



ITA No.3760/Mum/2018
Assessment Year :2013-14
Siti Cable Network Ltd.

आयकर अपीलीय अधिकरण "जी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.3760/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2013-14)

DCIT-16(1) Room No.439 Aaykar Bhavan, M.K. Marg Mumbai-400 020.	बनाम/ Vs.	M/s. Siti Cable Network Ltd. 135, Continental Building Dr. Annie Besant Road Worli, Mumbai-400 018.
स्थायीलेखासं./जी आइ आर सं./PAN/GIR No. AAACW-6349-M		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

C.O. No.157/Mum/2019
(Arising out of ITA No. 3760/Mum/2018)
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Siti Cable Network Ltd. 135, Continental Building Dr. Annie Besant Road Worli, Mumbai-400 018.	बनाम/ Vs.	DCIT-16(1) Room No.439 Aaykar Bhavan, M.K. Marg Mumbai-400 020.
स्थायीलेखासं./जी आइ आर सं./PAN/GIR No. AAACW-6349-M		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Jay Bhansali -Ld. AR
Revenue by	:	Shri V. Vinod Kumar -Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	25/06/2020
घोषणा की तारीख / Date of Pronouncement	:	25/06/2020



आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2013-14 contest the order of Ld. Commissioner of Income Tax (Appeals)-4, Mumbai [CIT(A)], Appeal No. CIT(A)-4/IT-128/ACIT-16(1)/2016-17 dated 22/03/2018 on following grounds of appeal: -

- i) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance u/s, 14A of the I.T. Act, 1961 without considering the CBDT Circular No. 5 of 2014 dated 11.02.2014 wherein it was clearly stated that the legislative intention is to allow only that expenditure which is relatable to earning of income and it therefore follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance irrespective of the fact whether such income has been earned during the financial-year or not.
- ii) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance u/s. 14A of the I.T. Act, 1961 by ignoring the fact that once a particular income itself is not to be included in the total income is exempted from tax, there is no reasonable basis for giving benefit of deduction of expenditure incurred towards earning such income.
- iii) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance u/s. 14A of the I.T. Act, 1961 and thereby not appreciating that Section 14A does not use the work "income of the year" but "income under the Act" which clearly indicates that for invoking provisions of Section 14A, it is not necessary that the assessee should have earned exempt income during the financial year under consideration.
- iv) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance u/s. 14A of the I.T. Act, 1961 without considering that in cases involving deduction u/s. 57(iii) of the I.T. Act, it was held by the Courts that actual earning of the income is not sine qua non for deciding the deduction of expenditure laid out or expended wholly or exclusively for the purpose of earning the income. Thus, taking the same logic forward, where investment has been made in shares, which did not yield any dividend in the year under consideration, the expenditure incurred for earning the income is deductible notwithstanding the fact that no such income has been earned.
- v) The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing officer be restored."

2. The assessee, upon receipt of notice of hearing, has filed cross-objection. The grounds taken in its cross-objection read as under: -



1. The Assessing Officer [hereinafter referred to as "the AO] erred in making disallowance of Rs.1,78,44,3407- (i.e. Rs. 1,69,00,1907- out of interest and Rs. 9,44,1507- out of expenses) under section 14A of the Act without giving any specific finding or recording any dissatisfaction with the correctness claim made by assessee in the return of income.
2. The AO erred in disallowing expenses under section 14A of the Act without establishing any nexus between expenses and exempt income;
3. The AO 7 CIT(A) failed to appreciate that disallowance under section 14A read with Rule 8D could not be added to book profit u/s 115JB of the Act.
4. The above cross objections are without prejudice to each other"

3. The learned counsel for Assessee, Shri Jay Bhansali, at the outset, submitted that the only issue involved in the appeal is disallowance u/s. 14A and the assessee has not earned any exempt income during the year. Therefore, no such disallowance could be made u/s 14A in terms of following binding judicial precedents: -

1. Pr.CIT vs. Rivian International (P) Ltd. (ITA 693 of 2015 dated 21/11/2017)
2. Pr. CIT Vs. Huntsman International (India) Pvt.Ltd. (ITA 1619 of 2016)
3. Cheminvest Ltd. Vs. CIT (378 ITR 33)
4. Finquest Securities Pvt.Ltd. vs. ACIT [ITA 2540/M/2017] and
5. ACIT Vs. Vireet Investments (P.) Ltd. [82 taxmann.com 415]

The learned DR could not controvert the said fact but submitted that disallowance u/s 14A has to be made in terms of CBDT Circular No. 5 of 2014 dated 11/02/2014 which mandate such disallowance notwithstanding the quantum of exempt income earned by the assessee during the year.

4. We have given a thoughtful consideration to the rival submissions and we have also perused the relevant material on record including judicial pronouncements as cited by Ld. AR during the course of hearing.

5. Facts on record would reveal that the assessee being resident corporate assessee has been assessed for year under consideration in scrutiny assessment u/s 143(3) vide order dated 17/03/2016 wherein it



has been saddled with additional disallowance u/s 14A for Rs.178.44 Lacs. The said disallowance has been made while computing the income under normal provisions as well as while computing Book Profits u/s 115JB.

6. The assessee has not earned any exempt income during the year. However, still it offered suo-moto disallowance of Rs.39.23 Lacs u/s 14A while filing its return of income. The Ld. AO, disregarding the fact that the assessee has not earned any exempt income during the year, applied Rule 8D and computed aggregate disallowance of Rs.217.67 Lacs which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.206.16 Lacs and expense disallowance u/r 8D(2)(iii) for Rs11.51 Lacs. After adjusting suo-moto disallowance of Rs.39.23 Lacs as offered by the assessee, the additional disallowance thus worked out to be Rs.178.44 Lacs and the same is the sole subject matter of appeal before us.

7. The learned CIT(A), *inter-alia*, relying upon the binding decision of Hon'ble Gujarat High Court in Cortech Energy (P.) Ltd. (45 Taxmann.com 116) and the decision of Hon'ble Bombay High Court in CIT V/s Delite Enterprises (ITA No.110 of 2009 dated 26/02/2009) deleted the additional disallowance as made by Ld. AO. Consequently, it was held that the question of adjustment of the same u/s 115JB would not arise. Aggrieved, the revenue is in further appeal before us.

8. We find that it is undisputed fact that the assessee has not earned any exempt income during the year and therefore, no additional disallowance u/s 14A could be made by revenue authorities. The said position is well-settled by catena of binding decisions of Hon'ble High Courts as cited by Ld. AR and tabulated by us in preceding paragraph



ITA No.3760/Mum/2018
Assessment Year :2013-14
Siti Cable Network Ltd.

no. 3. The Hon'ble Bombay High Court in its recent decision of **Pr. CIT Vs. Huntsman International (India) Pvt.Ltd. (ITA 1619 of 2016 dated 30/01/2019)** refused to admit the question of law raised by the revenue against the decision of Tribunal which relied upon the decision of Hon'ble Delhi High Court titled as **CIT V/s Holcim India Pvt. Ltd. (272 CTR 282)** to hold that where there is no exempt income earned by the assessee, no disallowance u/s 14A could be made. It was also noted by Hon'ble High Court that Hon'ble Supreme Court in case of CIT Vs. Chettinad Logistics Pvt. Ltd. (95 Taxmann.com 250) dismissed the Revenue's SLP against the aforesaid judgment of Hon'ble Delhi High Court in **Holcim India P. Ltd. (Supra)**. Therefore, no fault could be found in the impugned order, in this regard. Resultantly, the revenue's appeal stands dismissed which makes the exercise of delving into assessee's cross-objection merely academic in nature.

9. Resultantly, the appeal as well as cross-objection stands dismissed.

Order pronounced in the open court on 25th June, 2020.

Sd/-
(Mahavir Singh)
उपाध्यक्ष / **Vice President**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 25/06/2020
Sr.PS, Jaisy Varghese



ITA No.3760/Mum/2018
Assessment Year :2013-14
Siti Cable Network Ltd.

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.