IN THE INCOME TAX APPELLATE TRIBUNAL
"B"BENCH: BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENTAND
SHRI B.R. BASKARAN, ACCOUTANT MEMBER

ITA Nos.284/Bang/2020
AssessmentYear: 2014-15

M/s. Century Real Estate Holdings Pvt. Ltd. No.10/1, Ground Floor Lakshminarayana Complex Palace Road Bengaluru-560 052. **PAN NO :AADCC0651M**	**Vs.**	The Asst. Commissioner of Income Tax Central Circle-2(2) Bangalore
APPELLANT		**RESPONDENT**

S.P. No.113/Bang/2020 (Arising out of ITA Nos.284/Bang/2020)
Assessment Year: 2014-15

M/s. Century Real Estate Holdings Pvt. Ltd. No.10/1, Ground Floor Lakshminarayana Complex Palace Road Bengaluru-560 052.	Vs.	TheAsst. Commissioner of Income Tax Central Circle-2(2) Bangalore
APPELLANT		**RESPONDENT**
Appellant by	:	Smt. Sheetal Borkar, A.R.
Respondent by	:	Shri Muzaffar Hussain, D.R.

Date of Hearing	**:**	18.06.2020
Date of Pronouncement	**:**	24.06.2020

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

This appeal and stay petition have been filed by the assessee and they relate to assessment year 2014-15. The appeal is directed against order dated 11.2.2020 passed by Ld. CIT(A)-11, Bengaluru. The grounds of appeal urged by the assessee read as under:

1. The learned CIT(A) has erred in passing the order in the manner which she did.
2. The learned CIT(A) is wrong in law by confirming the additions of the Assessing Officer and passing the order without considering the submissions of the appellant.
3. The learned CIT(A) is wrong in law in confirming the addition made by the Assessing Officer u/s 14A r.w. Rule 8D of the Act.
4. The learned CIT(A) has erred in not recording the satisfaction before proceeding to invoke the provisions of s.14A r.w. Rule 8D of the Act.
5. The learned CIT(A) ought to have appreciated that no expenditure is incurred to invoke S.14A since most of the investments are carried forward from the previous year.
6. The learned CIT(A) ought to have appreciated that the appellant had sufficient funds of its own, thereby making the disallowance u/s 14A r.w. Rule 8D unwarranted.
7. The learned CIT(A) further, failed to appreciate that the disallowance made in much more than the exempt income.
8. Without prejudice, the disallowance is excessive, arbitrary, unreasonable and ought to be deleted.

9. For these and other grounds that may be urged at the time of haring of the appeal, the Appellant prays that the appeal may be allowed.

2. All the grounds urged by the assessee are directed against the disallowance made u/s 14A of the Act. The facts relating thereto are discussed in brief. The assessee is a real estate developer. During the year under consideration, the assessee has received following income, which were claimed as exempt:

a) Share of profit from partnership firm – Rs.1,02,01,474/-

b) Dividend from mutual funds - Rs.2,04,183/-

Total exempt income – Rs.1,04,05,657/-

The assessee did not make any disallowance u/s 14A of the Act. The A.O. noticed that the amount to be disallowed u/s 14A of the Act as per workings given rule 8D of Income Tax Rules is Rs.20,92,40,552/-. Accordingly, the AO issued a show cause notice to the assessee to explain as to why the above said amount should not be disallowed u/s 14A of the Act. In reply thereto, the assessee submitted that it did not incur any expense during the year for earning exempt income; that most of the investments have been brought forward from earlier year; that the investments in equity and preference shares have been made out of own funds and that the investments made in associate and subsidiary companies

are strategic investments in the nature of equity and preference shares. The assessee also contended that, according its own workings, the disallowance u/s 14A of the Act works out to Rs.7,54,468/- only.

3. The A.O. did not accept the contentions of the assessee However, he computed the disallowance at Rs.19.95 crores; which consisted of interest disallowance of Rs.18.65 crores under rule 8D(2)(ii) and disallowance of Rs.1.28 crores out of administrative expenses under rule 8D(2)(iii). The AO completed the assessment by making disallowance of Rs.19.95 crores u/s 14A of the Act.

4. In the appellate proceedings before Ld CIT(A), the assessee contended that the AO has not recorded dissatisfaction before invoking provisions of Rule 8D. It was further submitted that majority of these investments have been made in the partnership firms and the assessee has earned interest income as well as cross charged expenditure also to the partnership firms. It was also submitted that the A.O. should have considered only those investments, which have yielded exempt income. Without prejudice to the above, it was also contended that the disallowance u/s 14A of the Act should be restricted to the amount of exempt income.

5. The Ld. CIT(A) rejected the contentions of the assessee that the AO did not record dissatisfaction by observing that the AO has duly looked into the accounts of the assessee. With regard to other arguments of the assessee, the Ld CIT(A) took support of the CBDT circular No.5/2014 dated 11.2.2014, which stated that the disallowance u/s 14A of the Act should be made even if the tax payers has not earned any exempt income, and rejected all other arguments. Accordingly, he confirmed disallowance made by the A.O. Aggrieved, the assessee has filed this appeal before us.

6. We have heard the rival contentions and perused the records. The ground nos. 1, 2, 3, 5, 8 and 9 are general in nature. Ground no.4 is related to non-recording of dissatisfaction. As rightly pointed out that the Ld CIT(A), we notice that the AO has issued show cause notice to the assessee on due examination of financial statements of the assessee, since the assessee did not make any disallowance u/s 14A of the Act, even though it had earned exempt income. Hence the dissatisfaction of the AO has been demonstrated in the assessment order and it is not a case of mechanical invoking of provisions of Rule 8D. Accordingly we reject ground no.4 of the assessee.

7. In ground no.6, the assessee is contending that the assessee has got sufficient own funds and hence

disallowance u/s 14A is not warranted. Before us, the Ld. A.R. submitted that the own funds available with the assessee is in excess of the value of investment made in shares and hence the A.O. should not have disallowed any expenditure out of interest expenses under Rule 8D(2)(ii) of I T Rules. In this connection, Ld. A.R. invited our attention to the copies of Balance Sheet placed in the paper book. On a perusal of the same, we notice that the Ld. A.R. has considered only the value of investments made in shares for advancing this argument and did not consider the value of investments made in partnership firm. We have noticed earlier that the exempt income earned by the assessee included "share income from partnership firm", which is exempt u/s 10(2A) of the Act. Hence, we are of the view that the investments made in partnership firm are also required to be considered for comparing the value of investments with the available own funds. We notice that the value of investments held by the assessee as at the year end is Rs.1,444.46 crores, whereas the own funds available with the assessee was Rs.585.21 crores only. Hence, it cannot be said that the own funds available with the assessee was more than the value of investments. Hence, this argument of the assessee also fails on the above said facts.

8. Before addressing ground no.7, we prefer to adjudicate two more contentions urged orally by Ld A.R. The first

contention of Ld A.R was that the share income from partnership firm should not be considered as exempt income, since the profits of partnership firm have already suffered tax in the hands of the partnership firm. We notice that the very same issue was considered by Ahmedabad Special bench of ITAT in the case of Shri Vishnu Anand Mahajan (ITA No.3002/Ahd/2009 dated 25-05-2012) and identical contentions made by the assessee were rejected by holding that, once the share income is excluded from the total income u/s 10(2A) of the Act, the provisions of section 14A of the Act would apply to it. Hence, this contention of the assessee would fail.

9. The next contention urged by the assessee is a partner in many firms. Some firms have earned profit and other firms have incurred loss. She submitted that the A.O. has considered only "share of profit received from partnership firm" for the purposes of sec.14A and did not consider "share of loss divided to the assessee". The Ld A.R submitted that the share of profit/loss from partnership firms should be cumulated and in that case, net result would be only loss from the partnership firms. Hence the AO should have ignored the share of profit received from some of the firms for the purposes of computing disallowance under sec.14A of the Act. We do not find any merit in this contention of the assessee, since

what is exempted under the Act is share income received from the partnership firm u/s 10(2A) of the Act, meaning thereby, the profit or loss received from the partnership firm does not enter into computation of income at all. Hence the question of setting off income from partnership firm inter se does not arise. Accordingly, once a particular income does not enter into the computation on the ground the same is exempt, as held by special bench in the case of Sri Vishnu Anand Mahajan (supra), provisions of section 14A of the Act would apply. In this case, there is no dispute that the share income from partnership firm to the tune of Rs.1,02,01,474/- has been claimed as exempt u/s 10(2A) of the Act. Hence the provisions of sec.14A shall apply to the above said exempt income.

10. In ground no.7, the assessee is contending that the disallowance made by the tax authorities u/s 14A of the Act is much more than exempt income. Before us, the Ld. A.R. submitted that the quantum of disallowance u/s 14A of the Act should not exceed the amount of exempt income. In support of this proposition, the Ld. A.R. placed reliance on the decision rendered by Hon'ble High Court of Delhi in the case of Joint Investment Private Limited Vs. CIT 372 ITR 694 and also the decision rendered by Mumbai bench of Tribunal in the case of Future Corporate Resources Limited Vs. DCIT (ITA No.4658/Mum/2015 dated 26.7.2017).

11. The Hon'ble Delhi High Court has considered an identical issue in the case of PCIT vs. Caraf Builders & Construction (P) Ltd (2019)(101 taxmann.com 167) and has held as under:-

> **"25.** Total exempt income earned by the respondent-assessee in this year was Rs. 19 lakhs. In these circumstances, we are not required to consider the case of the Revenue that the disallowance should be enhanced from Rs. 75.89 crores to Rs. 144.52 crores. Upper disallowance as held in *Pr. CIT* v. *McDonalds India (P.) Ltd.* ITA 725/2018 decided on 22nd October, 2018 cannot exceed the exempt income of that year."

The Mumbai bench of Tribunal has also taken an identical view in the case of Future Corporate Resources Ltd (supra) and the relevant observations made by the Tribunal in the above said case are extracted below:-

> **"10.** Coming to the second argument of the assessee, the assessee argued that it had earned meager dividend income of Rs. 24,138 as against which, the assessing officer disallowed a sum of Rs. 3,36,28,000 which is more than the exempt income. The assessee further argued that dis-allowance under section 14A cannot exceed amount of exempt income. The assessee relied upon case laws in support of its arguments. We find that the Hon'ble Delhi High Court in the case of *Joint Investments (P.)*

Ltd. (supra) held that the window for dis allowance is indicated in section 14A and is only to the extent of disallowing expenditure incurred by the assessee in relation to tax exempt income. This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case. We further notice that the Hon'ble Delhi High Court in the case of *CIT v. Holcim India (P.) Ltd. (2014) 272 CTR 282 (Delhi)* has held that there can be no dis allowance under section 14A in the absence of exempt income. The rationale behind these judgments is that the amount of dis allowance cannot exceed exempt income. In this case, on perusal of the facts, we find that the assessee has earned exempt income of Rs. 24,138, whereas the assessing officer disallowed an amount of Rs. 3,36,28,000. Therefore, considering the facts and circumstances of the case and also following the ratios of the case laws discussed above, we are of the view that dis allowance under section 14A cannot exceed the exempt income. Hence, we direct the assessing officer to restrict dis allowance under section 14A to the extent of exempt income earned by the assessee."

The above said decisions would support the contention of the assessee on this point. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to restrict the disallowance u/a 14A to the amount of exempt income.

12. Since appeal itself is disposed of, the stay petition shall become infructuous.

13. In the result, the appeal of the assessee is partly allowed and stay petition is dismissed.

Order pronounced in the open court on 24.6.2020.

Sd/-	**Sd/-**
(N.V. Vasudevan)	**(B.R. Baskaran)**
Vice President	**Accountant Member**

Bangalore,
Dated 24th June, 2020.
VG/SPS

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.