

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “VIRTUAL COURT-A” KOLKATA*

Before **Shri P.M. Jagtap, Vice-President** and
Shri S.S.Godara, Judicial Member

ITA No.1509/Kol/2019
Assessment Year:2012-13

Dy. Commissioner of Income Tax Circle-6(2), Aaykar Bhawan, R.No. 6/15, 6 th Floor, P-7, Chowringhee Square, Kolkata-700 069	<u>बनाम /</u> V/s.	M/s West Bengal Infrastructure Development Finance Corporation Ltd. “ <i>Mangalam</i> ” Building, Blcok-A, 1 st Floor, 24, Hemanta Basu Sarani, Kolkata-700 001 [PAN No.AAACW 3432 D]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Ram Bilash Meena, CIT-DR
प्रत्यर्थी की ओर से/By Respondent	None
सुनवाई की तारीख/Date of Hearing	08-10-2020
घोषणा की तारीख/Date of Pronouncement	07-12-2020

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This Revenue’s appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-7, Kolkata’s order dated 02.04.2019, passed in case No. 1274/CIT(A)-7/Circle-6(2)/Kol/15-16 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short ‘the Act’.

Case called twice. None appears at the assessee’s behest. We accordingly dispose of this appeal *ex parte* after hearing the learned CIT-DR.

2. The Revenue's sole substantive grievance canvassed in the instant *lis* seeks to reverse the CIT(A)'s appellate action deleting sec. 14A r.w.s. Rule 8D disallowance of ₹1,56,07,230/- made in the assessment dated 28.03.2015 framed u/s 143(3) of the Act. Learned CIT-DR invited our attention to the CIT(A)'s detailed discussion to this effect reading as under:-

"4. Ground Nos. 1 to 5

These grounds are interlinked and directed against the action of the AO in making a disallowance of ₹15,60,72,830/- u/s 14A r.w. Rule 80. The AO observed that the assessee itself had *suo moto* disallowed an amount of ₹31,86,969/- u/s 14A of the Act which was found to be not convincing and therefore proceeded to apply the provisions of Rule 80 in working out the disallowance u/s 14A of the Act. As per the second and third limb of Rule 80(2), the disallowance was worked out to an aggregate amount of ₹15,92,59,799/-. Since the appellant had *suo moto* made a disallowance of ₹31,86,969/- u/s 14A, the balance of ₹15,60,72,830/- was added back / find that the AD had mechanically proceeded to apply the provisions of Rule 8D without recording any tenable reasons as to why any further disallowance u/s 14A was to be made when the appellant itself *suo moto* made a disallowance of ₹31,86,969/- u/s 14A. There has to be a finding by the AO with cogent material evidence that the claim of the appellant was wrong, which is not the case here. On the other hand it is the contention of the AR of the appellant that in the absence of any exempt dividend income earned by the appellant, there was no question of resorting to section 14A of the Act. I find from the audited accounts of the appellant that there was no exempt income earned during the year under consideration. The issue is well settled by various judicial forums that in the absence of any exempt income, there could not be any occasion for resorting to Rule 8D r.w. section 14A of the Act. Hon'ble Delhi High Court in the case of **Cheminvest Ltd. vs. CIT** reported in 378 ITR 33 (Del) held that **"No disallowance u/s 14A can be made in a year in which no exempt income has been earned or received by the assessee. Section 14A of Income Tax Act, 1961 does not apply to shares bought for strategic purposes"**. Similarly, Hon'ble Delhi High court in the case of **CIT vs. M/s Holcim India Private Ltd.** held that **"Expenditure could not be disallowed u/s 14A of the Act in absence of any exempt income earned during the year."** Hon'ble Allahabad High court in the case of **CIT vs. M/s Shivam Motors (P) Ltd.** held that **"Hence in absence of any Tax free income, the corresponding expenditure could not be worked out for disallowance"**. The Hon'ble Tribunal Chennai Bench, in the case of **ACIT Vs N. Bhaskaran** in **ITA NO.1717/MDS/2013** has categorically held that the CBDT Circular No.5/2014 dt. 11.2.14 is not a good law and no disallowance can be made if there is no exempt income. In this regard I also rely on the decision of the jurisdictional Calcutta High Court in the case of **CIT Vs. Ashika Global Securities Ltd. (GA No. 2122 of 2014) dated 11.06.2018** wherein the High Court held that where the assessee has not derived any exempt income from the investments, then Rule 8D cannot be applied to such investments. The relevant extracts of the judgment are as follows:

"This is another useless appeal without any substance. In course of assessment, a sum of about Rs. 99 lakh debited as interest paid on unsecured loans another sum of about Rs. 9 lakh engaged the attention of the officer. The

Assessing Officer required the assessee to explain why the interest expense and the administrative expenses should not be disallowed in view of Section 14A of the Income Tax Act, 1961. The assessee replied that such income was not exempted income earned during the year and there was no question of disallowance under Rule 8D of the Income Tax Rules, 1962 read with Section 14A of the Act.

Both the Commissioner and the Appellate Tribunal found as a matter of fact that there was no exempt income for the operation of the relevant Rule. In the light of such concurrent findings and, in particular, the Department failing to demonstrate any error therein, no question of law arises in this matter."

4.1. Respectfully following the above binding judgment of the Hon'ble High Court and the decision of the Hon'ble ITAT, Kolkata in a similar case, I am of the considered view that since in the facts of the present case, none of the investments yielded dividend income during the year, the disallowance of ₹15,60,72,8301- made u/s 14A was unjustified. However, since the appellant had *suo moto* made a disallowance of ₹31 ,86,969/- u/s 14A, the AO is accordingly directed to restrict the disallowance u/s 14A to ₹31 ,86,969/-. The grounds are **allowed** accordingly."

It is evidently clear from a perusal of the above extracted lower appellate discussion that the assessee has not derived any exempt income in the impugned assessment year. Hon'ble jurisdictional high court (supra) holds that sec. 14A under Rule 8D disallowance does not get attracted in absence of such an exempt income. We therefore uphold the CIT(A)'s impugned action reversing the assessment findings to this effect. The Revenue fails in its sole substantive grievance.

3. This Revenue's appeal is dismissed.

Order pronounced in open court on 07/12/2020

Sd/-
(P.M.Jagtap)
(उपाध्यक्ष)
Vice President

Sd/-
(S.S.Godara)
(न्यायिक सदस्य)
Judicial Member

*Dkp-Sr.PS

दिनांक:- 07/12/2020

कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-DCIT, Cir-6(2), Aayakar Bhawan, R.No.6/15, 6th Floor, P-7
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2. प्रत्यर्थी/Respondent-M/s West Bengal Infrastructure Development Finance Corpn.
Ltd., “**Mangalam**” Building, Block-A, 1st Floor, 24, Hemanta
Basu Sarani, Kolkata-700 001
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।