

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

**ITA Nos. 3843 & 3844/MUM/2018
(A.Ys: 2013-14 & 2014-15)**

Orix Auto Infrastructure Services Ltd., Plot No. 94, Marol Co. Op. Indl. Estate Andheri Kurla Road, Andheri(E) Mumbai – 400 059 PAN: AAACO2563P	v.	Dy. Commissioner of Income- tax Circle – 10(3)(1) Aayakar Bhavan, M.K. Road Mumbai – 400 020
(Appellant)		(Respondent)

**ITA Nos. 3946 & 3947/MUM/2018
(A.Ys: 2013-14 & 2014-15)**

Dy. Commissioner of Income- tax Circle – 10(3)(1) Room No. 212 Aayakar Bhavan, M.K. Road Mumbai – 400 020	v.	Orix Auto Infrastructure Services Ltd., Plot No. 94, Marol Co. Op. Indl. Estate Andheri Kurla Road, Andheri(E) Mumbai – 400 059 PAN: AAACO2563P
(Appellant)		(Respondent)

Assessee by	:	Shri Ketan K. Ved
Department by	:	Shri Kumar Padmapani Bora
Date of Hearing	:	28.11.2019
Date of Pronouncement	:	10.01.2020

ORDER**PER C.N. PRASAD (JM)**

1. These cross appeals are filed by the assessee and revenue against different orders of the Ld. Commissioner of Income-tax (Appeals) – 17, Mumbai [hereinafter for short “Ld.CIT(A)"] dated 28.03.2018 for the A.Ys. 2013-14 and 2014-15.

2. In so far as the assessee’s appeals are concerned the assessee challenged the order of the Ld.CIT(A) in sustaining the disallowance made u/s. 14A r.w. Rule 8D of I.T. Rules. An additional ground was filed for both these assessment years except for the figures which is as under: -

“1:0 Re: Suo-moto disallowance u/s. 14A of Rs. 90,26,332/-

1:1 The Commissioner of Income-tax (Appeals) [CIT(A)] has erred in holding that no relief can be granted to the Appellant for the amount of Rs. 90,26,332/- suo-moto disallowed by the Appellant u/s. 14A of the Income-tax Act, 1961 while filing its return of income.

1:2 The Appellant submits that considering the facts and circumstances of its case in particular the fact that it has not received any dividend/ exempt income during the year under consideration and also considering the law prevailing on the subject, no disallowance whatsoever is called for u/s. 14A of the Income-tax Act, 1961 and the stand taken by the Assessing Officer is incorrect/ illegal and the CIT(A) ought to have held as such.

1:3 The Appellant submits that no disallowance shall be made u/s. 14A of the Income-tax Act, 1961 and the Assessing Officer be directed to delete the entire disallowance made u/s. 14A and re-compute the total income accordingly.

2:0 The Appellant craves leave to add, alter, amend, substitute and / or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.”

3. At the outset, Ld. Counsel for the assessee submitted that, the assessee did not earn any exempt income in both these assessment years and therefore, there shall not be any disallowance u/s. 14A of the Act. Further, the Ld. Counsel for the assessee placed reliance on the decision of the Coordinate Bench of the Tribunal in the case of M/s. Kamat Hotels (India) Limited v. ACIT in ITA No. 2866 & 2867/Mum/2018 dated 01.07.2019 and submitted that assessee can make claim even suomoto disallowance cannot be made when there is no exempt income.

4. Ld. DR vehemently supported the orders of the authorities below.

5. We have heard the rival submissions and perused the orders of the authorities below. As the additional ground is only a legal ground the same is admitted. It is the finding of the Assessing Officer in the assessment orders that the assessee has not earned any dividend income during the assessment years i.e. A.Ys. 2013-14 & 2014-15. In the absence of any exempt income received by the assessee there cannot be any disallowance u/s. 14A of the Act.

6. In the case of M/s. Kamat Hotels (India) Limited v. ACIT (supra) the Coordinate Bench of the Tribunal considered the claim of the assessee that, it can make a claim that assessee is very much entitled to make a revised claim and the concession by the assessee initially in making suomoto disallowance cannot act as estoppel against the assessee for

challenging the same. The Coordinate Bench of the Tribunal allowed the claim of the assessee observing as under: -

“8. Upon careful consideration and hearing both the counsel, we find considerable cogency in the submissions of learned counsel of the assessee. We find that as held in the case laws hereinabove no disallowance is required u/s. 14A when no exempt income has been earned. Furthermore, assessee is very much entitled to make a proper and revised claim as emanating from the decision of Hon'ble Bombay High Court in the case of M/s. Pruthvi Brokers & Shareholders (supra). Since no disallowance u/s. 14A is legally permissible and assessee has duly raised this issue, the concession by the assessee initially in making suo moto disallowance cannot act as estopple, against the assessee for challenging the same. Accordingly, in the background of the aforesaid discussion and precedent, we decide this issue in favour of the assessee.”

7. Respectfully following the said decision, we direct the Assessing Officer to delete the disallowance made u/s. 14A r.w. Rule 8D of I.T. Rules.

8. In so far as the contention of the assessee that suomoto disallowance should be excluded for computing the taxable income since this claim was not made before lower authorities we restore this additional claim made before us, by way of additional ground, to the file of the Assessing Officer who shall decide in accordance with law.

9. Ground No. 3 of grounds of appeal of the assessee is relating to levy of interest u/s. 234B of the Act.

10. It is submitted that a rectification petition was filed before Assessing Officer and the same is pending for disposal. It is submitted that an

inadvertent mistake crept in calculating the interest and according to the assessee no interest is leviable. Keeping in view the submissions of the Ld. Counsel for the assessee this ground is restored to the file of the Assessing Officer who shall decide in accordance with law.

11. Coming to the appeals of the revenue, as we have held that since assessee has not earned any dividend income during the assessment year under consideration and therefore no disallowance u/s. 14A is warranted, the grounds raised by the Revenue are rejected.

12. In the result, appeals of the assessee are partly allowed and the appeals of the revenue are dismissed.

Order pronounced in the open court on the 10th January, 2020

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER
Mumbai / Dated 10/01/2020
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum