

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2112/MUM/2019
Assessment Year: 2013-14**

DCIT Circle- 14(1)(1)

M/s. Asset Auto India Pvt. Ltd.
Vs. 14/3, Union Park, Chembur,
Mumbai 400074.

Appellant

**PAN No. AAECA0733F
Respondent**

Revenue by : Shri Michael Jerald (DR)
Assessee by : None

Last Date of Hearing : 10/09/2020
Date of pronouncement : 11/09/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the revenue. The relevant assessment year is 2013-14. The appeal is directed against the order passed by the Commissioner of Income Tax (Appeals)-21, Mumbai [in short 'CIT(A)'] and arises out of assessment completed u/s. 143(3) of the Income Tax Act. 1961 (the Act).

Though the case was fixed for hearing on 10.09.2020, neither the assessee nor its Authorised Representative appeared before the Tribunal on the above date. As there is non-compliance by the assessee, we are proceeding to dispose of this appeal after examining the materials available on record and after hearing the Ld. Departmental Representative (DR).

2. The grounds of appeal filed by the revenue read as under:

1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance u/s 14A r.w.r. 8D, amounting to Rs.1,59,65,004/-?"

2. "Whether on the facts and circumstances of the case and law, the Ld, CIT(A) erred in directing the AO to delete the disallowance u/s 14A r.w.r. 8D by relying upon the judicial precedents which did not consider in right perspective, the legislative intent contained in Circular 5 of 2014 dated 11.02.2014 which clearly lays down that for making the above disallowance, actual receipt of exempt income during the relevant A. Y. is not necessary"?

3. "The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (A.Y.) 2013-14 on 28.09.2013 declaring total income of Rs.55,12,590/- and carried forward business loss of Rs.5,55,59,262/- .

During the course of assessment proceedings, the Assessing Officer (AO) made a disallowance of Rs.1,59,65,004/- under section 14A r.w. Rule 8D of the Income-tax Rules, 1963 (the Rules).

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Learned CIT (A). Since no exempt income was earned by the assessee during the year under consideration, the Ld. CIT(A) directed the AO to delete the above addition of Rs.1,59,65,004/- with the following observations: -

“..... Since no exempt income has been earned by the appellant during the year, no disallowance can be made under section 14A of the IT Act. Reliance in this regard is placed on the decision of Hon’ble Delhi High Court in the cases of CIT v. Holcim India (P.) Ltd. [2015] 57 taxmann.com 28 and Pr. CIT Vs. IL & FS Energy Development Company Ltd., [2017] 84 taxmann.com 186 (Delhi) where it has been held that there can be no disallowance u/s 14A in the absence of exempt income. Similar view has been taken in Redington (India) Ltd., v. Addl. CIT [2017] 392 ITR 633/77taxmann.com 257 (Mad.), CIT v. Lakhani Marketing Inc. [2014] 49 taxmann.com 257/226 Taxman 45 (Mag.), CIT v. Winsome textile Industries Ltd., [2009] 319 ITR 204, CIT v. Shivam Motors (P.) Ltd., [2015] 230 Taxman 63/55taxmann.com 262 (All.) and Quantum Advisors (P.) Ltd., Vs. DCIT [2016] 73 taxmann.com 233 (Mumbai –Trib.)

Hon’ble Supreme Court has also dismissed the SLP against decision of Madras High Court in the case of CIT v. Chettinad Logistics (P.) Ltd. [2017] 80 taxmann.com 221/248 Taxman 55 (Mad.) wherein it was held that that section 14A cannot be invoked where no exempt income was earned by assessee in relevant assessment year. [CIT vs. Chettinad Logistics (P.) Ltd., [2018] 95 taxmann.com 250 (SC)].”

5. The Ld. DR relies on CBDT Circular No. 5 of 2014 dated 11.02.2014 and supports the order passed by the AO.

6. We have heard the Ld. DR and perused the material available on record. The fact remains that no exempt income was earned by the assessee during the year under consideration. The Ld. CIT(A) has rightly followed the judgement of the Hon’ble Delhi High Court in Holcim India (P.) Ltd (supra); IL & FS Energy Development Company Ltd (supra), where it has been held

that there can be no disallowance under section 14A in the absence of exempt income.

The Ld. CIT(A) has rightly referred to the SLP dismissed by the Hon'ble Supreme Court against the order of the Hon'ble Madras High Court in CIT v. Chettinad Logistics (P.) Ltd., [2017] 80 taxmann.com 221 (Mad.), wherein it is held that section 14A cannot be invoked where no exempt income was earned by the assessee in the relevant assessment year.

In view of the above position of the law, we uphold the order of the Ld. CIT(A).

7. In the result, appeal filed by the revenue is dismissed.

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai:

Dated:

GIRIDHAR, Sr.PS

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai