

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.253/Viz/2019
(निर्धारण वर्ष/Assessment Year : 2015-16)

Asst. Commissioner of
Income Tax
Circle-3(1)
Vijayawada

Vs. M/s Kapil Infra Avenues
Pvt. Ltd.
40-14-3/1
Chandramouli Puram
Near Benz Circle
Vijayawada
[PAN : AADCK4944P]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Smt.Suman Malik, DR
: None

सुनवाई की तारीख / Date of Hearing

: 23.09.2019

घोषणा की तारीख/Date of Pronouncement

: 25.09.2019

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the revenue against the order of the
Commissioner of Income Tax (Appeals) [CIT(A)], Vijayawada vide Appeal

No.10100/CIT(A)/VJA/17-18 dated 07.02.2019 for the Assessment Year (A.Y.) 2015-16.

2. Brief facts of the case are, in this case, the assessee declared total income of Rs.35,31,850/-. The assessment was completed u/s 143(3) on total income of Rs.1,22,22,055/-. In the assessment order, the Assessing Officer (AO) made the addition of Rs.85,96,586/- u/s 14A r.w.Rule 8D of Income Tax Rules in respect of investment made by the assessee.

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition made by the AO, since, there was no exempt income earned by the assessee during the year under consideration. The Ld.CIT(A) followed the decisions of various High Courts and the Tribunals while deleting the addition. We reproduce hereunder the relevant part of the order of the Ld.CIT(A) which reads as under :

"10. I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. On perusal of the P & L Account and Note No.16 of the notes forming part of the financial statements containing details of the "Other Income", it is seen that "Other Income" credited to the P & L Account does not include any tax exempt dividend income during the year. Hence, it is seen that no dividend income has been received by the appellant during the year in respect of the investments held by it in the shares of other companies. Hence, it is evident that there was no receipt of tax exempt income by the appellant during the year. In the following cases, the Hon'ble High Courts have held that no disallowance u/s. 14A is warranted in a year where no tax exempt income was received by the assessee:

1. CIT Vs Lakhani Marketing Inc [2014]49 taxmann.com 257 (P & H)
2. Chemmves& Ltd, Vs. CIT [2015] 378 PR 33 (Del)
3. Redington (India) Ltd. Vs. Addl.CIT[2017] 392 ITR 633 (Mad.)
4. Principal CIT Vs. LL & FS Energy Development Co. Ltd. [2017] 399 ITR 483 (Del.)
5. CIT Vs. Chettinad Logistics (P) Ltd. [2017] 248 Taxman 55 (Mad.)
6. CIT Vs, Shivam Motors (I) Ltd [2015] 55 taxmann. com 262 (Allahabad)
7. CIT Vs. Corrttech Energy (P.) Ltd. [2014] 45 taxmann.com 116 (Gujarat)

11. *In the following cases, the Hon'ble Tribunals including the Hon'ble ITAT, Hyderabad also held that no disallowance u/s. 14A is warranted in a year where no tax exempt income was received by the assessee;*

1. ACIT Vs, Nekkanti Sea Foods Ltd. (ITA No.1609/Hyd/2016) (Hyd)
2. Soma Highways Pvt Ltd Vs. DCIT (ITA No.1670/Hyd/2016)(Hyd)
3. DishTV India Ltd. v. ACIT (ITA No.3061 & 3062/Mum/2017) (Mum)
4. Lodhà Builders P. Ltd. (ITA No.2871/MUM/2015) (Mum)
5. Huntsman International (India) Pvt. Ltd. v. DCIT 66 taxmann.com 325 (Mum)
6. India Debt Management (P) Ltd. v. DCIT 69 taxmann.com 125 (Mum)

12. *Hence, having regard to the decisions of the Hon'ble High Courts and Hon'ble Tribunals cited above, it is held that disallowance u/s. 14A is not warranted in the case of assessee for the present assessment year in the absence of receipt of any tax exempt dividend income from the investments made by it. The AO is accordingly directed to delete the disallowance of Rs.85,96,586/- made u/s 14A of the Act. This ground of appeal is therefore allowed."*

4. Against the order of the Ld.CIT(A), the department has filed appeal before this Tribunal.

5. We have heard both the parties and perused the material placed on record. In the instant case, there is no dispute that during the year under consideration, there is no exempt income earned by the assessee on the investments. It is settled issue that in the absence of exempt income, no

disallowance required to be made u/s 14A of the Income Tax Act r.w.r.8D of Income Tax Rules. This Tribunal in the case of ACIT, Central Circle-1, Rajahmundry Vs M/s GMP Infrastructure Pvt. Ltd. in I.T.A.No.524-528/Viz/2018 for the A.Y.2011-12 to 2015-16, held that in the absence of dividend income / exempt income, there is no case for making disallowance u/s 14A of the Act. While deciding the issue, this Tribunal has followed the decision of Hon'ble Madras High Court in the case of Redington (India) Ltd. Vs. Addl.CIT[2017] 392 ITR 633 (Mad.). For the sake of clarity and convenience, we extract relevant part of the order of this Tribunal, which reads as under :

"We have heard both the parties and perused the material placed on record. In this case, the AO made the disallowances relating to the to exempt income u/s 14A r.w. rule 8D of Income tax Rules. However, it was found that the assessee did not earn exempt income in the impugned assessment years. Therefore, the Ld.CIT(A) followed the orders of this Tribunal and deleted the addition. For the sake of clarity and convenience we extract the relevant part of the Ld.CIT(A) which reads asunder:

"I have carefully considered the facts of the case, written submissions and the finding of the AO in the assessment orders. There is no dispute regarding the investment made out of the borrowed funds by the appellant. There is also no dispute that the expenditure in the form of investment was incurred by the appellant. It is also equally not in dispute that there is no exempt income in the form of dividend received by the appellant for the respective assessment years. There is no controverting material before the AO regarding the exempted income. The overwhelming judicial view regarding disallowance u/s.14A r.w.r. 8D is that "no disallowance can be made in the absence of deemed dividend". This view has been rendered by Hon'ble Madras High Court in the case of M/s Redington (India) Ltd. Vs. The Addl, CIT, Company Range-V, Chennai in T.C.A.No. 520 of 216 and CIT, Central-1,

Chennai Vs Chettinad Logistics (P) Ltd.[2017] 80 taxmann. Com 221 (Madras) and Hon'ble ITAT (Vizag) in the case of D.Veerabhadhra Reddy(HUF) Vs the DCIT, Circle-1, Kakinada and DCIT, Circle-2(1), Vijayawada Vs. Radhakrishna Automobiles. Respectfully following the decisions mentioned above and in the facts of the case, the AO is directed to delete the additions."

Since the issue is squarely covered by the orders of the Tribunal in favour of the assessee, we do not find any reason to interfere with the orders of the Ld. CIT(A) and the same is upheld. The appeals of the revenue for the A.Y.2013-14 to 2015-16 are accordingly dismissed."

5.1. Since the facts are identical, respectfully following the view taken by this Tribunal, we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld.

6. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 25th September, 2019

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 25.09.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. राजस्व/The Revenue - Asst. Commissioner of Income Tax, Circle-3(1), Vijayawada
2. निर्धारिती/ The Assessee - M/s Kapil India Avenues, Pvt. Ltd., 40-14-3/1, Chandramouli Puram, Near Benz Circle, Vijayawada
3. The Pr.Commissioner of Income Tax, Vijayawada
4. The Commissioner of Income Tax (Appeals), Vijayawada
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam