

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ A ” BENCH: BANGALORE

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER AND
SHRI GEORGE GEORGE K, JUDICIAL MEMBER**

ITA No.2599/Bang/2019
(Assessment Year: 2013-14)

M/s.Windsor Gardens Pvt. Ltd.,
No.81, 36th Cross, 6th Main,
5th Block, Jayanagar,
Bangalore-560 041
PAN AAACW 3001E

....Appellant.

Vs.

Assistant Commissioner of Income Tax,
Circle 7(1)(2), Bangalore.

.....Respondent.

Assessee By:	Smt.Suman Lunkar, C.A.
Revenue By:	Dr. A. Shankar Prasad K, Addl. CIT.

Date of Hearing :	16.09.2020.
Date of Pronouncement :	17.09.2020.

ORDER

PER SHRI GEORGE GEORGE K, JM :

This appeal at the instance of assessee is directed against the order of Commissioner of Income Tax (Appeals)-7, Bangalore dt.29.10.2019. The relevant Assessment Year is 2013-14.

2. The grounds raised by the assessee read as follows :

“ 1. The ld. Assessing Officer had erred in passing the order as passed by him and the learned CIT (Appeals) has erred in confirming the same. The orders passed being bad in law, and are required to be quashed in toto.

2. The ld. Assessing Officer had erred in holding that a sum of Rs.13,31,421 is disallowable under Section 14A r.w. Rule 8D of the Act and ultimately disallowing a sum of Rs.10,01,000 over and above disallowance made by the appellant amounting to Rs.3,30,421 and the learned CIT (Appeals) has erred in confirming the same. On the facts and circumstances of the case and the law applicable, the disallowance as made / confirmed is wholly erroneous is to be deleted.

3. In any case and without prejudice, the disallowance under Section 14A r.w.rule 8D of the Act cannot exceed exempt income received. The disallowance as made/confirmed is erroneous and excessive.

4. In any case and without prejudice, only those investments which have yielded exempt income should have been considered for computing disallowance under Section 14A of the Act. The computation as done by the authorities below being erroneous and excessive is to be rejected.

5. In view of the above and on other grounds to be adduced at the time of hearing, it is requested that the order passed be quashed or atleast the disallowance as made by the Assessing Officer be deleted and suitable relief under the law is to be given to the appellant and interest levied be also deleted.”

3. The assessee has also raised additional grounds which read as under :

“ 1. The disallowance under Section 14A r.w.Rule 8D of the Act cannot exceed exempt income received. The disallowance as made/confirmed is erroneous and excessive.

2. In any case and without prejudice, the additional claim of restricting the disallowance under Section 14A of the Act to the extent of exempt income only is to be accepted in spite of the fact that the appellant suo motto disallowed a sum of Rs.3,30,421 under Section 14A of the Act in the Return of Income filed.”

4. With regard to the additional ground, we note that the assessee in the Return of Income has suo moto disallowed a sum of Rs.3,30,421 under Section 14A of the Income Tax Act, 1961 ('the Act'). The Hon'ble Jurisdictional High Court in the case of Pragathi Krishna Gramin Bank Vs. JCIT 95 taxmann.com 41 (Kar) has held that disallowance under Section 14A of the Act cannot exceed the exempted income. A similar view was held by the Hon'ble Delhi High Court in the case of PCIT Vs. Caraf Builders & Constructions (P) Ltd. reported in 101 taxmann.com 167 (Delhi) and SLP filed by revenue was dismissed by Hon'ble Apex Court reported in (2019) 112 taxmann.com 322 (SC)]. During the course of assessment as well as proceedings before the first appellate authority, the issue of restriction of disallowance to the extent of exempted income was not raised by the assessee. However, the issue raised in additional ground being a legal issue, which does not require examination of fresh facts and for advancement of substantial cause of

justice, we admit the additional ground and proceed to dispose off the issue on merits. In this context, we place reliance on the judgement of Hon'ble Apex Court, in case National Thermal Power Co. Ltd. Vs. CIT reported in 229 ITR 383 (SC).

5. The brief facts of the case are as follows :

The assessee is a company. It is engaged in land development and apartment construction. The Return of Income for the Assessment Year 2013-14 was filed on 28.09.2013, declaring total income of Rs.5,70,06,240. The assessee in the Return of Income had suo moto disallowed under Section 14A of the Act, an amount of Rs.;3,30,421 as expenditure incurred for earning exempt income. During the course of scrutiny assessment, the Assessing Officer did not accept the suo moto disallowance made by the assessee under Section 14A of the Act and issued show cause notice to the assessee. The assessee contended before the Assessing Officer that investment made in equity shares of Windsor Edifices Pvt. Ltd., Windsor Malind Developers & Citizen Co-op. Society Ltd. did not yield any income and hence Section 14A of the Act was not applicable in respect to these investments. The Assessing Officer however rejected the contentions raised by the assessee and accordingly reworked the disallowance under Section 14A of the Act, to Rs.13,31,421. Since the assessee on its own had disallowed Rs.3,30,421 in its

computation of income, the remaining amount of Rs.10,01,000 was added back to the total income of the assessee. The relevant finding of the Assessing Officer in this regard read as follows :

“ 4.1 The contention of assessee is not acceptable. The expression 'income' appearing in Sec. 14A(1) includes positive income, nil income and negative income (loss). Income not forming part of Total income, whether it is positive, Nil or negative, is to be excluded in the computation of total income and the corresponding expenditure both direct and indirect should be excluded in view of the provisions of Sec. 14(2) & (3) r.w. Rule 8D. Similar issue came up before the Chennai Bench of the Hon'ble ITAT in the case of M/s MGM Diamond Beach Resorts P. Ltd V DCIT (Chennai ITAT B Bench, decision rendered on 13/06/2008 in ITA No. 2173/Mds/2005- A.Y 2002-03). In that case, the AO referring to the decision of the Hon'ble Supreme Court in the case of CIT V Rajendra Prasad Mody (115 ITR 519) held that even if no dividend income is earned, the provision would still be applicable.

4.2 In that case cited supra, the Chennai ITAT has held as follows:

"Now the question is whether if no income is earned during the year which ultimately would be exempt income, even then this provision is applicable or not. We feel that the Assessing Officer has correctly referred to the decision of Hon'ble Supreme Court in the case of CIT V Rajendra Prasad Mody (supra) where, while interpreting Sec. 57(iii), the Hon'ble Supreme Court has held that even if no income was earned, expenditure is still allowable. Sec. 57(iii) reads as under: ' Any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income'. Though Sec. 14A and Sec. 57(iii) are couched in a different language, a careful reading of the provisions would show that the intention is the same. Under Sec. 57(iii), the expenditure incurred for the purpose of earning income was allowable whereas under Sec.14A, expenditure incurred in relation to exempt income was not allowable. When the Hon'ble Supreme Court has held that even if no income was earned from the shares for which moneys were borrowed, even then interest expenditure was allowable. The Hon'ble Supreme Court rejected the argument of the Department that the earning of income was sine qua non for admissibility of deduction. It was observed that it was the purpose of the expenditure which is relevant for determining the application of Sec. 57(iii) of the Act. The same logic is applicable in the case of Sec.14A. Once the assessee is purchasing the shares, naturally the income would come only in the form of dividend which is ultimately exempt and will not form part of the total income and, therefore, the expenditure for the purpose of earning such income would not be eligible. Whether any such exempt income has been earned or not is of no consequence".

4.3 In view of the above, even if no dividend is earned & claimed as exempt during the year, disallowance u/s 14A could be made. Also the Hon'ble High Court of Kerala in the case of CIT vs SBT as quoted in 16 taxmann.com 289 (Ker.) (2011) has ruled that the purpose of investment is immaterial –

"In any case, we do not think that the object or purpose of the investment affects operation of section 14A of the I.T. Act inasmuch as any expenditure incurred for earning tax free income is not an allowable deduction by virtue of operation of the said section"

4.4 Reliance is placed on the decision of the Bombay High Court in the case of Godrej & Boyce vs. DCIT, wherein it has been held that disallowance under Rule 8D r.w.s. 14A(2) is "fair and reasonable". Accordingly, the amount of **disallowance is reworked to Rs.13,31,421.** as per Annexure-I. Since the assessee on his own disallowed Rs. 3,30,421 in computation of total income, the remaining amount of Rs. 10,01,000 is added back to the total income of the assessee."

6. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal to the first appellate authority. The Id. CIT (Appeals) confirmed the view taken by the Assessing Officer. The relevant finding of the CIT (Appeals) reads as follows :

" 5.2 The submission of the appellant has been considered. It is observed that though the appellant has also argued before the Assessing Officer that no disallowance should be made since no income has been earned from the investment, there was no contention that the investments are made out of own funds. The appellant has also not brought any material on record during the appeal proceeding in support of this argument. As regards the claim that no exempt income is earned from these investments during the year, the same is found to be not correct. From the copy of return of income filed during the appeal proceedings it is found that in computation of income under Schedule BP the appellant has shown an amount of Rs.15,431 as 'any other exempt income'. However, under Schedule E1 (details of exempt income) Rs.15,431 shown against others and no amount is shown against dividend income or interest income. But from the assessment record it is found that the appellant has filed statement of computation of total income where an

amount of Rs.15,431 is shown as dividend received exempt under Section 10(34). Under 'other income' (Note 20 to annual accounts) in P & L account, the appellant has credited an amount of Rs.15,431 as dividend received. Therefore, it is clear that the appellant company has received dividend of Rs.15,431 during the year which is exempt under Section 10(34) and the contention of the appellant that provisions of section 14A will not be applicable since no exempt income is received during the year, is not correct."

7. Aggrieved by the order of CIT (Appeals), the assessee has preferred this appeal before the Tribunal. The Id. AR relied on the judgement of the Hon'ble Jurisdictional High Court in the case of Pragathi Krishna Gramin Bank Vs. JCIT (supra). The learned Departmental Representative, on the other hand, supported the orders of the Income Tax authorities.

8. We have heard both the parties and perused the material on record. The Hon'ble Jurisdictional High Court in the case of Pragathi Krishna Gramin Bank Vs. JCIT (supra) has held the disallowance under Section 14A of the Act cannot exceed the exempt income. The relevant finding of the Hon'ble Jurisdictional High Court reads as follows :

" 10.Apparently, the expenditure, so calculated to the extent of Rs.2,48,85,000 which was disallowed by Assessing Authority is far in excess of the dividend income of Rs.1,80,30,965. The same prima facie appears to be incorrect. While the assessee claimed that no expenses was incurred in this regard, the assessing authority has disallowed the said expenditure even in excess of the dividend income itself. The said calculations do not appear to be computed in accordance with Rule 8D of the Rules. We do not find any rational basis for the same."

9. Further the Hon'ble High Court held as follows :

"14. We make it clear that the expenditure for earning exempted income has to have a reasonable proportion to the income, so earned, going by the common financial prudence."

Therefore, even if the Assessing Authority has to make an estimate of such an expenditure incurred to earn exempted income, it has to have a rational nexus with the amount of income earned itself. Disallowance under Section 14A of Rs.2,48,85,000/- as expenses to earn exempted Dividend income of Rs.1,80,30,965/is per se absurd and hypothetical. The disallowance under Section 8D cannot exceed the expenses claimed by assessee under the Proviso to Rule 8D. Therefore, the assessee claimed that assessee did not incur any such expenditure during the year in question to earn Dividends of Rs.1,80,30,965/-, the burden was upon the assessing authority to compute the interest on such borrowed funds which were dedicatedly used for investment in securities to earn such exempted Dividend income. The disallowance under Section 14A cannot be a wild guesswork bereft of ground realities. It has to have a reasonable and with the factually incurred expenses. It is not deemed disallowance under Section 14A of the Act but an enabling provision for assessing authority to compute the same on the given facts and figures in the regularly maintained Books of Accounts. The assessing authority also could not have called upon the Assessee himself to undertake the exercise of computing the disallowance under [Section 8D](#) of the Rules. Since no such exercise has been undertaken by the assessing authority, the case calls for a remand."

10. A similar view has been held by the Hon'ble Delhi High Court in the case of PCIT Vs. Caraf Builders & Constructions (P) Ltd. reported in 101 taxmann.com 167 (Del). The SLP filed by the revenue as against the judgment of Hon'ble Delhi High Court was dismissed by the Hon'ble Supreme Court in the case of PCIT Vs. Caraf Builders & Construcitons (P) Ltd. reported in 112 taxmann.com 322 (SC). In the instant case, the exempted income earned for the relevant assessment year admittedly is only a sum of Rs.15,431. This is evident from copy of audited financial statement filed along with audit report in Form No.3CB (refer page 26 of the Paper Book filed by the assessee). Going by the dictum laid down by the Hon'ble Jurisdictional High Court, the disallowance under Section 14A of the Act has to be restricted to Rs.15,431, however since the assessee has suo moto in the Return of Income had disallowed a sum of Rs.3,30,421 under Section 14A of

the Act, the disallowance is restricted to Rs.3,30,421 as per the Return of Income filed by the assessee. It is ordered accordingly.

11. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(GEORGE GEORGE K)
JUDICIAL MEMBER

Dated: 17.09.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore