

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBE

ITA No.940/Bang/2016
Assessment year : 2012-13

The Professional Couriers, No.195, Margosa Road, Bengaluru – 560 055. <b>PAN: AAAFT 6234H</b>	Vs.	The Additional Commissioner of Income Tax, Range 9, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri B.S. Balachandran, Advocate
Respondent by	:	Shri Sunil Kumar Agarwal, Addl.CIT(DR)(ITAT), Bengaluru

Date of hearing	:	11.09.2019
Date of Pronouncement	:	13.09.2019

**ORDER**

*Per N V Vasudevan, Vice President*

This appeal by the assessee is against the order dated 23.10.2015 of the CIT(Appeals), Bengaluru-2, Bengaluru relating to assessment year 2012-13.

2. The assessee is a partnership firm running the business of courier services. For the AY 2012-13 the assessee filed a return of income declaring a total income of Rs.1,08,15,880. The AO noticed that the assessee had incurred interest expenses to the tune of Rs.1,41,02,657. He also noticed that the assessee had made investments and these investments were likely to yield dividend income which is exempt under Chapter III of the Act.

3. The AO called upon the assessee to show cause as to why the expenses incurred in earning exempt income should not be disallowed by invoking the provisions of section 14A of the Act. The assessee in reply submitted as follows:-

“During the year ended on 31.3.2012, there was no tax free income earned by the assessee firm and therefore it is submitted that no disallowance u/s. 14A is permissible and therefore it is requested that the claim of interest may kindly be allowed to the fullest extent.”

4. The AO did not dispute the position that the assessee did not earn any exempt income during the previous year. In fact, at the time of hearing, copy of the Profit & Loss account was filed before us and a perusal of the same shows that income of the assessee was from courier charges, business support services and other income as set out in Schedule 21 of the P&L account. Schedule 21 to P&L account consists of only interest on fixed deposits and rent received. It is thus clear that there is no exempt income earned by the assessee during the previous year. The AO, however, took the view that even in the absence of exempt income earned during the previous year, disallowance of expenses has to be made u/s. 14A of the Act and in this regard relied on a decision of the Bangalore Bench of the ITAT in the case of *Khoday India Pvt. Ltd. (ITA No.211/Bang/2012 dated 8.7.2012*, wherein a view has been expressed that irrespective of the fact that there was no exempt income earned, disallowance was to be made u/s. 14A of the Act.

5. This decision, however, does not hold the field and it has been held by the Hon'ble Delhi High Court in the case of *Cheminvest Ltd. v. CIT, 378 ITR 33 (Del)* as well as the Supreme Court in *Pr.CIT v. GVK Project and Technical Services Ltd. [2019] 106 taxmann.com 181 (SC)* that in the

absence of exempt income earned during the previous year, no disallowance can be made u/s. 14A of the Act.

6. Nevertheless, the AO, by relying on the decision of the Bangalore Bench of ITAT in the case of *Khoday India P. Ltd. (supra)* made a disallowance u/s. 14A of the Act r.w. Rule 8D of the I.T. Rules of a sum of Rs.63,56,016.

7. On appeal by the assessee, the CIT(Appeals) confirmed the order of the AO.

8. Aggrieved by the order of CIT(A), the assessee has preferred the present appeal before the Tribunal. We have heard the rival submissions. The Id. DR relied on the order of CIT(Appeals), whereas the Id. counsel for the assessee reiterated the submissions made before the lower authorities and relied on the decision of the Hon'ble Delhi High Court, which we have referred to in the earlier part of this order.

9. We have given a careful consideration to the rival submissions.

10. 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. Corrttech 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”

11. 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 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 by a 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 express provisions

of section 14A, read with rule 8D. Therefore, the disallowance made u/s. 14A of the Act is deleted.

12. In the result, this appeal of the assessee is allowed.

Pronounced in the open court on this 13<sup>th</sup> day of September, 2019.

Sd/-

( VIKRAM SINGH YADAV )  
ACCOUNTANT MEMBER

Sd/-

( N.V. VASUDEVAN )  
VICE PRESIDENT

Bangalore,  
Dated, the 13<sup>th</sup> September, 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.