

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 3905/MUM/2018 (A.Y: 2014-15)

DCIT – 11(1)(2) Room No.1, Ground Floor Aayakar Bhavan, M.K. Marg Mumbai-400 020	v.	M/s. Sahana Constructions Pvt. Ltd., 402, Sagar Avenue, Plot No. 54-B Junction of S.V. Road, Andheri (W) Mumbai – 400 058 PAN: AAKCS2550A
(Appellant)		(Respondent)

Assessee by : **None**
Department by : **Shri Chaudhary Arun Kumar Singh**

Date of Hearing : **19.08.2019**
Date of Pronouncement : **19.08.2019**

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-18, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 15.03.2018 for the A.Y. 2014-15. The only issue in the appeal of the Revenue is in respect of deletion of disallowance made u/s.14A r.w. Rule 8D of I.T. Rules.

2. Briefly stated the facts are that, the Assessing Officer while completing the assessment made disallowance u/s. 14A r.w. Rule 8D at ₹.4,04,05,856/-, being interest under Rule 8D(2)(ii) of ₹.3,90,46,883/- and expenses under Rule 8D(2)(iii) of ₹.13,58,973/-. The Ld.CIT(A) deleted the disallowance on the ground that assessee has not earned any exempt income and therefore no disallowance is warranted. Against this order the Revenue is in appeal before us.

3. None appeared on behalf of assessee. Since the issue is decided by various courts in favour of the assessee the same is being disposed off on hearing the Ld.DR.

4. Ld. DR vehemently supported the order of the Assessing Officer.

5. We have heard Ld. DR, perused the orders of the authorities below.

On a perusal of the order of the Ld.CIT(A), it is observed that the Ld.CIT(A) deleted the disallowance observing as under: -

“7 Decision: I have gone through the assessment order and the submission of the appellant.

7.1 Only issue involved in the present appeal is disallowance of Rs.4,04,05,856/- u/s. 14A of the Act r.w. Rule 8D of the Income-tax Rules, 1962. The Assessing Officer has noticed that the appellant has made investment of Rs.27,17,94,682/- as on 31-03-2014 in exempt income yielding assets. However, the appellant has not attributed any expenses which have been incurred to carry out the activity of investments. Therefore, he has made disallowance of Rs.4,04,05,856/- u/s. 14A of the Act by applying Rule 8D. During the appellate proceedings, the Ld.AR has contended that no exempt income was earned during the year and hence no disallowance u/s 14A r.w. Rule 8D can be made. Contending so, the Ld.AR requested that the disallowance of Rs.4,04,05,856/- u/s.14A of the Act r.w. Rule 8D made by the Assessing Officer be deleted.

8.2 It is observed that no exempt income has been earned by the appellant during the year. Therefore, disallowance u/s. 14A r.w. Rule 8D cannot be made. In this regard reliance is placed on the following decisions:

- (i) Zee News Ltd. (2018-TIOL-263) Bombay HC
- (ii) Cheminvest Ltd. v. ITO [2009] 378 ITR 33 (Delhi HC).
- (iii) CIT vs Corrttech energy private limited (Tax Appeal No. 239 of 2014) (Gujarat High Court)
- (iv) CIT Vs Winsome Textile Industries Ltd (319 ITR 204) (P & H)
- (v) CIT Vs Holcim India P Ltd (ITA No. 486/2014 & ITA No. 299/2014) Delhi High Court
- (vi) CIT Vs. Shivam Motors P Ltd (ITA No. 88 of 2014), Allahabad High Court.
- (vii) PC1T Vs Ballarpur Industries Ltd (ITA No. 51/2016) (Bombay HC, Nagpur bench).

8.3. Respectfully, relying on the aforesaid judicial pronouncements, it is held that no disallowance can be made u/s. 14A r.w. Rule 8D.

8.4. Accordingly, disallowance made by the learned Assessing Officer by invoking the provisions of Section 14A of the Act r.w. Rule 8D of Rs. 4,04,05,856/- is hereby deleted”

6. It is an undisputed fact that during this assessment year assessee did not receive any exempt income. When no exempt income is received by the assessee, whether there can be any disallowance u/s. 14A has been considered by the Coordinate Benches of this Tribunal and it has been consistently holding that if there is no exempt income there should not be any disallowance u/s. 14A of the Act.

7. In the case of ACIT v. M/s.Ballarpur Industries Ltd., in ITA.No. 346 to 379/NAG/2014 dated 04.12.2015 the Nagpur Bench of the Tribunal following the decision of the Hon'ble Delhi High Court in the case of Cheminvest v. CIT (supra) held as under: -

“6. We have heard both the sides at some length and carefully perused the orders of the authorities below in the light of the precedence cited. As far as the exemption for the years under consideration were concerned, it was an admitted factual position that the AO has not mentioned any such amount. Meaning thereby, there was no exempt income earned by the assessee for the years under consideration. In reply to one of our questions, the learned AR, Mr. K. P. Dewani has

also made a statement at Bar that no dividend was declared, hence, there was no earning of exempted dividend income. He has also clarified that for the purpose of invocation of the provisions of section 14A of the IT Act, the AO has applied the formula only in respect of disallowance of proportionate interest expenditure. There was no allegation of the AO that the exempt income was earned by the assessee. In the light of the undisputed finding on facts, we have perused the decision of the Hon'ble Courts. We may like to mention that a view has been expressed consistently that if there is no exempted profit then there is no question of invocation of the provisions of section 14A of the IT Act but, we have also carefully perused that very decision of the Tribunal namely Cheminvest Ltd. (supra) was reversed by the Hon'ble Delhi High Court, copy placed in the compilation. The Hon'ble Delhi High Court in ITA No.749/2014 vide order dated 02-09-2015 titled as "Cheminvest Ltd. Vs CIT" has decided the substantial question of law that whether disallowance u/s 14A of the Act can be made in a year in which no exempt income has been earned or received by the assessee. The Final verdict was as under: -

"23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression 'does not form part of the total income' in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year."

7. In short, in a situation when that very order of the Tribunal which was the basis for invocation of the provisions of Section 14A of the IT Act got reversed by the Hon'ble Delhi High Court, hence, the very said basis do not survive any more. As a result, we hereby confirm the findings of the learned CIT (A) on this issue. We hereby also hold that in view of the numbers of decisions on this issue in favour of the tax payers, we find no force in this ground of appeal of the Revenue. The same is dismissed."

8. This decision of the Tribunal has been affirmed by the Hon'ble Bombay High Court in the case of Pr.CIT v. M/s. Ballarpur Industries Limited in ITA.No. 51 of 2016 dated 13.10.2016 by rejecting the appeal of the Revenue and held that no substantial question of law arises. While holding so, the Hon'ble High Court observed as under: -

"On hearing the learned Counsel for the Department and on a perusal of the impugned orders, it appears that both the Authorities have recorded a clear finding of fact that there was no exempt income earned by the assessee. While holding so, the Authorities relied on the judgment of the Delhi High Court in Income Tax Appeal No. 749/2014, which holds that the expression "does not form part of the total income" in Section 14A of the Income Tax Act, 1961 envisages that there should be an actual receipt of the income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. The Income Tax Appellate Tribunal held that the provisions of Section 14A of the Income Tax Act, 1961 would not apply to the facts of this case as no exempt income was received or receivable during the relevant previous year. It is not the case of the Assessing Officer that any actual income was received by the assessee and the same was includible in the total income. In the facts of the case, the Authorities held that since the investments made by the assessee

in the sister concerns were not the actual income received by the assessee, they could not have been included in the total income.

The findings of facts recorded by both the Authorities do not give rise to any substantial question of law.

Since no substantial question of law arises in this income tax appeal, the income tax appeal is dismissed with no order as to costs."

9. It is not in dispute that the assessee did not earn any exempt income during this Assessment Year, therefore in the absence of any exempt income there shall not be any disallowance u/s. 14A of the Act. Thus, respectfully following the above decision of the Hon'ble Jurisdictional High Court in the case of Pr.CIT v. M/s. Ballarpur Industries Limited (supra), we uphold the order of the Ld.CIT(A) and reject the grounds raised by the Revenue.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on the 19th August, 2019

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Mumbai / Dated 19/08/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file. //True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum