

THE INCOME TAX APPELLATE TRIBUNAL
“C” Bench, Mumbai
Shri Shamim Yahya (AM) & Shri C.N. Prasad (JM)

I.T.A. No. 5271/Mum/2019 (Assessment Year 2016-17)

M/s. Priya Limited 4 th Floor, Kimatrai Building 77/79, Maharshi Karve Road, Marine Lines East Mumbai-400 002. PAN : AAACP2210Q (Appellant)	Vs.	ACIT,CC-2(2)(2) Room No. 545 5 th Floor Aayakar Bhavan M.K. Road Mumbai-400020. (Respondent)
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Assessee by	Shri J.P. Bairagra
Department by	Ms. Shreekala Pardeshi
Date of Hearing	15.02.2021
Date of Pronouncement	16.02.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) dated 27.6.2019 and pertains to assessment year 2016-17.

2. The grounds of appeal read as under :-

- 1) The Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance made by Assessing Officer under section 14A read with Rule 8D(2)(iii) of Rs. 1,80,247/- being 0.5% of the average value of investments.
- 2) The Learned Commissioner of Income Tax (Appeals) further erred in not holding that no disallowance under section 14A should be made when there is no exempt income.

3. Solitary issue arises in this appeal is whether learned CIT(A) is correct in upholding an addition of Rs. 1,80,247/- under section 8D(2)(iii) being 0.5% of the average value of investment despite the assessee not carrying any exempt income.

4. Learned Counsel of the assessee submitted that the issue is squarely covered in assessee's favour as under :-

"We are relying on the Decision of Hon'ble Supreme Court in the case of Commissioner of Income Tax (Central) 1 vs. Chettinad Logistics, 95 taxmann.com 250 (Copy enclosed at Annexure-2), wherein the Apex Court held as under:

"Section 14A, of the Income-tax Act, 1961, read with rule 8D of the Income-Tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (General principle) - Assessment year 2011-12 -High Court by impugned order held that section 14A can only be triggered, if, assessee seeks to square off expenditure against income which does not form part of total income under Act, rule 8D only provides for a method to determine amount of expenditure incurred in relation to income, which does not form part of total income of assessee and it cannot go beyond what is provided in section 14A - It further held that where no exempt income i.e., dividend, was earned in relevant assessment year by assessee, section 14A could not be invoked - Whether SLP against said impugned order was to be dismissed - Held, yes (Para 1) (In favour of assessee)"

2. Further, in assessee company's own case for the Assessment Year 2008-09, 2009-10, the disallowance u/s 14A r.w.r 8D made by the Assessing Officer was rightly deleted by the CIT(A) and the said decision of CIT(A) was upheld by Hon. ITAT. Further appeal filed by department before the Hon'ble High Court of Bombay has been dismissed by the Hon'ble High Court vide order dated 09-08-2016. Further, Hon. ITAT has decided the matter in favour of the assessee for AY 2010-11 and AY 2011-12 and held that provisions of Section 14A cannot be invoked when the assessee has not earned any exempt income during the year. Copy of order of Hon. ITAT for AY 2010-11 and AY 2011-12 are enclosed as Annexure - 3 and 4 respectively."

5. Upon careful consideration and hearing both the parties we hold that the issue is covered in favour of the assessee. Hence, we set aside the order of learned CIT(A) and decide the issue in favour of the assessee.

6. In the result, this appeal filed by the assessee stands allowed.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 16.2.2021.

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

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 16/02/2021

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//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai