

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.1676/Bang/2019
AssessmentYear:2013-14

M/s. Ballal Tourist Hotel Pvt. Ltd. No.74/4, Residency Road Bangaluru-560 025. PAN NO :AAACB8432C	Vs.	Deputy Commissioner of Income-tax Circle-1(1)(2) Bangaluru
APPELLANT		RESPONDENT

Appellant by	:	N O N E
Respondent by	:	Shri R. Premi, D.R.

Date of Hearing	:	09.03.2020
Date of Pronouncement	:	11.03.2020

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The appeal filed by the assessee is directed against order dated 23.5.2019 passed by Ld. CIT(A)-1, Bengaluru and it relates to assessment year 2013-14.

2. None appeared on behalf of the assessee. Hence, we proceed to dispose of the appeal ex-parte without presence of the assessee.

3. The grounds of appeal urged by the assessee relate to solitary issue, viz., disallowance made u/s 14A of the Income Tax Act, 1961 (hereinafter called as 'the Act'). We notice that the assessee did not appear before Ld. CIT(A) also, hence, the first appellate authority was constrained to pass order ex-parte without presence of the assessee.

4. We heard Ld. D.R. and perused the record. During the year under consideration, the assessee has received dividend income of Rs.10.57 lakhs and claimed the same as exempt u/s 10(34) of the Act. However, the assessee did not disallow any amount u/s 14A of the Act. Hence the A.O. disallowed a sum of Rs.7.25 lakhs u/s 14A of the

Act read with rule 8D of the I.T. Rules. The said addition was confirmed by Ld. CIT(A).

5. In the grounds of appeal raised by the assessee before the Tribunal, the assessee has stated that the own funds available with it is in excess of the value of investment. The assessee has further contended that for the purpose of computing average value of investment, only those investments which have yielded exempt income should be considered.

6. We notice that both the above contentions have not been examined by the tax authorities. The Hon'ble Karnataka High Court has held in the case of Microlabs Ltd (383 ITR 490), by concurring with the view taken by Hon'ble Bombay High Court in the case of HDFC Bank Ltd (ITA 33/2012 dated 23-07-2014) has held that no interest disallowance under rule 8D(2)(ii) of I.T. Rules is

called for, when the own funds available with the assessee is in excess of the value of investments. Hence, the first contention of the assessee with regard to the disallowance of interest expenditure made under rule 8D(2)(ii) shall be covered by the above said decision rendered by Hon'ble jurisdictional Karnataka High Court.

7. In the case of Vireeth Investments 165 ITD 27, the Delhi Special Bench of Tribunal has held that for the purpose of computing the average value of investments under rule 8D(2)(iii), only those investments which have yielded exempt income should be taken into account. Hence, the second contention of the assessee would be covered by above said decision.

8. However both the contentions of the assessee require factual verification. We also notice that the tax authorities have computed disallowance without following

the decisions cited above. Under these set of facts, we are of the view that the issue of disallowance u/s 14A of the Act, in the instant case, require fresh examination at the end of the Assessing Officer. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and restore the same to the file of the A.O. for examining it afresh by considering both the decisions referred above. The assessee is also directed to furnish all the details in support of its contentions.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 11.03.2020.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 11th March, 2020.
/VG/

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
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4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
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6. Date of uploading the order on
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11. The date on which the file goes to the Assistant
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12. The date on which the file goes to dispatch section for
dispatch of the Tribunal Order
13. Date of Despatch of Order.
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14. Dictation note enclosed.....