

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“ A ” BENCH, BENGALURU**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
&  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

I.T.A. Nos.1152 & 1153/Bang/2018  
(Assessment Years : 2009-10 & 2011-12)

<b>Sri Shankaranarayana Industries &amp; Plantation Pvt.Ltd.,No.64, I Main S.T.Bed, 4<sup>th</sup> Block, Koramangala, Bangalore-560 034</b>	Vs.	<b>JCIT(OSD), Circle-12(3), Bangalore</b>
<b>PAN/GIR No.AACCS2282B</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Ravishankar, Advocate
<b>Respondent by :</b>	Shri B.R.Ramesh, JCIT

<b>Date of Hearing</b>	25-02-2020
<b>Date of Pronouncement</b>	27-02-2020

**ORDER**

**PER PRADIP KUMAR KEDIA : AM**

The captioned appeals have been filed at the instance of assessee against order of the CIT(A), Bengaluru arising in the assessment order passed by the AO under s.143(3) of the Act, 1961 ('The Act') concerning assessment year 2009-10 & 2011-12 respectively.

2. The solitary grounds of appeal concerns disallowance under s.14A of the IT Act, 1961 ('The Act')

3. The facts and issue involved being similar in both cases, we note the facts in ITA No.1152(B)/2018 (AY: 2009-10) for adjudication purpose.

4. When the matter was called for hearing, the learned counsel for the assessee at the outset, submitted that the disallowance has been made under s.14A of the Act, as computed under Rule 8D(2)(iii) i.e one and half 1 ½ % of average value of investments. It was pointed out that the whole of the investments has been made in mutual funds only where the administrative charges are collected and inbuilt in the mutual fund scheme itself. The ld. AR further referred to the audited financials of the assessee and pointed out that out of 6.77 Crores towards administrative expenses incurred by the assessee and 6.59 Crore relates to electricity and water charges incurred for the purpose of regular business of the assessee. The other insignificant expenses incurred as recorded in the financial statement has nothing to do with the investments of idle funds in the mutual fund. It was further contended that no satisfaction has been recorded by the AO as mandated under s.14A for the purpose of carrying out disallowance, more so, where the facts are so peculiar. It was thus contended that no disallowance under s.14A is possible on these facts.

5. We have carefully considered the rival submissions. The assessee has agitated the disallowance made by the AO under s.14A read with Rule 8D(2)(iii) of the IT Rules. We notice averments made on behalf of the assessee that tax free income earned in the form of dividend has arisen entirely out of mutual funds which are one time investments without any proactive involvement of management *per se*. The surplus funds of the company have been simply parked in the mutual funds. We take cognizance of the arguments advanced on behalf of the assessee that mutual fund investments bear different traits and are different species of

investment. The mutual funds are supervised by the experts in field and management charges for such supervision is recovered from the clients. This being so, an investor under the mutual fund separately bears administrative and managerial expenses unlike a case where assessee chooses to make investment in shares directly. In the case of mutual funds, administrative and managerial expenses are factored in the investments itself. In such a scenario, the explanation offered by the assessee for non-applicability of Rule 8D(2)(iii) for rigid disallowance appears to be in congruity with market practice. Accordingly, we do not find it a fit case for resorting to double disallowance of similar expenditure taking shelter of Rule 8D(2)(iii) of the IT Rules.

6. It will be pertinent here to note that a bare reading of Section 14A of the Act suggests that its applicability is not automatic. It is hedged by conditions prescribed therein. Section 14A inheres in it the concept of reasonableness. The formidable amount of expenditure as computed by the AO cannot be said to be attributable to tax free income generated from separately administered mutual funds by applying a straight jacket formula embodied in Rule 8D(2)(iii) of the IT Rules.

7. We thus find considerable merit in the plea of the assessee for non adjudication of s.14A in the facts of the case. Hence, we are disposed to adjudicate the issue in favour of the assessee. Hence, the order of the CIT(A) sustaining the disallowance under s.14A of the Act deserves to be vacated.

8. In the result, the appeal of the assessee in ITA No.1152(B)/2018 for assessment year 2009-10 as well as appeal in ITA No.1153(B)/2018 involve the identical issue for assessment year 2012-13 are allowed.

**This Order pronounced in Open Court on 27-02-2020**

**Sd/-**

(BEENA PILLAI)  
JUDICIAL MEMBER

Place: Bengaluru

Dated: 27-02-2020

am

**Sd/-**

(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Copy of Order Forwarded to:-

1. Revenue
2. Assessee
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Bengaluru .
6. Guard file.

By order

Asst. Registrar

