

IN THE INCOME TAX APPELLATE TRIBUNAL,  
"SMC" BENCH MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA No. 3146/Mum/2019  
Assessment Year: 2014-15.

ERP Infrastructure Projects Pvt. Ltd., DCIT 12(2)-1  
30 203, Neptune CHSL Phase-2, Vs. Mumbai  
Sector-3, EMP Thakur Villa,  
Kandivali (E), Mumbai 400101

Appellant.

Respondent.

PAN AABCE8953A.

Assessee by : Shri Nimesh Chothani  
Revenue by : Ram Tiwari

Date of Hearing : 29-09-2020  
Date of pronouncement : 29-09-2020

ORDER

PER SHAMIM YAHYA, A.M.

This is in appeal by the assessee directed against order of Ld. CIT(A) dated 08/03/2019 and pertains to A.Y. 2014-15.

2. The grounds of appeal read as under:-

1. On the facts and circumstances of the case and in law, the Ld. CIT(A)-20, Mumbai erred in confirming the disallowance under section 14A of the Act to Rs.1,00,92,156/-. The Ld. CIT(A) ought to have appreciated that the disallowance/s 14A has to be restricted to the amount of exempt income earned during the year under consideration.

2. On the facts and circumstances of the case and in law, the Ld.CIT(A)-20, Mumbai erred in confirming disallowance of interest under section 36(1)(iii) to the extent of Rs.13,78,519/- treating the same as not incurred for business purpose.

a. Without prejudice to the above, the action of the Ld. CIT(A) is not justified as the same is contrary to his own action of allowing certain interest paid on loans taken for such purposes by treating the same as for business purpose.

3. As regards ground no. 1, Ld. Counsel of the assessee submitted that Ld. CIT(A) has not accepted the assessee submissions that disallowance u/s. 14 shall be restricted to the extent of the exempt income.

4. Learned Departmental Reprehensive in this regard submitted that assessing officer has not made any disallowance. That assessee has himself made the disallowance u/s. 37(1). That the same is duly noted the order of Ld. CIT(A).

5. Per contra Ld. Counsel of the assessee submitted the assessee has duly mentioned this aspect of disallowance u/s. 14A and Ld. CIT(A) has erred is not accepting the same.

6. Upon careful consideration I note that in the computation of income the assessee has mentioned under the head disallowance u/s. 37:- Expenditure relating to exempt income disallowance u/s. 14A = Rs.1,00,92,156/-.

7. The Ld. CIT(A) on this issue denied the relief regarding the disallowance by observing as under:-

4.41 I have considered the contentions of the appellant. I find that appellant's contention is totally wrong. From appellant's computation of total income which is reproduced above, the can be seen that the appellant had disallowed the expenditure u/s. 37 of the Act. In other words, the sum of Rs. 1,00,92,156/-was disallowed on the ground that those expenses were not incurred wholly and exclusively for the appellant's business. The appellant has also stated in schedule one of the competition of total income that the said sum was relatable to the

exempted income which reinforces the appellant is earlier admission that the said sum was not incurred wholly and exclusively for earning the appellant's business income and hence not allowable u/s. 37 of the Act. Therefore, I find absolutely no merit in the appellant's ground of appeal. Accordingly, I dismiss the ground of appeal No. 1.

8. Upon careful consideration I find that interest of justice will be served if the issue is remitted to the file of assessing office. If the disallowance in this regard is being made u/s. 14A, the assessing officer shall restrict the same to the extent of exempt income on the touchstone of Hon'ble High Court decision in case of Delight Enterprises ITA No. 110 of 2009 dated 26.02.2009 in which the Hon'ble Bombay High Court has followed the Hon'ble Delhi High Court decision in the case of Chem Investment vs CIT (2015) 378 ITR 33 (Del)

9. Ld. Counsel of the assessee fairly agreed to the above proposition.

10. As regards ground no.2, Ld. Counsel of the assessee submitted that he shall not be pressing the same.

11. Accordingly ground no.2 is dismissed as not pressed.

12. In the result this appeal by the assessee is partly allowed as above.

Order pronounced under rule 34(4) of ITAT Rules on this 29/09/2020

Sd/-  
( SHAMIM YAHYA)  
ACCOUNTANT MEMBER.

Mumbai; Dated 29/09/ 2020

N.V Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.

3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai

