

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA Nos. 2286 & 2287/Bang/2018
Assessment years: 2015-16 & 2014-15

M/s Global Tech Park Pvt. Ltd. No.11, Ground Floor, Divyashree Chambers, B Wing, O Shaughnessy Road, Near Hockey Stadium, Langford Town, Langford Gardens, Bengaluru – 560 025. PAN: AABCG 5707C	Vs.	The Assistant Commissioner of Income Tax, Circle - 3(1)(2) Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Hariprasad Nayak, CA
Respondent by	:	Smt R. Premi, JCIT(DR)(ITAT), Bangalore.

Date of hearing	:	04.03.2020
Date of Pronouncement	:	06.03.2020

ORDER

Per N.V. Vasudevan, Vice President

These are appeals by the Assessee against two orders both dated 28.5.2018 of CIT(A)-3, Bengaluru, relating to assessment years 2015-16 & 2014-15.

2. As far as ITA No.2286/Bang/18 is concerned, the only issue that arises for consideration in the said appeal is as to whether the revenue authorities were justified in disallowing expenses of Rs.46,87,556/- by

invoking the provisions of Sec.14A of the Income Tax Act, 1961 (Act) which provides that any expenditure incurred in earning income which does not form part of the total income shall be disallowed in computing total income.

3. The Assessee is a company engaged in the business of developing and maintaining real estate properties. The admitted factual position is that though the Assessee was a partner in two firms, it did not receive any share income from those firms and therefore there was no income which does not form part of the total income under Chapter III of the Act that was earned by the Assessee. The Assessee also did not earn any other exempt income, more importantly any dividend income. Perusal of the return of income filed by the Assessee shows that the Assessee has earned no income which does not form part of the total income under the Act. The Profit and Loss Account of the Assessee also shows that it had not earned any income like dividend or share income from firm of which it was partner. It was submission of the Assessee before the CIT(A) that the Assessee has not earned any income which is exempt. The CIT(A) in his order while dealing with a decision of Hon'ble Delhi High Court in the case of *Cheminvest Ltd. Vs. CIT 378 ITR 3 (Delhi)* cited by the Assessee before him, in which it was held that if there is no exempt income then there can be no disallowance of expenditure u/s.14A of the Act, merely observed that the Assessee earned share income from partnership which is exempt. In paragraph 5.2 and 5.3 of his order he has dealt only with the aspect that investment in the capital of the firm should also be considered for the purpose of working out the average value of investments while computing disallowance u/s.14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (Rules). Therefore it can safely be concluded that there was no exempt income earned by the Assessee in AY 2015-16.

4. In the given circumstances, the first question for our consideration is as to whether disallowance can be made u/s. 14A of the Act in the absence

of exempt income. The law in this regard is now fairly well settled. The Bangalore Bench of ITAT in the case of M/s UB Infrastructure Projects Ltd., Vs. DCIT, ITA No. 2098/Bang/2016 (AY.2012-13) order dated 22-12-2017, this Tribunal took the view that there can be no disallowance of expenses u/s 14A of the Act, if there is no exempt income earned during the relevant previous year. The Tribunal followed the decision of the Hon'ble Delhi High Court in the case of *Cheminvest Ltd. (supra)*. The following are the relevant observations of the Tribunal in this regard:-

“3. Having carefully examined the orders of authorities below, we find that undisputedly the assessee has not earned any exempted income. Now it is settled position of law that whenever assessee did not earn any exempt income, no disallowance could be made u/s. 14A of the Act. The Hon'ble Delhi High Court in the case of Cheminvest Ltd. v. CIT, 378 ITR 33 (Del) has categorically held that section 14A envisages that there should be actual receipt of income which was not includible in the total income during the relevant previous year for the purpose of disallowing any expenditure in relation to the said income. Wherever there is no exempt income includible in the total income of the assessee, the provisions of section 14A cannot be invoked. The relevant observations of the judgment of the Hon'ble Delhi High Court are extracted hereunder:-

“15. Turning to the central question that arises for consideration, the court finds that the complete answer is provided by the decision of this court in CIT v. Holcim India (P) Ltd. (decision dated 5th September 2014, in I.T. A. No. 486 of 2014). In that case, a similar question arose, viz., whether the Income-tax Appellate Tribunal was justified in deleting the disallowance under section 14A of the Act when no dividend income had been earned by the assessee in the relevant assessment year? The court referred to the decision of this court in Maxopp Investment Ltd. (supra) and to the decision of the Special Bench of the Income-tax Appellate Tribunal in this very case, i.e., Cheminvest Ltd. v. CIT [2009] 317 ITR (AT) 86 (Delhi) [SB]. The court also referred to three decisions of different High Courts which have decided the issue against Revenue. The first was the decision in CIT v.

Lakhani Marketing Incl. (decision dated April 2, 2014, of the High Court of Punjab and Haryana in I. T. A. No. 970 of 2008)--since reported in [2015] 4 ITR-OL 246 (P&H)-- which in turn referred to two earlier decisions of the same court in CIT v. Hero Cycles Ltd. [2010] 323 ITR 518 (P&H) and CIT v. Winsome Textile Industries Ltd. [2009] 319 ITR 204 (P&H). The second was of the Gujarat High Court in CIT v. Corrttech Energy (P.) Ltd. [2014] 223 Taxmann 130 (Guj) ; [2015] 372 1TR 97 (Guj) and the third of the Allahabad High Court in CIT v. Shivam Motors (P) Ltd. (decision dated 5th May, 2014, in T.A. No. 88 of ITA No.1 1071Bang12016 2014). These three decisions reiterated the position that when an assessee had not earned any taxable income in the relevant assessment year in question "corresponding expenditure could not be worked out for disallowance."

4. *This was also examined by the Tribunal in the assessee's own case for assessment year 2010-11 and held that when there is no exempt income, provision of section 14 of the Act cannot be applied.*

5. *In the light of the aforesaid judgment, the provisions of section 14A cannot be invoked as there is no exempt income in the hands of the assessee. Accordingly, we find no infirmity in the order of the CIT(Appeals) who has rightly deleted the addition."*

5. In view of the aforesaid decision of the Tribunal, we are of the view that the disallowance of expenditure u/s 14A of the Act cannot be sustained and the same is directed to be deleted.

6. The appeal of the Assessee being ITA No. 2286/Bang/2018 is allowed.

7. As far as ITA No.2287/Bang/2018 for AY 2014-15 is concerned, the first issue that arises for consideration in this appeal is disallowance of expenses u/s.14-A of the Act. In this year, there is no dispute that the Assessee earned exempt income in the form of dividend of Rs.1,51,694/-. The disallowance u/s.14A of the Act computed by the revenue authorities was a sum of Rs.2,83,23,833/-. The Hon'ble Delhi High Court in the case of

Joint Investments (P) Ltd. v. CIT, 372 ITR 694 has taken the view that disallowance u/s. 14A of the Act cannot exceed the exempt income. Similar view was expressed by the Hon'ble Delhi High Court in the case of *CIT v. Holcim India Pvt. Ltd., 272 CTR 282 (Del)*. These decisions were considered by the Mumbai Bench of the Tribunal in the case of *Future Corporate Resources Ltd v. ACIT, ITA No.4658/Mum/2015 dated 26.07.2017* relating to AY 2011-12 and it was held by the Tribunal Mumbai Bench that disallowance u/s. 14A of the Act cannot exceed the exempt income. Following the aforesaid decisions, we hold that disallowance u/s. 14A of the Act in the present case should be restricted to the exempt income earned by the assessee. We hold and direct accordingly.

8. The other issue that arises for consideration in this appeal is with regard to disallowance of interest expenses u/s.36(1)(iii) of the Act. The Assessee paid interest on short term and long term borrowings totalling Rs.23,68,16,255 which was claimed as deduction while computing income from business. The AO noticed that the Assessee had given the following interest free loan to the following related parties:-

Interest-free loans to related parties					
Sl No.	Name of the Party	Closing Balance	Notional Interest @12%	Interest already credited in P&L	Difference to be added
1 /	Bindu S Chandra	1,05,16,712	12,62,005	0	12,62,005
2	Global Biz Prop Ventures Pvt Ltd	7,00,000	30,061	0	30,061
3	Mysore Logistics Pvt Ltd	10,05,000	40,550	0	40,550
4 /	Mysore International Pvt Ltd	75,12,225	9,02,260	0	9,02,260
5	Primus Engineering Solutions	23,57,600	2,29,912	0	2,29,912
6	S Susheela	2,86,60,770	37,07,487	0	37,07,487
7 /	Swiss Smile Dental Clinics India Pvt Ltd	6,91,04,778	82,86,110	0	82,86,110
8	CBS Hi Tech Ventures Pvt Ltd	7,91,35,707	95,21,464	77,51,327	17,70,137
9	P V Line Pvt Ltd	8,22,743	22,164	19,948	2,216
Total		19,98,15,535			1,62,30,738

9. Since borrowed funds on which interest was paid was not used for the purpose of business but used for giving interest free loan to sister concerns, the AO disallowed interest expenditure to the extent of such diversion of funds for non-business purpose i.e., to the extent of Rs.1,62,30,738/- as given in the chart above. The same was added to the total income of the Assessee.

10. Before CIT(Appeals), the Assessee submitted that it had, its own funds in the form of share capital, free reserves, interest free rental deposits from tenant when interest free advances were given to the related parties and therefore the borrowed funds on which interest was paid cannot be said to have been not used for the purpose of business of the Assessee. The Assessee could not demonstrate before CIT(A) nor before the Tribunal, the correctness of the aforesaid plea. Apart from the above, the Assessee submitted that each and every loan given to the related parties were given for the purpose of business of the Assessee only. We shall deal with each of the 9 related parties, whose details are given in the chart given in the earlier paragraphs of this order, to whom the interest free loans were given. As far as parties listed in Sl.No.5, 8 & 9 of the Chart, viz., Primus Engineering Solutions, CBS Hi Tech Ventures Pvt. Ltd., and P.V.Line Pvt.Ltd., the plea of the Assessee was that it charged interest on these loans to the related parties. To the extent of interest received the AO has given credit while working out the interest expenses to be disallowed. The plea of the Assessee before the CIT(A) in so far as the aforesaid three parties are concerned was that interest income received as considered by the AO was less than what was accounted for by the Assessee and that in the case of Swiss Smile Dental Clinics India Pvt.Ltd., the plea of the Assessee was that interest income receivable was not considered at all by

the AO. The CIT(A) on the above plea has given the following directions in his order:-

“5.6 As regards the claim of the appellant that it had charged interest in relation to advances/loans given to three companies and the disallowance of interest made in respect of these companies has wrongly been computed by the AO, it is noted that the AO has considered the interest received from these parties on the basis of related party transactions reported in the financials of the company. The appellant has claimed that the interest received was more than that and the same has duly been reflected by it as other income in its P & L account. This aspect can be verified by the AO and if the actual amount of interest received from M/s CBS Hi Tech Ventures Pvt. Ltd., M/s Primus Engineering Solutions and P V Line Pvt. Ltd. is more than what has been considered by the AO while working out the disallowance, the credit for the same may be given to the appellant.”

11. Except the above submission on the aforesaid three parties no evidence whatsoever was filed by the Assessee to show that the loans given to these three parties were for the purpose of Assessee's business and therefore, we are of the view that in respect of the aforesaid three parties, no interference is called for to the order of the CIT(A).

12. With regard to the remaining 6 persons, the Assessee has not given any evidence with regard to the nexus between the Assessee's business and interest free loan to Bindu S.Chandra, Mysore International Pvt.Ltd., and Swiss Smile Dental Clinics India Pvt.Ltd., either before the revenue authorities or before the Tribunal and therefore the order of the CIT(A), in so far as these two parties are concerned, is also confirmed.

13. As far as interest free loan to Global Biz Prop Ventures Pvt.Ltd., is concerned, the plea of the Assessee was that this company was a group company and did not have sufficient funds to maintain minimum balance with ICIC Bank, Bangalore-1. Therefore the interest free loan was given so

that the image of the Assessee in the eyes of the public does not suffer. In our view this explanation was rightly rejected by the CIT(A) because the business purpose of the interest free loan has not been established by the Assessee.

14. As far as interest free loan to Mysore Logistics Pvt.Ltd., is concerned, the plea of the Assessee was that the loan was given by it to Mysore Logistics Pvt.Ltd., to enable the later to make payment to Karnataka Udyog Mitra for the purpose of paying fees for single window clearance for setting up Logistic Park at Bhaktipura and the project was to be developed by the Assessee. The aforesaid claim has not been substantiated with any credible evidence whatsoever, except the self-serving statement of the Assessee. What is Assessee's interest in the project, whether Assessee intends to develop the project and why the payment is routed through Mysore Logistics Pvt.Ltd., and what is the connection between the project and Mysore Logistics Pvt.Ltd., are not explained. Therefore the business purpose, in our view was rightly not accepted by the CIT(A).

15. As far as Primus Engineering Solutions Pvt. Ltd., is concerned, it is claimed that interest was charged on this loan and the CIT(A) has directed the AO to verify this aspect and allow relief. Hence, we need not examine the business purpose of this loan, as the loan is not interest free loan.

16. What is now left for consideration is interest free loan to G.Susheela who is a director of the Assessee. It was the plea of the Assessee that it was in real estate and property development business. To acquire land for property development, agricultural lands were proposed to be acquired in Bhaktipura. The process involved is to acquire agricultural lands and then convert the usage from Agricultural to non-Agricultural purposes. A company cannot acquire Agricultural lands as per the Karnataka Revenue

Rules and hence the modus operandi adopted is to acquire lands in the name of individuals and after conversion for non-agricultural use, the company acquires the land and carries out development. The advances given to G.Susheela was for acquiring land. It was submitted that there exists agreement between the Assessee and G.Susheela in this regard but no copies were either filed before the revenue authorities or before the Tribunal. Evidence to show payment of Advance to alleged land owners was also filed. The CIT(A) however did not agree with the stand of the Assessee for the following reasons:-

“5.2 The submissions of the appellant have duly been considered. The appellant has claimed that loan given to Director Ms Susheela is for the purchase of land at Bhakthipura for the projects of the appellant and so the loan needs to be treated as for business purpose. The appellant submitted that such purchase of land is currently in progress and the land shall be used for the purpose of the business once the same are converted for non-agriculture use. This contention of the appellant is without any merit. The appellant has admitted that the land to be purchased by Ms Susheela would be agricultural land. As per existing laws a company cannot purchase agricultural land. So giving advance for purchase of agricultural land cannot be considered as to be for the purpose of the business of the appellant. The argument of the appellant is that the Director would transfer such land after obtaining necessary 'change of land use' is also without any merit. By making this argument the appellant is admitting that it is circumventing the law of land by such means. Further this is just a presumption of the appellant that the Government would allow it change of land use for business purposes. So the advance given by the appellant to its Director cannot be considered as business exigency of the appellant. Further the land meant to be purchased would not be used for the existing business of the appellant but for the purpose of expansion of its business and any expenditure in relation to that can only be of capital nature and not revenue expense. So even on this account proportionate expenditure on account of interest would need to be disallowed even if the loans/advances are considered for business purposes.”

17. The stand taken by the Assessee has not been established with credible evidence. There is no agreement between G.Susheela and the Assessee to substantiate the claim of the Assessee. There is no material brought on record to show any obligation on the part of G.Susheela to part with her rights over any property that she might acquire either as owner as agreement holder in favour of the Assessee. In such circumstances, the plea of the Assessee deserves to be rejected and was rightly rejected by the CIT(A).

18. We find no grounds to interfere with the order of the CIT(A) and accordingly, the relevant ground of appeal of the Assessee is dismissed.

19. In the result ITA No.2287/BANG/2018 is partly allowed.

20. Thus, ITA No.2286/Bang/18 is allowed while ITA No.2287/Bang/2018 is partly allowed.

Pronounced in the open court on this 6th day of March, 2020.

Sd/-

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 6th March, 2020.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore