

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

ITA NO. 3741/MUM/2019 : **A.Y : 2012-13**

Jt. Commissioner of Income Tax
(OSD) – 8(1)(1),
Mumbai. (Appellant)

Vs. M/s. Reliance Communication
Infrastructure Limited,
H-Block, 1st floor, 1st Wing,
Dhirubhai Ambani Knowledge City,
Thane Belapur Road, Koparkhairane,
Navi Mumbai 400 710.
PAN : AACCS2157H (Respondent)

Appellant by : **Smt. Ashima Gupta**
Respondent by : **Shri Jitendra Sanghvi**

Date of Hearing : **16/11/2020**
Date of Pronouncement : **13/01/2021**

ORDER

PER RAJESH KUMAR, AM :

This appeal by assessee is directed against the order of learned Commissioner of Income Tax (Appeals) - 14, Mumbai (in short 'the CIT(A)') pertaining to Assessment Year 2012-13.

2. The grounds raised by the Revenue in its appeal read as under :-

"1. On the facts and circumstances of the case and law, the Hon'ble CIT(A) has erred in deleting the disallowance of Rs.1,63,08,773/- u/s. 14A ignoring the fact that the Department has not accepted the decision of Bombay High Court in the case of Godrej & Boyce Mfg. Ltd. vs DCIT (2010) 328 ITR 81 (Bom.).

2. *On the facts and circumstances of the case and law, the Hon'ble CIT(A) has erred in deleting the disallowance u/s. 40a(ia) r.w.s. 194H as worked out by the Assessing Officer without properly appreciating the factual and legal matrix as clearly brought out by the Assessing Officer in the Assessment order.*

3. *On the facts and circumstances of the case and law, the Hon'ble CIT(A) has erred in deleting the disallowance of Rs.1,63,08,773/- u/s 14A for the purpose of computing book profit u/s. 115JB of the Act, ignoring the fact that the deletion of disallowance has not accepted by the Department."*

3. At the outset, the learned counsel for the assessee submitted that the issue raised in ground no. 1 which is qua the deletion of disallowance of Rs.1,63,08,773/- by the learned CIT(A) as made by the Assessing Officer under Section 14A of the Income Tax Act, 1961 (in short 'the Act') by accepting the decision of the jurisdiction High Court in the case of *Godrej & Boyce Mfg. Co. Ltd. vs DCIT, 328 ITR 81 (Bombay)*. The learned counsel for the assessee submitted that the issue has also been decided by the Hon'ble jurisdictional High Court in favour of the assessee in assessee's own case in ITA No. 702/2017 dated 22.07.2019 by following the decision in the case of *Cheminvest Ltd. vs CIT, 378 ITR 33 (Delhi)* as the assessee was not having any income during the year by way of exempt income qua which the provisions of Section 14A of the Act could be applied. The learned counsel for the assessee submitted before the bench that in view of the said decisions, the ground no. 1 may kindly be dismissed.

4. The learned Departmental Representative fairly agreed to the arguments of learned counsel for the assessee that the issue is covered by the decision of Hon'ble Bombay High Court in assessee's own case.

5. The undisputed facts are that the assessee did not have any exempt income during the year. After perusing the decision of the Hon'ble Bombay

High Court in ITA No. 702/2017 dated 22.07.2019 , we find that an identical issue has been decided by the Hon'ble Court in favour of the assessee in the earlier year by observing and holding as under :-

“4. Coming to second and third questions, the same emanates from the disallowance sought to be made by Revenue under section 14A of the Act. The Tribunal in the impugned judgement, came to the conclusion that the assessee had not earned any exempt income and there is, therefore, no question of disallowance under section 14A that would arise. The Tribunal had relied on the decision of the Delhi High Court in the case of Cheminvest Ltd. vs. CIT, reported in 378 ITR 33 (Delhi).

5. In view of such facts, we find no error in the view of the Tribunal. The decision of the Delhi High Court in the case of Cheminvest (supra) has been followed by this Court on numerous occasions.

6. In the result, no question of law arises. Income Tax Appeal is dismissed.”

6. We, therefore, respectfully following the decision of the Hon'ble Bombay High Court dismiss ground no. 1 of the appeal.

7. The issue raised in ground no. 2 is qua the deletion of disallowance made under Section 40a(ia) r.w.s 194H of the Act by the learned CIT(A) as made by the Assessing Officer without properly appreciating the facts and legal position under which these expenses have been incurred by the assessee.

8. At the outset, the learned counsel for the assessee submitted that the issue is covered in favour of the assessee by the same decision of Hon'ble Bombay High Court vide para 2 and 3 wherein the Hon'ble Court has held that when the transaction was between two persons on principal-to-principal basis, deduction under Section 194H of the Act is not required to be made since the payment was not for commission or brokerage. The learned counsel for the

assessee submitted that ground no. 2 may kindly be dismissed in view of the said findings of Hon'ble Bombay High Court in assessee's own case. The learned Departmental Representative fairly agreed to the same.

9. We have examined the decision of the Hon'ble jurisdiction High Court in assessee's own case being ITA No. 702/2017 dated 22.07.2019 and find that the issue has been decided on identical facts in favour of the assessee. The operative part of the said order is reproduced hereunder :-

"2. The respondent assessee is a company registered under the Companies Act. The issues arise in relation to the Assessment Year 2007-2008. The first question pertains to disallowance under section 40a(i) of the Income Tax Act, 1961 (for short, 'the act') on the ground that according to the Assessing Officer, the assessee had deducted tax at source in terms of section 194H of the Act while making certain payments. The Tribunal in the impugned judgment allowed the assessee's appeal on two grounds. Firstly, that the order under section 201 of the Act was passed holding the assessment to be in default of deduction of tax at source. In appeal, the Commissioner had allowed the assessee's appeal against which the Revenue had not carried the issue further. Even on merits, the Tribunal was of the view that the payment was made on principal to principal basis and was not a payment of a principal to the agent.

3. Having heard the learned Counsel for the parties and having perused the documents on record, we do not find any error in the view of the Tribunal. The Tribunal, as noted, besides holding that the Commissioner's order setting aside the order passed u/s 201 was not carried in appeal, had also independently examined the nature of the transaction and come to the conclusion that when the transaction was between two persons on principal to principal basis, deduction of tax at source as per section 194H of the Act, would not be made since the payment was not for commission or brokerage."

10. We, therefore, respectfully following the decision of the Hon'ble Bombay High Court dismiss ground no. 2 raised by the Revenue in its appeal.

11. The issue raised in ground no. 3 is against the deletion of disallowance of Rs.1,63,08,773/- by the learned CIT(A) as made by the Assessing Officer under Section 14A of the Act while computing the book profits under Section 115JB of the Act. Since we have dismissed ground no. 1 of Revenue's appeal by confirming the order of learned CIT(A) wherein the learned CIT(A) has deleted the disallowance made under Section 14A of the Act on the ground that assessee is not having any exempt income during the year, therefore, this ground is consequential and required to be dismissed. Accordingly, ground no. 3 of the appeal is dismissed.

12. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 13th January, 2021.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai, Date : 13th January, 2021

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai