

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

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

S.No.	ITA No.	AY	Appellant	Respondent
1 & 2	718 & 719/H/18	2012-13 & 2013-14	Manjeera Hotels and Resorts Pvt. Ltd., Hyderabad. PAN- AACCM 3554C	Asst. Commissioner of Income-tax, Circle – 16(2), Hyderabad.
3&4	720/H/18 & 1315/H/16	2012-13 & 2013-14	Manjeera Estates Pvt. Ltd., Hyderabad. PAN-AABCM3700D	-do-

Assessee by : Shri D. Vijay Kumar
Revenue by : Shri Kiran Katta

Date of hearing : 06/08/2019
Date of pronouncement : 09/08/2019

ORDER

PER S. RIFAUR RAHMAN, A.M.:

These appeals filed by the assessee against the orders of CIT(A) – 4, Hyderabad for the AYs 2012-13 and 2013. Since identical issue involved in these appeals, the same were clubbed and heard together and for the sake of convenience, a consolidated order is passed.

2. Brief facts as taken from ITA No. 718/Hyd/2018 in the case of Manjeera Hotels and Resorts Pvt. Ltd. are, the assessee company is in hotel business & Power generation, filed its return of income for the AY 2012-13 on 28/09/2012 admitting an income of Rs. 12,56,28,285/-, which was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, the case was selected for scrutiny under CASS and accordingly, notice u/s 143(2) dated 12/08/2013 was issued and duly served on the assessee company and also notice u/s 142(1) was issued. In response to the said notices, the AGM (finance) of the assessee company furnished the information as called for.

2.1 During the course of assessment proceedings, the AO observed in the balance sheet that the assessee has made investment to the extent of Rs. 1,09,50,000/- as on 31/03/2012 and the assessee company has not declared any income from the said investments. Further, the AO noticed from the information furnished by the assessee that it had incurred interest on term loans to the extent of Rs. 6,46,13,482/-.

2.2 The AO referring to the provisions of section 14A rwr 8D, inter-alia observed that no evidence is required to be examined to see that the expenditure has been actually incurred in relation to income not includible in total income. He, therefore, worked out an amount of Rs. 5,74,571/- and disallowed the same u/s 14A.

3.1 Aggrieved, the assessee preferred an appeal before the CIT(A) and contended that it has invested out of its own funds and having reserves and own funds to the extent of Rs. 29.33 crores. However, it has not denied the fact that there is income which does not form part of total income and expenditure which is incurred in relation to income which does not form part of the said total income. Further, it was submitted that the assessee has neither accounted any expenditure nor claimed any expenditure nor incurred any expenditure on any account whatsoever relatable to the income not forming part of the total income on investments made in earlier years.

4. After considering the submissions of the assessee, the CIT(A) confirmed the addition made by the AO by holding that since the assessee had received an amount of Rs. 1,44,575/- towards dividend income, hence, the addition made by the AO is confirmed.

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

1. That the Learned Commissioner of Income Tax (Appeals) [“the CIT(A)"] erred in law and on facts in upholding the action of the

Learned Assessing Officer ["the AO"] in disallowance of Expenditure u/s.14A of Income Tax Act, 1961.

2. The Commissioner of Income Tax (Appeals) failed to appreciate that the

a. Investments were made in the Subsidiary company and in group company totally from the shareholder's funds in earlier financial years and such investments were only to promote the companies and was on account of business expediency.

b. The interest expenditure is fully on account of Fully charge created Secured Term loans and Working capital specifically borrowed from Scheduled Banks and is directly attributable to the earnings of Revenue from operations and not related to income which does not form part of the total income.

3. Without prejudice, the CIT(A) erred in not appreciating that in order to bring any interest expenditure under ambit of rule 8D(2)(ii), it will have to be demonstrated by the AO that said interest is not directly attributable to income which does not form part of the total income.

4. The appellant craves leave to add, alter, amend or vary from the above grounds of appeal before or at the time of hearing."

6. Ld. AR submitted that AO has disallowed interest expenditure and administrative expenditure u/s 14A. He submitted that the interest expenditures are for the term loan which are secured against the stock and working capital. Therefore, the funds invested were out of own funds. Further, he submitted that AO should have considered the average investment which has yielded exempt income.

7. On the other hand, Id. DR relied on the orders of revenue authorities.

8. Considered the rival submissions and perused the material on record. Even though, the assessee has not raised any specific ground on seeking relief to consider the investment which has yielded exempt income but filed written submission. Since, this issue has already been considered by this bench in favour of the assessee, we accept the submission of the Id. AR and adjudicate as below:

8.1 We find that similar issue came up for consideration before the coordinate bench of this Tribunal in the case of Transport Corporation of India Ltd. in ITA No. 117/Hyd/2016 vide order dated 21st September, 2016 wherein the coordinate bench has held as under:

“11.1 While carefully reading the rule 8D(2)(ii), the formula given are:

A X B/C

Where A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year:

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

In particular, the notes for ‘B’ clearly states that the average value of investment, income from which does not or shall not form part of the total income. It is clear that we have to include those investments which has generated income and exclude those investments, which have not generated income. In the present case, AO had taken the total investment instead of those investments, which have generated income. Accordingly, we direct the AO to calculate the disallowance of interest as below (as per rule 8D):

$$\text{Interest X } \frac{\text{Investment(which generated income)}}{\text{Average total assets}}$$

The main reason is that as per section 14A, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income, which is exempt from tax. The relevance is the expenditure in relation to income. The quantification has to be undertaken in relation to the exempt income. The investment which has not generated exempt income should be excluded from the calculation of ratio to determine the disallowance.

11.2 Similarly, for the administrative expenses, 0.5% of average investments from which the exempt income is received should be considered instead of average of the total investments.

11.3 considering the above discussion, we direct the AO to recalculate the disallowance as per rule 8D as per the above guidance. Accordingly, ground raised by assessee is allowed.”

As the issue under consideration is materially identical to that of the said case, following the conclusions drawn therein we direct the AO to recalculate the disallowance as per rule 8D as per the guidelines given as above in the case of Transport Corporation of India and calculate the disallowance of expenditure under rule 8D(2)(ii) & (iii) taking the average investment from which the exempt income is received.

8.2. Coming to ground No. 2b and ground No. 3, Id. AR submitted that the interest expenditure incurred by the assessee are towards the secured loans which are secured against the stock and working capital. Therefore, AO cannot consider the above interest on secured loans which are committed to the business exclusively. AO may consider the other interest incurred by the assessee for the purpose of disallowance u/s 14A. Accordingly, these grounds are also remitted to the AO for recalculation.

8.3 With regard to ground No. 2a, we cannot accept the contention of the assessee that investments were made on business expediency. When assessee makes investments and earns exempt income, irrespective of the fact that whether assessee has own funds or not, when the business has mixed funds, rule 8D will apply. Accordingly, this ground raised by the assessee is dismissed.

9. As the issue in other appeals in ITA No. 719 & 720/Hyd/2018 and in ITA No. 1315/H/16 are materially identical to that of ITA No. 718/Hyd/18, following the decision therein, we direct the AO to decide these appeals in line with the directions given in the said appeal.

10. In the result, all the appeals under consideration are partly allowed.

Pronounced in the open Court on 9th August, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 9th August, 2019

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Copy to:-

- 1) *Manjeera Hotels and Resorts Pvt. Ltd.,*
- 2) *Manjeera Estates Pvt. Ltd., 711, Manjeera Trinity Corporate, JNTU-Hitech City Road, Kukatpally, Hyderabad – 500 072*
- 3) *ACIT, Circle – 16(2), Hyderabad*
- 4) *CIT(A) – 4 Hyderabad.*
- 5) *Pr. CIT - 4, Hyd.*
- 6) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 7) *Guard File*

