

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH, AHMEDABAD**

[Coram: Pramod Kumar, VP and Ms. Madhumita Roy, JM]

ITA No. 2739/Ahd/2017
Assessment Year: 2014-15

Dy. Commissioner of Income-tax**Appellant**
Circle 1(1)(1), Ahmedabad

Vs.

Ardor In-fin Pvt Ltd**Respondent**
*Ardor House, Mondeal Business Park,
B/s. Gurudwara, Thaltej,
Ahmedabad – 380059
[PAN : AAGCA 2925 B]*

Appearances by:

Mudit Nagpal, for the Appellant
Ankit Talsania, for the Respondent

Date of concluding the hearing : 14.03.2019
Date of pronouncing the order : 11.06.2019

O R D E R

Per Pramod Kumar, Vice President:

1. This appeal, filed by the Assessing Officer, is directed against the order dated 29th September 2017 of the CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961 for the assessment year 2014-15.

2. In first and second ground of appeal, which we will take up together, the grievances raised are as follows:-

“1. That the Id. CIT(A) has erred in law and on facts in deleting the suo motto disallowance of Rs.52,59,412/- u/s 14A and Rs.16,51,834/- u/s 14A r.w. Rule 8D(iii) of the IT Act 1961.

2. That the Id CIT(A) has erred in law and facts in directing the AO to reduce the total income by Rs.52,59,412/- despite the fact that assessee did not file revised return of income.”

3. Learned representatives fairly agree, even as learned Departmental Representative dutifully relied upon the stand of the Assessing Officer, that the issue is now covered, in favour of the assessee, by a coordinate bench decision in the

case of DCIT vs. Greenland Infracon Pvt Ltd (ITA No.2039 & 2040/Ahd/2016; order dated 14.11.2008) wherein the bench has, *inter alia*, observed as follows:-

“6. We have carefully considered the rival submissions and perused the orders of the authorities below. The substantive question arises in the Revenue's appeal is to ascertain the correctness of the action of the CIT(A) in refusing to endorse the action of the AO for resorting to disallowance under s.14A of the Act. Two broad issues emerges in the context of the case; (i) whether the disallowance under s.14A is maintainable where admittedly no exempt income i.e. dividend was earned by the assessee in the relevant assessment year and (ii) whether the CIT(A) was justified in going beyond the return of income and remove the disallowance which the assessee itself has made while filing the return of income. In other words, whether the action of the CIT(A) in bringing down the income returned by the assessee and granting relief on the issues not raised at the time of filing original return of income or by way of revised return at a subsequent stage is justified in law or not.

7. The first issue framed above appears quite simple as we see. While adjudicating the issue, we take note of CBDT Circular No. 5/2014 dated 11/02/2014 which seeks to emphasize that all expenses pertaining to an exempt income is required to be disallowed notwithstanding the fact that no corresponding tax free income has been earned during the financial year. Notwithstanding the aforesaid circular, various Courts have held that Section 14A of the Act disallowance cannot be kicked when there was no exempt income earned by the assessee as is the case in the present appeals. Hon'ble Delhi High Court in *PCIT vs IL&FS Energy Development Company Ltd.* (2017) 84 Taxman.com 186(Delhi) and the Hon'ble Madras High Court in *CIT v. Chettinad Logistics (P.) Limited* (2017) 80 taxmann.com 221(Madras) have expressed a clear disagreement with CBDT Circular and held that where there is no exempt income in relevant year there cannot be a disallowance of expenditure under s.14A of the Act. Similar proposition has been laid down by the Hon'ble Gujarat High Court in the case of *Corrttech Energy (P.) Ltd* (2014) 45 taxmann.com. 116 (Guj) and *Pr.CIT vs. India Gelatine and Chemicals Ltd.* (2016) 66 taxmann.com 356 (Guj). The aforesaid judicial fiat was reiterated by the Hon'ble Delhi High Court in the case of *Joint Investments Pvt. Ltd. vs. CIT* reported in 372 ITR 692 (Delhi) wherein Hon'ble Delhi High Court has categorically ruled that disallowance under s.14A of the Act cannot exceed the amount of tax exempt income. Notably, the SLP filed against the decision of Hon'ble Madras High Court in *Chettinad Logistics (supra)* has been dismissed by Hon'ble Supreme Court in *CIT vs. Chettinad Logistics (P.) Ltd.* (2018) 95 taxmann.com 250 (SC). Hence, in conformity with the judicial precedents, we find substantial merit in the conclusion drawn by the CIT(A) which essentially holds that Section 14A of the Act can be triggered only if assessee seeks to square off expenditure against the income which does not form part of total income under the Act and Section 14A of the Act cannot be invoked where no exempt income was earned in the relevant assessment years. In consonance with the judicial precedents, we do not see any infirmity

in the conclusion drawn by the CIT(A) for non-applicability of Section 14A of the Act in the facts of the case.

8. We shall now turn to the second issue raised on behalf of the Revenue regarding propriety of the action of the CIT(A) in granting relief on the disallowance (*suo moto* made by the assessee) beyond the return of income and in the absence of any formal revised return. The CIT(A) has discussed this aspect in very great detail in para 2.5 to 2.28 of its order. We are not inclined to reiterate the findings of the CIT(A). However, we fully endorse the observations of the CIT(A) which essentially holds that the mistake or inadvertence on the part of the assessee whereby an income not taxable has been wrongly offered for tax, will not operate as any kind of estoppel against the assessee and regardless of whether the revised return was filed or not. Once the assessee is in a position to show that it has been over assessed under the provisions of the Act even on account of assessee's own mistake or otherwise, the Revenue is under duty to assess correct income.

9. It is trite that the authorities under the Act are under sacrosanct obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, mis-conception or not being properly instructed, is over assessed, the authorities under the Act are required to ensure that only legitimate tax dues are collected. This is the view which flows from innumerable judgments including *CIT vs. Shelly Products (2003) 261 ITR 367 (SC)*, *S. R. Koshti vs. CIT (2005) 276 ITR 165 (Guj)*, *Ester Industries vs. CIT (2009) 185 TAXMAN 266 (Delhi)* and *CIT vs. Pruthvi Brokers & Shareholders (P.) Ltd. [2012] 349 ITR 336 (Bom)*. The essence of these decisions are that mere admission on the part of the assessee with respect to an addition/disallowance in its original return or in revised return would not *ipso facto* bar an assessee from claiming an expense or disputing an addition if it is otherwise permissible under law. It is thus well settled that if a particular income is not taxable under the Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. The Revenue authorities cannot enforce untenable actions of the assessee against it which led to declaration of income of higher amount incorrectly. It is thus open to assessee to show that it was over assessed in correctly owing to its own mistake.

10. So viewed, we do not see any potency in the argument laid on behalf of the Revenue that the CIT(A) allegedly committed error in granting total relief in the matter of disallowance under s.14A of the Act. In our considered view, the action of the CIT(A) in granting relief under s.14A of the Act on account *suo moto* disallowance by the assessee and thereby granting relief higher than claimed in the return of income cannot be faulted in law.”

4. We see no reasons to take any other view of the matter than the view so taken by the coordinate bench. Respectfully following the same, we approve the stand of the CIT(A) and decline to interfere in the matter.

5. Ground nos. 1 & 2 are thus dismissed.

6. Once the disallowance under section 14A stands deleted, all other issues raised in this appeal are rendered infructuous.

7. In the result, the appeal is partly allowed in the terms above. Pronounced in the open court today on the 11th June, 2019

Sd/-

Sd/-

Ms. Madhumita Roy
(Judicial Member)

Pramod Kumar
(Vice President)

Ahmedabad, the 11th day of June, 2019

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *Commissioner*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

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*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*