

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

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5205/MUM/2019
Assessment Year: 2016-17**

Asst. Commissioner of
Income Tax, Circle-16(1),
Room No. 439, 4th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

PAN No. AACCP 5602 Q

Appellant

Vs. M/s Percept Ltd.,
22, Raghuvanshi Estate
11/12, Senapati Bapat Marg,
Percept House, Lower Parel,
Mumbai-400013.

Respondent

Revenue by : Ms. Shreekala Pardeshi, DR
Assessee by : None

Date of Hearing : 09/02/2021
Date of Pronouncement : 09/02/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2016-17. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-4, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing today, neither the assessee nor its authorized representative appeared before the Bench through video conferencing. As there is non-compliance by the assessee, we are proceeding to dispose off this appeal, after hearing the Ld. Departmental Representative (DR) and also examining the materials available on record.

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

- i. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance u/s. 14A of the Act without considering the CBDT Circular No. 5 of 2014 dated 11.02.2014 wherein it was clearly stated that the legislative intention is to allow only that expenditure which is relatable to earning of income and it therefore follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance irrespective of the fact whether such income has been earned during the financial-year or not?
- ii. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance u/s. 14A of the Act by ignoring the fact that once a particular income itself is not to be included in the total income is exempted from tax, there is no reasonable basis for giving benefit of deduction of expenditure incurred towards earning such income?
- iii. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance u/s. 14A of the Act and thereby not appreciating that Section 14A does not use the work "income of the year" but "income under the Act" which clearly indicates that for invoking provisions of Section 14A, it is not necessary that the assessee should have earned exempt income during the financial year under consideration?
- iv. Whether on the facts and circumstances of the case and in law, the Ld, CIT(A) has erred in deleting the disallowance u/s. 14A of the Act without considering that in cases involving deduction u/s. 57(iii) o the I.T. Act, it was held by the Courts that actual earning of the income is not sine qua non for deciding the deduction of expenditure laid out or expended wholly or exclusively for the purpose of earning the income. Thus, taking the same logic forward where investment has been made shares, which did not yield any dividend in the year under consideration, the expenditure incurred for earning the income is deductible notwithstanding the fact that no such income has been earned?
- v. The appellant prays that the order of Ld. 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 (AY) 2016-17 on 08.10.2016 declaring total income at Rs. Nil. During the course of assessment proceedings, the Assessing Officer (AO) asked to assessee to furnish details of expenditure incurred or attributable for earning exempt income, in view of the provisions of section 14A r.w. Rule 8D of the Income Tax Rules, 1962 (the Rules). The main submission of the assessee before the AO was that no exempt income was earned during the year under consideration. However, the AO was not convinced with such explanation of the assessee in view of CBDT Circular No. 5 of 2014 dated 11.02.2014. Accordingly, the AO made a disallowance of Rs.2,68,65,924/- u/s 14A r.w. Rule 8D.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). It was submitted during the course of appellate proceedings that the assessee did not earn any exempt income during the previous year relevant to the impugned assessment year. Relying on the order of the Hon'ble Delhi High Court in the case of *Cheminvest Ltd. v. CIT* (ITA No. 749 of 2014) and the Tribunal in *M/s Nitishree International Pvt. Ltd. v. ITO* (ITA No. 4603/Del/2014), the assessee submitted before the Ld. CIT(A) that since no exempt income has been earned by the assessee, no disallowance u/s 14A r.w. Rule 8D should be made. The Ld. CIT(A) by following the above two decisions deleted the disallowance of Rs.2,68,65,924/- made by the AO.

5. Before us, the Ld. DR relies on the order passed by the AO.

6. We have heard the Ld. DR and perused the relevant materials on record. The fact remains that no exempt income was earned by the assessee during the financial year 2015-16 relevant to the AY 2016-17.

That when there is no exempt income earned by the assessee, no disallowance under Section 14A of the Act can be made is no longer *res integra*.

In *Pr. CIT v. Huntsman International (India) Pvt. Ltd.* (ITA No. 1619 of 2016), the Hon'ble Bombay High Court *vide* order dated 30.01.2019 has held:-

"5. This question relates to disallowance made by the Assessing Officer under Section 14A of the Income Tax Act, 1961 r/w Rule 8D of the Rules of the expenditure incurred by the assessee for earning exempt income. The Tribunal by the judgment which is impugned in this appeal held that the assessee had not earned any exempt income during the year under consideration. The Tribunal, therefore, followed the decision of Delhi High Court in case of CIT Vs. Holcim India (Pvt.) Ltd. (2014) 272 CTR 282. In such decision, the Delhi High Court ruled that when there is no exempt income earned by the assessee, no disallowance under Section 14A of the Act can be made. It is pointed out to us that this Court in Income Tax Appeal No.693 of 2015, following the judgment of Delhi High Court in case of Holcim India (P) Ltd. (supra), has adopted the same principle making following observations :-

"3. We have given careful consideration to the submissions. On facts, it appears from the impugned judgment that the assessee had made investment in shares of closely held companies which did not declare any dividend. On fact, there is no dispute that the assessee has not earned any exempt income during the year under consideration. After consideration of Section 14A, the Delhi High Court followed decisions of certain other High Courts. Section 14A of the said Act provides that for the purpose of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the said Act. In other words, Section 14A provides that if there is an income which does not form a part

of the total income under the said Act, the expenditure which is incurred for earning the income is not an allowable deduction. Therefore, during the relevant year, if the assessee has not earned any tax free income, the corresponding expenditure incurred cannot be taken into consideration for dis-allowance.

4. We respectfully concur with the view taken by the Delhi High Court as the said view can always be taken on fair reading of Section 14A of the Said Act. A Division Bench of Allahabad High Court has also taken a similar view in the case of Commissioner of Income Tax V. Shivam Motors (P) Ltd. (supra). Hence, in our view, no fault can be found with the impugned judgment of the Appellate Tribunal whereby disallowance under Section 14A was ordered to be deleted. No substantial question of law arises. Appeal is, accordingly, dismissed."

6. Counsel for the assessee also brought to our notice the fact that the Supreme Court in case of CIT Vs. Chettinad Logistics (P) Ltd. has dismissed the Revenue's SLP against the judgment of the Delhi High Court in Holcim India (P) Ltd. (supra), taking a similar view."

6.1 Thus when there is no exempt income earned by the assessee, no disallowance under Section 14A of the Act can be made. Similar is the decision by the Hon'ble Bombay High Court in *Pr. CIT v. M/s Ballarpur Industries Ltd.* (ITA No. 51 of 2016) and the decision by the Hon'ble Punjab & Haryana High Court has held in *CIT v. Winsome Textiles Industries Ltd.* (2009) 319 ITR 204 (P&H). The Hon'ble Madras High Court in the case of *CIT v. Celebrity Fashion Ltd.* (Tax Case Appeal No. 26 of 2018) has similarly held that no disallowance can be made u/s 14A in absence of exempt income.

7. Following the above decisions, we uphold the order of the Ld. CIT(A) and delete the disallowance of Rs.2,68,65,924/- made by the AO u/s 14A r.w. Rule 8D.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 09/02/2021.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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

Mumbai;

Dated: 09/02/2021

Rahul Sharma, Sr. P.S.

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./Assistant Registrar)
ITAT, Mumbai