

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SHRI D.KARUNAKARA RAO, ACCOUNTANT MEMBER
AND
SHRI V.DURGA RAO, JUDICIAL MEMBER**

ITA No.	A.Y.	Appellant	Respondent
2150/Hyd/17	2012-13	Asst. Commissioner of Income Tax, Central Circle-3(1), HYDERABAD	Mytrah Energy (India) Pvt. Ltd., HYDERABAD [PAN: AADCC7989C]
2151/Hyd/17	2013-14		
2152/Hyd/17	2014-15		
2102/Hyd/17	2013-14	Mytrah Energy (India) Pvt. Ltd., HYDERABAD [PAN: AADCC7989C]	Dy. Commissioner of Income Tax, Circle-16(2), HYDERABAD
2103/Hyd/17	2014-15		

For Assessee : Shri T.S.Ajai, AR
For Revenue : Shri Y.V.S.T.Sai, CIT-DR

Date of Hearing : 03-12-2019
Date of Pronouncement : 04-12-2019

ORDER

PER D.KARUNAKARA RAO, A.M. :

There are bunch of five appeals in this Group, covering AYs.2012-13 to 2014-15. Out of this, ITA Nos.2102/Hyd/2017 (AY.2013-14) & 2103/Hyd/2017 (AY.2014-15) are the appeals of assessee. Rest of the three appeals are filed by the Revenue.

We shall now take the assessee's appeals for adjudication.

Assessee's Appeals in ITA Nos.2102/Hyd/17 & 2103/Hyd/17:

2. Referring to the Grounds of these two appeals, Ld.Counsel for the assessee demonstrated that the Grounds are identically worded in these two appeals and the core issue relates to the addition made by the AO u/s.2(22)(e) of the Income Tax Act [Act]. Referring to Ground No.2, Ld.Counsel submitted that the said core issue arises in this Ground and the other Grounds are argumentative only. Therefore, considering the significance of the Ground No.2, the same is reproduced hereunder:

"2. The Learned CIT(A) ought to have appreciated that the amounts received by the Appellant from its wholly owned subsidiary companies were part of the commercial transactions in the ordinary course of business, that the moneys have been deployed in other wholly owned subsidiaries of the Appellant as per business requirements, that no part of the amounts were paid to the shareholders of the Appellant and therefore the provisions of deemed dividend u/s.2(22)(e) of the Act are not attracted to the transactions of receipt/payment of moneys between eh Appellant and its subsidiaries."

The above Ground is common in both the appeals.

3. Before us, at the outset, Ld.Counsel for the assessee submitted that the facts relating to the said addition includes that the payments were made to the related company. Referring to the reasons for AO for invoking the provisions of Section 2(22)(e) of the Act, Ld.Counsel submitted that the payments made in the 'ordinary course' of business and therefore, are outside the scope of these provisions. Despite of raising of this objection before the authorities below, the said argument/submission of the assessee was never attended to by the AO/CIT(A). To that extent, the order is deficient and cannot be considered as a speaking order. Every appealable order has to contain the reasoning for rejecting the arguments of the

assessee. In this background of the facts, Ld.Counsel prayed for remanding the entire issue to the file of AO for fresh adjudication of the entire issue. In this regard, he took us through the order of the AO as well as the CIT(A) to demonstrate the deficiency.

4. On the other hand, Ld.DR heavily relied on the orders of the AO as well as the CIT(A) on this limited issue.

5. We heard both the parties on this limited issue of the requirement of remanding the issue to the file of AO for second round of the proceedings. On perusal of the assessee's submissions made before the AO, we find that there exists an argument made by the assessee relating to the transaction in the 'ordinary course' of the business. We find that the orders of the AO and the CIT(A) do not contain any reference to this core argument of the assessee. Simply, the provisions of Section 2(22)(e) of the Act were invoked and the addition was made. Lot of theory was discussed in the orders of the lower authorities leaving the facts unattended.

5.1. Considering the same, we are of the opinion that the prayer of the Ld.Counsel for the assessee should be considered and accepted. Eventually all these issues under the Grounds raised by the assessee in the Grounds of Appeals are required to be remanded to the file of AO for fresh adjudication. AO is directed to give reasonable opportunity of being heard to the assessee. Hence, the Grounds by assessee for both the assessment years are allowed for statistical purposes.

6. In the result, appeals of assessee for both the assessment years are allowed for statistical purposes.

Revenue's Appeals in ITA Nos.2150/Hyd/17, 2151/Hyd/17 & 2152/Hyd/17:

7. In these appeals, the main issue relates to the disallowance u/s.14A r.w.r.8D of the Income Tax Rules. The Ld.CIT(A) allowed the appeal of assessee, stating as under (order of the CIT(A) for the AY.2012-13):

*"7. I have carefully considered the facts of the case, the assessment order and the submissions of the appellant. As per the assessment order the Assessing Officer made disallowance of Rs.44,64,880/- u/s.14A read with Rule 8D of the Act stating that the appellant has shown an amount of Rs.22,91,40,135/- as investment. However, the appellant contended that **it has not earned any dividend income** out of such investments, no disallowance u/s 14A can be made. With regard to the issue of disallowance u/s 14A of the Act, the Hon'ble ITAT, "B" Bench, Hyderabad in the case of Prathista Industries Ltd., Secunderabad Vs. The DCIT, Circle-16(3), Hyderabad in ITA No.1302/Hyd/2015 dated 29.04.2016 for the A.Y. 2011-12 held as under:*

*"6. Having regard to the rival contentions and the material on record, we find that section 14A clearly stipulates that the expenditure incurred for earning of **any income which does not form part of the total income** alone can be disallowed. In the case before us, when the assessee has not earned any exempt income, there can be no disallowance under section 14A of the Act. The Hon'ble Delhi High Court in the case of Cheminvest Ltd., reported in (2015) 378 ITR 33 (Del.) has held that section 14A will not apply where no exempt income is received or receivable during the relevant assessment year"*

Respectfully following the above decision of Hon'ble ITAT in the case of Prathista Industries, since the appellant has not earned any dividend during the relevant assessment year, the provisions of section 14A r.w. Rule 8D are not applicable in this case. Therefore, the addition made by the Assessing Officer is deleted.

8. In the result, the appeal is allowed".

7.1. Since the Ld.CIT(A) has followed the decision of the Hon'ble ITAT for the earlier years, we do not find any infirmity in the order

passed by the Ld.CIT(A). Respectfully following the said decision of the Co-ordinate Bench of the ITAT, we, therefore, dismiss the appeals of Revenue for all the assessment years.

8. In ITA No.2151/Hyd/17 (AY.2013-14), vide Ground Nos.5 to 8 the Revenue has also raised issue relating to 'liquidated damages'. As far as this issue is concerned, the Ld.CIT(A) deleted the additions made by the AO, following these decisions:

- i. Kettlewell Bullen and Co. Ltd., Vs. Commissioner of Income Tax, Calcutta AIR 1965 SC 65;
- ii. Commissioner of Income Tax, Gujarat Vs. M/s.Saurashtra Cement Limited – 2010 TIOL-49-SC-IT;

Finally, the Ld.CIT(A) held as under:

*"7.3 I have carefully considered the assessment order and submissions of the appellant. On going through the submissions, it is noticed that that appellant company has **received the liquidated damages for cancellation of contract** due to downsizing of project at Agasawadi, hence to be **treated as capital in nature**. Therefore, the Assessing Officer is directed to treat it as capital receipt and allow accordingly.*

8. With regard to ground Nos. 4 and 5, the appellant did not press for the same, therefore, the same are not adjudicated.

9. Since the appellant has specifically admitted the income under the MAT provisions as per the return of income, the Assessing Officer is directed to verify the taxability income under MAT Provisions also, if the normal income is less than the MAT".

8.1. In the above cited decisions i.e., in para 8 above, the receipts received on termination of the contract is held to be of capital nature. The CIT(A) rightly held comparison in the said cases to the facts of the present case and held that the receipts earned by the assessee falls in the capital field. Since the Ld.CIT(A) has followed

the binding judgments of the Hon'ble Supreme Court, where as the Ld.DR for the Revenue relied on the decision of the Hon'ble High Courts, we do not find any infirmity in the order passed by the Ld.CIT(A). We, therefore, dismiss the Grounds of Appeal Nos.5 to 8 of Revenue, raised in this appeal.

9. To sum-up, the appeals of assessee are allowed for statistical purposes and the appeals of Revenue are dismissed.

Order pronounced in the open court on 4th December, 2019

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Hyderabad, Dated 4th December, 2019

TNMM

Copy to :

- 1. Dy.Commissioner of Income Tax, Circle-16(2), Hyderabad.*
- 2. Asst.Commissioner of Income Tax, Central Circle-3(1), Hyderabad.*
- 3. Mytrah Energy (India) Private Limited, 8001, Q-City, D.No.109, Nanakramguda, Gachibowli, Hyderabad.*
- 4. CIT(Appeals)-4, Hyderabad.*
- 5. Pr.CIT-4, Hyderabad.*
- 6. D.R. ITAT, Hyderabad.*
- 7. Guard File.*