

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI
BEFORE MS SUSHMA CHOWLA, JUDICIAL MEMBER
AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA No.5387/Del/2017
Assessment Year: 2014-15

ITO,
Ward1(1)
New Delhi.

Vs M/s ACB India Power Ltd.,
C-102, LGF Surya Enclave,
New Multan Nagar,
New Delhi.
PAN : AAICA7305D

Assessee by : Ms Ananya Kapoor, Advocate
Deptt. By : Shri Sanjog Kapoor, Sr. DR

ITA No.5390/Del/2017
Assessment Year: 2014-15

ITO, Ward 3(2),
New Delhi.

Vs. Arbutus Construcyion Ltd.,
M062 & 63, first Floor,
Connaught Place,
New Delhi.
PAN: AAICA8172A

Assessee by : Nipun Jain, Advocate
Deptt.by : Shri Sanjog Kapoor, Sr. DR

ITA No.5595/Del/2017
Assessment Year: 2014-15

ACIT,
Central Circle-29,
New Delhi.

Vs. Wave Infratech Pvt. Ltd.,
C-1, Sector-3,
Noida.
PAN: AAACW7708G

Assessee by : Ms Ananya Kapoor, Advocate
Deptt. By : Shri Surendra Pal, Sr. DR

(Appellants)

(Respondents)

Date of Hearing : 28.11.2019
Date of Pronouncement : 31.12.2019

ORDER

PER R.K. PANDA, AM:

This batch of three appeals filed by the Revenue are directed against the separate orders of the CIT(A). In all these appeals, the Revenue is aggrieved with the order of the CIT(A) in deleting the disallowance u/s 14A r.w. Rule 8D made by the Assessing Officer. Since common issues are involved in all these appeals, therefore, these were heard together and are being disposed of by this common order for the sake of convenience.

2. So far as ITA No.5387/Del/2017 is concerned, the Assessing Officer made disallowance of Rs.1,71,29,845 by invoking the provisions of section 14A of the IT Act r.w. Rule 8D of the IT Rules, 1962 although the assessee has not earned any exempt income. While doing so, he held that merely because the companies in which the assessee has made investment did not declare dividend, the nature of investment does not change. Further, the assessee company has major shareholding in its group companies and as such declaration of dividend is also controlled by the assessee. The Assessing Officer, therefore, invoking the provisions of section 14A of the IT Act r.w. Rule 8D of the IT Rules, 1962, made a disallowance of Rs.1,71,29,845/-.

3. Similarly, in ITA no.5595/Del/2017, the Assessing Officer made a disallowance of Rs.3,17,07,847/- by invoking the provisions of section 14A of the

IT Act r.w. Rule 8D of the IT Rules, 1962. It is pertinent to mention here that at para 4.1 of the assessment order the Assessing Officer has categorically mentioned that the assessee has no exempt income.

4. So far as ITA No.5390/Del/2017 is concerned, here also, despite the submission of the assessee that the assessee has not earned any exempt income and, hence, disallowance u/s 14A of the IT Act r.w. Rule 8D of the IT Rules, 1962 is not warranted at all, the Assessing Officer, invoking the provisions of section 14A of the IT Act r.w. Rule 8D of the IT Rules, 1962 made a disallowance of Rs.3,07,98,587/-.

5. The respective CIT(A)s deleted the addition made by the respective Assessing Officers on the ground that the assessee has not earned any exempt income.

6. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal.

7. We have heard the respective Id. counsels appearing for the assessee. As mentioned earlier, the assessee has not earned exempt income during the year. The Hon'ble Delhi High Court in the case of *Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del)*, has held that section 14A will not apply if no exempt income is received or receivable during the relevant previous year. The Hon'ble Supreme Court in the case of *CIT vs. Chettinad Logistics (P) Ltd. (2017) 95 taxmann.com*

250 (SC) has dismissed the SLP filed by the Revenue against the decision of the Hon'ble Madras High Court in the case of *CIT vs. Chettinad Logistics (P) Ltd.* holding that section 14A cannot be invoked where no exempt income was earned by the assessee in the relevant assessment year. The Hon'ble Delhi High Court in the case of *PCIT vs. McDonald's India (P) Ltd. (2019) 101 taxmann.com 86*, after considering various decisions, has dismissed the appeal filed by the Revenue against the order of the Tribunal where the Tribunal has deleted the disallowance made by the Assessing Officer u/s 14A on the ground that the assessee had not earned any exempt income during the relevant assessment year and, therefore, no substantial question of law arises. We further find the Hon'ble Supreme Court in the case of *PCIT vs. GVK Project and Technical Services Ltd. (2019) 106 taxmann.com 181 (SC)* has dismissed the SLP filed by the Revenue against the decision of the Hon'ble Delhi High Court in the case of *CIT vs. GVK Project and Technical Services Ltd., reported in 106 taxmann.com 180* where the Hon'ble High Court upheld the order of the Tribunal holding that in absence of any exempt income returned by the assessee, disallowance could not be made u/s 14A. The Hon'ble Supreme Court, again, in the case of *PCIT vs. Oil Industry Development Board (2019) 103 taxmann.com 326 (SC)*, has dismissed the SLP filed by the Revenue against the decision of the Hon'ble High Court upholding the Tribunal's order that in absence of any exempt income, disallowance u/s 14A of any amount was not permissible. In view of the decisions of the Hon'ble Delhi High Court cited (supra), we do not find any perversity or illegality in the order of the CIT(A)

deleting the disallowance made by the Assessing Officer u/s 14A of the IT Act r.w. Rule 8D of the IT Rules, 1962 when the assessee has not earned any exempt income. Accordingly, the orders of the CIT(A) on this issue is upheld.

8. In the result, the appeals filed by the Revenue in respect of the above three assesseees are dismissed.

Order pronounced in the open court on 31.12.2019.

Sd/-

(SUSHMA CHOWLA)
JUDICIAL MEMBER

Dated: 31st December, 2019

dk

Copy forwarded to :

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

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Asstt. Registrar, ITAT, New Delhi