

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

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

ITA No.1669/Bang/2019
Assessment year: 2015-16

Shamanur Kallappa & Sons, No.22/1-2, Chowkipet, Davangere – 577 001. PAN: AAFFS 2646M	Vs.	The Deputy Commissioner of Income Tax, Central Circle 1(3), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Bharadwaj Sheshadri, Advocate
Respondent by	:	Shri Priyadarsi Mishra, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	17.06.2020
Date of Pronouncement	:	19.06.2020

ORDER

Per N.V. Vasudevan, Vice President

This is an appeal by the Assessee against the order of the CIT(Appeals) dated 21.05.2019 relating to assessment year 2015-16.

2. The grounds of appeal raised by the Assessee reads thus:

“1. The order of the Learned Assessing Officer in so far as it is against the appellant is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The Learned Assessing Officer erred in making an addition of Rs.9,43,481/- by disallowing expenditure under section 14A of the Income Tax Act 1961, even though no expenditure is attributable to the exempt income. Further, the Learned Assessing Officer erred h) not considering the intention behind making the said investment in the sister concern, which is

purely strategic in nature and not with a view to earn exempt income. The Learned Assessing Officer erred in failing to appreciate that the investment was made out of own funds, as there was sufficient own funds available with the Appellant and thus there was no interest expenditure incurred in respect of the said investment, so as to invoke the provision of Section 14A.

3. Without prejudice to the right to seek waiver with the Hon'ble CCIT, the appellant denies itself liable to be charged to interest U/s. 234-B of the Act, which under the, facts and in the circumstances of the appellant's case deserves to be cancelled.

4. For the above and other grounds of appeal urged at the time of hearing of the appeal,, your appellant prays that the relief sought for, may be granted and justice rendered.”

3. The only issue that arises for consideration in this appeal is with regard to disallowance u/s.14A of the Income Tax Act, 1961 (the Act). We shall take up for consideration Gr.No.3 raised by the Assessee. At the time of hearing of this appeal, it was brought to our notice by the Id. counsel for the assessee that there was no dividend income or other exempt income earned by the assessee during the relevant previous year. He drew our attention to the computation of total income at page-37 of the paper book in which under the heading Schedule EI (exempt income) no income is shown. Though the AO in his order has not disputed this position, yet he has proceeded to make the impugned disallowance on the basis that section 14A of the Act would apply even when exempt income was not earned in a particular Assessment year (Vide Paragraph 5.4.8 of AO's order). The CIT(A) confirmed the action of the AO in making disallowance u/s.14A of the Act.

4. At the time of hearing of this appeal, it was brought to our notice by the Id. counsel for the assessee that the admitted factual position in the present case is that there was no dividend income or other exempt income earned by the assessee during the relevant previous year. The Id. counsel

for the assessee drew our attention to certain decisions on the issue, copies of which were filed in the paper book. We, however, find that the proposition canvassed by the AR is supported by a decision of the Bangalore Bench of ITAT in the case of *M/s UB Infrastructure Projects Ltd., Vs. DCIT 2098/Bang/2016 (asst. year 2012-13) order dated 22/12/2017*, wherein 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 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. Hololcim 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. The Id. DR however placed reliance on the order of the CIT(A) and the circular of the CBDT Circular No.5/2014 dated 11-2-2014 which clarified that section 14A would apply even when exempt income was not earned in a particular Assessment year and confirmed the action of the AO in making disallowance u/s.14A of the Act.

6. We are of the view that in the light of the decision of the Tribunal referred to earlier which in turn is based on decisions of Hon'ble Delhi High Court in the case of *Cheminvest Ltd. (supra)*, the disallowance of expenditure u/s 14A of the Act deserves to be deleted. We may also add

that the High Court of Delhi in the case of *Pr. CIT Vs. IL & FS Energy Development Co. Ltd. (2017) 84 taxmann.com 186(Delhi)* has held that CBDT Circular upon which extensive reliance is placed by revenue does not refer to rule 8D(1) at all, but only refers to the word "includible" occurring in the title to rule 8D as well as the title to section 14A. The Circular concludes that it is not necessary that exempt income should necessarily be included in a particular year's income for the disallowance to be triggered. The Court held that the process of interpretation adopted by the CBDT will be a truncated reading of section 14A and rule 8D particularly when rule 8D(1) uses the expression 'such previous year'. Further, it does not account for the concept of 'real income'. It does not note that under section 5, the question of taxation of 'notional income' does not arise. For all of the aforementioned reasons, the Court held that the CBDT Circular dated 11-5-2014 cannot override the express provisions of section 14A, read with rule 8D. In view of the above conclusion on Gr.No.3, the other grounds of appeal do not require any adjudication.

7. In the result, appeal of the Assessee is allowed.

Pronounced in the open court on this 19th day of June, 2020.

Sd/-

(B R BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 19th June, 2020.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.