

2. The Assessee is a company engaged in the limited liability carrying on the business of generating and selling hydro electric power. In the course of assessment proceedings, the AO noticed that the Assessee has made investments in shares and mutual funds of the value of Rs.25,03,89,952. The AO held that the Assessee has used borrowed funds on which interest was paid and such interest was claimed as

expenditure in the profit and loss account. The AO therefore invoked the provisions of Sec.14A of the Income Tax Act, 1961 (Act) and disallowed expenses that were incurred to earn income that does not form part of the total income. The AO applied the methodology of disallowance under Rule 8D of the Income Tax Rules, 1962 (Rules).

3. On appeal by the Assessee the CIT(A) deleted the addition made by the AO for the reason that the Assessee did not earn any exempt income during the relevant previous year and therefore there cannot be any disallowance under section 14A of the Act, when exempt income was not earned in a particular Assessment year.

4. The Revenue is in appeal before the Tribunal against the deletion of disallowance u/s.14A of the Act by the CIT(A).

5. At the time of hearing of this appeal, it was brought to our notice 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. Our attention was brought to a 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. Corrttech Energy (P.) Ltd. [2014] 223 Taxmann 130 (Guj) ; [2015] 372 ITR 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”

6. We are 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. We 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 No.5/14 dated 11-5-2014 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.

7. For the reasons given above, we find no merit in the appeal by the revenue and consequent the appeal by the revenue is dismissed

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

Sd/-

(B.R. BASKARAN)
Accountant Member

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.