

**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. 513/VIZ/2019
(Asst. Year : 2012-13)**

ACIT, Circle-1,
Kakinada.

vs.

M/s. Cresco Technology Pvt.
Ltd., D.No. 8-256, Tata
Nagar, Balabadrapuram,
East Godavari District.

(Appellant)

PAN No. AAACC 9848 F
(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Smt. Suman Malik – Sr.DR

Date of hearing : 28/10/2019.
Date of pronouncement : 11/12/2019.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Visakhapatnam, dated 08/05/2019 for the Assessment Year 2012-13.

2. The only issue involved in this appeal is in respect of section 14A read with rule 8D of I.T. Rules, 1962.

3. In the assessment order, the Assessing Officer has noted as under:-

2. During the course of assessment proceedings, it was observed that the assessee company has made investment amounting to Rs.27,25,28,651/- in Equity Shares during the year and earned Exempt-income in form of Dividend Income amounting to Rs.31,16,000/-. Assessee Company was asked to file the reply on disallowance U/s 14A.

In its reply dated 08 01 2015, the assessee simply stated that "we are receiving interest on the amount advanced to KPR Fertilizers Ltd, Sec 14 A is not applicable as the loan taken from Karvy is advance to KPR Fertilizer Ltd on which we are earning income The interest paid to Karvy Financial Services is debited to Profit and Loss account."

Reply of the assessee is considered but not acceptable as the section, 14A specifically mentioned the proportionate disallowance of expenses and the calculation of disallowance are mentioned in rule 8D. Since the assessee has made investment to earn the divided income, requires to disallowance U/s 14A read with rule 8D. Since the assessee has, claimed that no expenses are required to be disallowed U/s 14A read with Rule 8D, I am satisfied that the assessee has made default U/s 14A and the provision of section-.14A is hereby invoked.

Disallowance U/s 14 A read with rule SD is computed as under:-

i)	Amount of expenditure directly related to income which does not form part of total income	NIL
ii)	Amount of interest which is not directly attributable	
	Interest Expenses : Rs. 2,06,76,792/-	
	Average investment:Rs.24,46,09,325/-	
	Average Assets :Rs.35,18,13,718/	Rs.1,43,76,176/-
iii)	Amount equal to ½ of Average Investment Rs. 12,23,046/- (24,46,09,325/- x.05%)	-----
	Total Disallowance U/s 14A read with Rule 8D	<u>Rs.1,55,99,222/-</u>

4. On appeal before the Id. CIT(A), it was submitted that disallowance u/sec. 14A r.w.r. 8D cannot be more than dividend income received. The Id. CIT(A) by considering the explanation of the assessee and also by following the decision of the Hon'ble

Supreme Court in the case of *M/s. Maxopp Investment Ltd. Vs. CIT* [(2018) 91 taxmann.com 154 (SC)] directed the Assessing Officer to restrict the disallowance to the extent of 31,16,000/- u/sec. 14A r.w.r. 8D.

5. On being aggrieved, Revenue carried the matter in appeal before this Tribunal.

6. At the outset, Id.counsel for the assessee has submitted that the issue involved in this appeal is squarely covered by the decision of the coordinate bench of the tribunal in the case of *M/s. RKR Investments Services (P) Ltd. Vs. ITO* in ITA No. 330/VIZ/2018, dated 28/11/2018.

7. Ld.DR has relied on the grounds of appeal.

8. We have heard both the sides and perused the material available on record. We find that the issue involved in this appeal is squarely covered by the decision of the ITAT, Visakhapatnam Bench in the case of *M/s. RKR Investments Services (P) Ltd.* (supra) wherein the tribunal has held that disallowance u/sec. 14A required to be restricted to the dividend income earned by the assessee u/sec. 14A r.w.r. 8D of the I.T. Rules. For the sake of convenience, the relevant portion of the order is extracted as under:-

"6. We have heard both the parties and perused the material placed on record. In this case, the assessee made the investments in the Listed Securities, but the exempt income earned was only Rs.500/-. The AO made the disallowance of Rs.87,51,655/- as per Rule 8D of income tax Rules. The Ld.AR relied on the decision of Hon'ble High Court of Delhi in the case of Joint Investments Pvt. Ltd. Vs. Commissioner of Income Tax (supra), wherein it was held that the disallowance should not exceed the income earned by the assessee. For the sake of clarity and convenience, we extract relevant part of the order of Hon'ble High Court of Delhi which reads as under:

"9. In the present case, the AO has not firstly disclosed why the appellant/assessee's claim for attributing Rs.2,97,440/- as a disallowance under Section 14A had to be rejected. Taikisha says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assessee's claim or explanation. The second aspect is there appears to have been no scrutiny of the accounts by the AO - an aspect which is completely unnoticed by the CIT (A) and the ITAT. The third, and in the opinion of this court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is Rs.48,90,000/-, the disallowance ultimately directed works out to nearly 110% of that sum, i.e., Rs.52,56,197/-. By no stretch of imagination can Section 14A or Rule 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed, The window for disallowance is indicated in Section 14A, and is only to the extent of disallowing expenditure 'incurred by the assessee in relation to the tax exempt income'. This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case."

7. The Ld.AR also relied on the decision of K. Ratanchand & Co. of coordinate Bench Ahmedabad, wherein the coordinate Bench has examined various decisions of Hon'ble High Courts and the Coordinate Benches and restricted the disallowance to exempt income earned by the assessee u/s 14A. We extract the relevant part of the order of the coordinate bench in the case of K.Ratanchand &Co supra which reads as under:

7. Further in the case of Jivraj Tea Ltd. (supra) and others, the co-ordinate Bench held that disallowance under section 14A cannot be more than the exempt income. The

relevant portion of the decision is reproduced below—

"20. We have heard the rival submissions and perused the orders of the lower authorities and materials available on record. In the instant case, the assessee received exempt dividend income of Rs.900/-. The Assessing Officer was of the opinion that expenditure incurred for earning the exempt dividend income was not allowable to the assessee and the assessee has not disallowed any expenditure towards the earning of the exempted dividend income, he by invoking the provisions of Section 14A computed expenditure attributable to the earning of exempt dividend income under Rule 8D of the Income-tax Rules and made disallowance for interest expenditure of Rs.1,49,710/- and administrative expenses of Rs.12,750/-. The assessee unsuccessfully appealed before the CIT (A). The contention of the assessee is that the interest free funds available with the assessee in the form of share capital and free reserves as on the date of balance- sheet was Rs.17,86,69,501/- and the investments at the end of the year was at Rs.1,26,00,538/- only. Therefore, in view of the decision of the Hon'ble Gujarat High Court in the case of Hitachi Home and Life Solutions (I) Ltd. (supra) and Torrent Power Ltd. (Supra), no disallowance towards interest expenditure incurred for earning exempt income can be made. Regarding the disallowance of administrative expenses of Rs.12,750/-, we find that the Chandigarh Bench of the Tribunal in the case of A.C.I.T. v. Punjab State Coop & Marketing Fed. Ltd. in ITA No. ITA No.548/Chd/2011 for AY 2007- 08 has held that disallowance u/s. 14A read with Rule 8D cannot exceed the exempt dividend income. Therefore, we restrict the disallowance of administrative expenses to Rs.900/- only, being the exempt dividend income earned by the assessee. Thus, this ground of appeal of the assessee is partly allowed."

8. The facts of the case of assessee are well covered by the above referred judicial pronouncements of the Co-ordinate Benches. So much so that it is undoubted that assessee is a dealer in shares, trading of shares has been shown as income from business, stock in trade in shares is at Rs.41,16,992 investment in shares not held for business are only Rs.51,000, and dividend income earned during the

year is Rs.58,963. However, assessee has maintained same books of accounts for his business of trading in cloth, trading in shares, commission income, income from real estate and exempt income. There is no bifurcation available on record to segregate the entire expenses incurred on the type of business activities carried on and some element of cost for earning exempt income cannot be ignored in these circumstances. The assessee has demonstrated that it has carried out the business activity of sale and purchase of shares. The Revenue on the other hand could not place any contrary material on record. Therefore, in the light of decision of the co-ordinate Benches we are of the considered view that the AO was not justified in invoking the provisions of section 14A of the Act. The dividend so earned is incidental to normal business activities of the assessee. Moreover, the AO has made disallowance of Rs.4,04,204/- whereas the assessee has earned exempt income in the form of dividend of Rs.58,963/-. Even assuming that some expenditure is required to be disallowed but such disallowance should not exceed the quantum of exempt income. Therefore, in view of the decision of the Co-ordinate Benches we hereby hold that the addition under section 14A cannot be more than the exempt income and should therefore be restricted to Rs.58,963/-. This ground of the assessee is partly allowed."

During the appeal hearing, the Ld.DR did not bring any other case law of Higher Court/jurisdictional High court to controvert the decisions relied upon by the assessee. Therefore, respectfully following the decision of the Hon'ble High Court and the Coordinate Bench, we hold that disallowance u/s 14A required to be restricted to the extent of dividend income earned by the assessee, under section 14A read with Rule 8D of I.T.Rules. Accordingly, we set aside the orders of the lower authorities and allow the appeal of the assessee."

9. Therefore, respectfully following the decision of the coordinate bench of the tribunal in the above referred to case, we find no infirmity in the order of the Id. CIT(A). Thus, this appeal filed by the Revenue is dismissed.

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

Order Pronounced in open Court on this 11th day of Dec., 2019.

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

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 11th December, 2019.

vr/-

Copy to:

1. *The Assessee – M/s. Cresco Technology Pvt. Ltd., D.No. 8-256, Tata Nagar, Balabadrapuram, E.G. District.*
2. *The Revenue - ACIT, Circle-1, Kakinada.*
3. *The Pr.CIT-2, Visakhapatnam.*
4. *The CIT(A)-2, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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