

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 141/VIZ/2018  
(Asst. Year : 2014-15)**

DCIT, Circle-2(1),  
Vijayawada.

vs.

M/s. Kapil Infra Avenues Pvt.  
Ltd., D.No. 40-14-3/1,  
Chandramouli Puram,  
Near Benz Circle, Vijayawada.

(Appellant)

PAN No. AADCK 4944 P  
(Respondent)

Assessee by : None

Department by : Smt. Suman Malik – Sr.DR

Date of hearing : 03/09/2019.

Date of pronouncement : 25/09/2019.

**ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals), Vijayawada, dated 22/02/2018 for the Assessment Year 2014-15.

**2.** Facts of the case in brief are that assessee-company engaged in the business of real estate, filed its e-return of income by declaring total income of Rs. 34,37,230/-. The return filed by the assessee was processed u/sec. 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). Subsequently, case of the

assessee was selected for scrutiny under CASS and after following due procedure, assessment was completed u/sec. 143(3) dated 20/12/2016.

**3.** In the assessment order, the Assessing Officer has noted that on verification of the information furnished, it is noticed that the assessee has raised loans/advances in respect of which claimed interest expenditure of Rs. 1,82,79,247/-. Since the returns from these investments do not constitute taxable income, the proportionate interest of Rs. 94,39,882/- is disallowed and brought to tax u/sec. 14A r.w.r. 8D of the I.T. Rules, 1962 and accordingly same is added to the total income of the assessee.

**4.** On appeal, Id. CIT(A) deleted the addition made by the Assessing Officer by following the decision of the ITAT, Visakhapatnam Bench in the case of *DCIT Vs. Radha Krishna Automobiles* in ITA No. 13/VIZ/2013, dated 22/11/2017.

**5.** Id. Departmental Representative has relied on the order of the Assessing Officer. None appeared on behalf of the assessee.

**6.** We have heard Id.DR, perused the material available on record and orders of the authorities below.

**7.** The only issue involved in this appeal in a case where no dividend income is received whether Assessing Officer can invoke section 14A r.w.r. 8D of the IT Rules, 1962 or not. This issue has

been considered by the ITAT, Visakhapatnam Bench in the case of *DCIT Vs. M/s. Radhakrishna Automobiles Pvt. Ltd.*, in ITA No. 511/VIZ/2017, dated 22/11/2017 wherein by following the judgment of the Hon'ble Madras High Court in the case of *M/s.Redington (India) Ltd. Vs. Addl. CIT [(2017) 392 ITR 633 (Mad. – HC)]* and also the decision of the coordinate bench of the tribunal in the case of *D. Veerabhadra Reddy (HUF) vs. DCIT* in ITA No. 263/VIZ/2014, dated 23/06/2017 held that no disallowance can be made when there is expenses incurred in relation to exempt income. For the sake of convenience, the relevant portion of the order in *M/s. Radhakrishna's case* (supra) is extracted as under:-

*"6. In this case, admittedly, no exempt income is earned by the assessee for the relevant assessment year under consideration. However, the Assessing Officer is of the opinion that whether there is an exempt income or not as per section 14A, the expenditure which is relatable to earning of exempt income has to be considered for disallowance, irrespective of the fact whether any such income has been earned during the financial year or not. The Id. CIT(A) by following the decision of the Hon'ble Madras High Court in the case of M/s. Redington (India) Ltd. (Supra) has directed the Assessing Officer to delete the addition. A similar view has been taken by the coordinate bench of the tribunal in the case of D. Veerabhadra Reddy (HUF) vs. DCIT in ITA No. 263/VIZ/2014, by order dated 23/06/2017 for the Assessment Year 2009-10, wherein the Tribunal has held that no disallowance can be made when there is expenses incurred in relation to exempt income. The relevant portion of the order is extracted as under:-*

*"6. We have heard the rival submissions and perused the material on record. The assessee has rental income from godowns and the business loss. The assessing officer has*

completed the assessment u/s 143(3) by order dated 04.11.2011. The Ld.CIT has called for the record u/s 263 and issued the notice for revision for incorrect set off of business loss against the rental income. After verification of the material on record, the Ld.CIT has dropped the issue with regard to incorrect set off of business loss against the income from property which was examined by the assessing officer. During the course of revision proceedings, it has come to the notice of Ld.CIT that the assessee has made investments in shares and bonds and did not make disallowance which was required to be made u/s 14A of IT Act. The assessee explained that there were no expenses incurred in relation to the exempt income which was claimed as deduction for the assessment year 2009-10. Hence, the assessee argued before the Ld.CIT that Section 14A is not applicable in assessee's case. As per the observation of the Ld.CIT, the assessee made the investments to the tune of Rs.19,90,625/- in shares and bonds from the borrowed funds and the interest expenditure relating to the earning of dividend income is required to be disallowed u/s 14A. Though CIT opined that the expenditure relating to the earning of dividend income required to be disallowed, there was no finding given by the CIT in his order with regard to earning of dividend income. The CIT also did not rebut the explanation offered by the assessee stating that no expenditure was incurred for making the investments. The Ld.DR did not make any clarification with regard to the quantum of dividend income earned by the assessee. The Ld.AR submitted paper book enclosing the copy of statement of computation, return of income, balance sheet and profit and loss account. It is seen from the profit and loss account and the statement of computation of income that the assessee has not derived any dividend income. When the assessee has no exempt income, the question of disallowance u/s 14A r.w. Rule 8D is not called for. The same view is expressed by the decision of Hon'ble Madras High Court in Redington (India) Ltd. Vs. Addl.CIT, 77 taxman.com 257, Hon'ble Delhi High Court in Chem Investments Vs. CIT, 61 taxman.com 118 and the Hon'ble Gujarat High Court in Principal CIT Vs. Sintex Industries Ltd., 82 taxman.com 171 held that no disallowance is called for when assessee makes small investment from the surplus funds. There was no dividend income earned by the assessee and the case was taken for revision to disallow the business loss claimed against the property income which was examined by the AO and

*dropped the assessment proceedings and the Ld.CIT also satisfied that there is no case for revision on account of incorrect set off of business loss. With regard to the issue of disallowance u/s 14A as per the judicial pronouncements no disallowance is called for when there is no exempt income. Therefore, we are of the considered opinion that there is no case for revision of order u/s 263 and accordingly we set aside the orders of the CIT and allow the appeal of the assessee."*

*Ld. Departmental Representative has not brought any decision of the jurisdictional High Court or any other High Court which is contrary to the decision of the Hon'ble Madras High Court.*

*7. We, therefore, respectfully following the order of the Hon'ble Madras High Court in the case of M/s. Redington (India) Ltd. (supra) and also the decision of the coordinate bench of the tribunal in the case of D. Veerabhadra Reddy (HUF) (supra), this appeal filed by the revenue is dismissed."*

**8.** We find that Id. CIT(A) by following the decision of the coordinate bench of the tribunal in the case of *Radha Krishna Automobiles (supra)*, wherein the decisions of the Hon'ble Madras High Court in the case of *Redington (India) Ltd.* and the Hon'ble Gujarat High Court in the case of *Pr.CIT Vs. Sintex Industries Ltd.*, (82 taxman.com 171) have been followed. Ld. Departmental Representative has not brought any decision of the jurisdictional or any other High Court which is contrary to the decision of the Hon'ble Madras High Court as well as Gujarat High Court (supra). Therefore, we find no infirmity in the order passed by the Id.CIT(A). Thus, this appeal filed by the revenue is dismissed.

9. In the result, appeal filed by the Revenue is dismissed.

Order Pronounced in open Court on this 25<sup>th</sup> day of Sep., 2019.

Sd/-  
**(D.S. SUNDER SINGH)**  
**Accountant Member**

sd/-  
**(V. DURGA RAO)**  
**Judicial Member**

**Dated : 25<sup>th</sup> Sep., 2019.**

**vr/-**

*Copy to:*

1. *The Assessee - M/s. Kapil Infra Avenues Pvt. Ltd., D.No. 40-14-3/1, Chandramouli Puram, Near Benz Circle, Vijayawada.*
2. *The Revenue - DCIT, Circle-2(1), Vijayawada.*
3. *The Pr.CIT, Vijayawada.*
4. *The CIT(A), Vijayawada.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.