

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above two captioned cross appeals by the assessee and revenue are preferred against the order of the Commissioner of Income Tax [Appeals] - LTU New Delhi dated 10.10.2012 pertaining to assessment year 2009-10. Since both these appeals were heard together, these are being disposed of by this common order for the sake of convenience and brevity.

ITA No. 1158/DEL/2013 [Assessee's Appeal]

2. The solitary grievance of the assessee is that the ld. CIT(A) erred in upholding the disallowance of Rs. 18,43,122/- u/s 14A of the Income tax Act, 1961 [hereinafter referred to as 'The Act'].

3. Briefly stated, the facts of the case are that the assessee is engaged in manufacturing of sheet metal components, fuel tank, tools & dyes and is also engaged in job work. For the year under consideration, the assessee filed its return of income on 29.09.2009

returning a loss of Rs. 4.45 crores. Return was revised on 20.10.2010 declaring loss of Rs. 4.45 crores. The return was selected for scrutiny assessment and statutory notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, and on examination of the record, the Assessing Officer noticed that the assessee has invested in assets which will result in tax exempt income. The Assessing Officer was of the firm belief that provisions of section 14A r.w.r 8D of the Income tax Rules clearly apply. The assessee was asked to explain why disallowance should not be made u/s 14A r.w.r 8D.

5. In its reply, the assessee strongly contended that the said provisions are not applicable as there was no dividend income earned during the year under consideration.

6. This reply of the assessee did not find any favour with the Assessing Officer who proceeded to compute the disallowance by invoking provisions of section 14A r.w.r 8D and made an addition of Rs. 18,43,122/-.

7. The assessee carried the matter before the CIT(A) but without any success.

8. Before us, the ld. AR once again stated that since there was no exempt income earned during the year under consideration, no disallowance should be made u/s 14A of the Act.

9. On the other hand, the ld. DR strongly supported the findings of the Assessing Officer and in support of his contention, strong reliance was placed on the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd versus CIT (2018) 91 taxman.com 154.

10. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that during the year under consideration, there is no exempt income earned by the assessee. We find that similar issue arose in the case of M/s Cheminvest Ltd 121 ITD 318 which was affirmed by the Hon'ble High Court of Delhi. Same view is taken by the Hon'ble Gujarat High Court in the case of Corrttech Energy (P) Ltd 372 ITR 97 wherein it has been held that there cannot be any disallowance u/s 14A of the Act where there is no exempt income earned during the year under consideration.

11. In another case, the Hon'ble High Court of Madras in the case of CIT Vs. Chettinad Logistics 80 Taxmann.com 221 also had the occasion to consider a very similar issue and while adjudicating the issue in favour of the assessee, the Hon'ble High Court also considered Circular No. 5/2014 issued by the CBDT dated 11.2.2014 to the effect that section 14A was intended to cover even those situations whether there is a possibility of exempt income being earned in future. The observations of the Hon'ble High Court read as under”

“9. We are unable to subscribe to the aforesaid view. The provisions of section 14A were inserted as a response to the judgments of the Supreme Court in Commissioner of Income Tax v. Maharashtra Sugar Mills Limited [\[1971\] 82 ITR 452](#) and Rajasthan State Ware Housing Corporation v. Commissioner of Income-tax [\[2002\] 242 ITR 450](#) in terms of which, expenditure incurred by an assessee carrying on a composite business giving rise to both taxable as well as non-taxable income, was allowable in entirety without apportionment. It was thus that s.14A was inserted providing that no deduction shall be allowable in respect of expenditure incurred in relation to the earning of income exempt from taxation. As observed by the Supreme Court in the judgment in the case of Commissioner of Income-tax v. Walfort Share and Stock Brokers (P) Ltd. [\[2010\] 326 ITR 1](#)

'... The mandate of s.14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of an exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income.'

10. The provision this is clearly relatable to the earning of actual income and not notional or anticipated income. The submission of the Department to the effect that s.14A would be attracted even to exempt income 'includable' in total income would entail the assessment of notional income, assumed to be exempt in the future, in the present assessment year. The computation of total income in terms of s.5 of the Act is on real income and there is no sanction in law for the assessment of admittedly notional income, particularly in the context of effecting a disallowance in connection therewith.

11. The computation of disallowance in terms of Rule 8D is by way of a determination involving direct as well as indirect attribution. Thus, accepting the submission of the Revenue would result in the imposition of an artificial method of computation on notional and assumed income. We believe this would be carrying the artifice too far. (emphasis is ours)"

12. Considering the facts of the case in totality in the light of judicial decisions, we are of considered opinion that the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd [supra] was delivered on different set of facts and the decisions considered hereinabove are directly on the dispute. Therefore, respectfully following the same, the Assessing Officer is directed to delete the impugned addition.

13. As a result, the appeal filed by the assessee is allowed.

ITA No. 1526/DEL/2013 [Revenue's appeal]

14. The solitary grievance raised by the Revenue is that the Id. CIT(A) erred in deleting the addition of Rs. 1,70,62,698/- made on account of disallowance of provision of doubtful debts.

15. While scrutinising the return of income, the Assessing Officer noticed that in the audited profit and loss account, a sum of Rs. 1,76,62,698/- has been debited as 'Manufacturing and other Expenses'. On perusal of the details, the Assessing Officer found that these expenses included as sum of Rs. 1,70,62,698/- being provision for bad

and doubtful debts. The Assessing Officer further noticed that while computing its total income for the year under consideration, the assessee has not added back the above amount as a disallowable item. Accordingly, the assessee was asked to justify its stand.

16. In its reply, the assessee explained that the provision for doubtful debts is, in fact, the amount of bad debts written off. It was explained that this amount was included in the sale price as price increase to various parties and the same was taxed as income in the respective years. Since it was not recovered, the same was written off. A note on bad doubts written off was also furnished to the Assessing Officer.

17. Claim of the assessee was dismissed by the Assessing Officer. The Assessing Officer was of the opinion that the amount of Rs. 1.70 crores has been shown as provision for bad and doubtful debts in the audited accounts of the company which raised grave doubts about the correctness of the claim. Referring to the provisions of section 36(1)(vii) of the Act, the Assessing Officer was of the firm belief that such provisions cannot be allowed as bad debt and, accordingly, made addition of Rs. 1,70,62,698/-.

18. The assessee carried the matter before the Id. CIT(A) and reiterated its claim.

19. After considering the facts and detailed submissions the CIT(A) observed that the assessee has duly disclosed the income in respect of provisional price increase which was shown as separate sub item under the head 'Sales'. The Id. CIT(A) further observing that the nomenclature given by the assessee as provisions for bad and doubtful debts' is minor human error which cannot undo the very nature of transaction and hence any decision passed merely thereon is not sustainable, deleted the addition made by the Assessing Officer.

20. Before us, the Id. DR strongly supported the findings of the Assessing Officer.

21. Per contra, Id. AR reiterated what has been stated before the lower authorities. The Id. counsel for the assessee also drew our attention to the relevant documentary evidences brought on record in the form of paper book.

22. We have given a thoughtful consideration to the orders of the authorities below. It is true that while writing off, the assessee has named it provision for bad and doubtful debts. It is equally true that sales have been increased by - price Increase - provisional. Rs. 25,65,838/- was provisional price increase in F.Y. 2005-06, Rs. 1,42,24,736/- is price increase in F.Y. 2006-07 and Rs. 2,72,124/- was price increase in F.Y. 2008-09. These can be seen from Exhibit 48, 53 and 86 to 90 of the paper book. Total of Rs. 1,70,62,698/- is charged to the profit and loss account by showing the same under the head "Manufacturing and other expenses", which is at page 103 of the paper book.

23. Considering these facts in totality, we are of the considered view that the debts have been actually written off from the books and the same amount has been show as price increase in sales of earlier A.Ys as mentioned elsewhere. Since the assessee has fulfilled all mandatory conditions of claiming the written off as bad debts, a wrong nomenclature should not be the basis for making disallowance. We, therefore, decline to interfere with the findings of the ld. CIT(A). Ground raised by the Revenue stands dismissed.

24. In the result, the appeal of the assessee in ITA No. 1158/DEL/2013 is allowed and that of the Revenue in ITA No. 1526/DEL/2013 is dismissed.

The order is pronounced in the open court on 20.07.2019.

Sd/-

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 20th September, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	