

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

AND

SHRI S.S. GODARA, JUDICIAL MEMBER

ITA No.443 & 444/Hyd/2020		
AY:2013-14 & 2014-15		
Deputy Commissioner of Income Tax, Circle-3(2), Hyderabad.	VS.	SMR Builders Private Limited, Hyderabad. PAN: AACCS 8214 K
(Appellant)		(Respondent)
Assessee by:	Shri C.S. Subrahmanyam	
Revenue by:	Smt. B. Kavitha Rani, DR	
Date of hearing:	27/09/2021	
Date of pronouncement:	07/10/2021	

ORDER

PER A. MOHAN ALANKAMONY, A.M.:

Both the captioned appeals are filed by the Revenue against the order of the Ld. CIT(A)-3, Hyderabad in appeal No. 10042 & 10041/2017-18/A3 & A2/CIT(A)-3, dated 27/02/2020 & 28/02/2020 passed U/s. 143(3) r.w.s 250(6) of the Act for the A.Y. 2013-14. Both these appeals are filed with a delay of 93 days each and the reason stated by the assessee is because of the Pandemic situation, the assessee could not file the appeals

within the stipulated period. Considering the Pandemic (Covid-19) Situation in the country during the relevant period, We hereby condone the delay of 93 days in filing both the appeals before the Tribunal and proceed to adjudicate the appeals on merits.

2. The Revenue has raised three identical grounds in its two appeals however, the crux of the issue is that:

“The Ld. CIT (A) has erred by restricting the disallowance U/s. 14A of the Act to the extent of exempt income as against the addition made by the Ld. AO in accordance with Rule 8D of the IT Rules, 1962.”

3. The brief facts of the case are that the assessee is engaged in the business of construction and real estate development filed its return of income for the AY 2013-14 on 29/09/2013 and for the A.Y. 2014-15 on 29/11/2014 declaring its total income as Rs. 59,78,920/- and Rs. 83,11,530/- respectively. Thereafter the case was selected for scrutiny under CASS and the assessment was completed U/s. 143(3) of the Act on 31/3/2016 and 30/11/2016 for the AY 2013-14 and 2014-15 respectively wherein the Ld. AO made addition invoking the provisions of section 14A of the Act read with Rule 8D of the Rules. On appeal, the Ld. CIT (A) restricted the disallowance for both the AYs to

the extent of exempt income aggrieved by which the assessee is now in appeal before us.

4. At the outset, we find that on the identical situation the Division Bench of the Hyderabad Tribunal in ITA No. 1847/Hyd/2017 in the case Andhra Pradesh Gas Power Corporation Limited vs. DCIT for the AY 2011-12 vide order dated 15/06/2021 it was held as under:

“4. At the outset, the Ld. AR submitted before us that the assessee Company had not incurred any expenditure towards the investment made for earning exempt income. The Ld. Revenue Authorities without considering the prayer of the assessee and without examining the facts of the case had invoked the provisions of section 14A r.w Rule 8D of the Rules and made disallowance of Rs. 24,35,222/- which was further sustained by the Ld. AO to the extent of Rs. 17,89,428/-. On the other hand, the Ld. DR argued in support of the order of the Ld. CIT (A).

5. We have heard the rival submissions and carefully perused the materials on record. The Provisions of section 14A(2) makes it clear that the assessee shall compute the expenditure incurred by it for making investment which earns exempt income and only if the Assessing Officer is not satisfied with the correctness of the claim of the assessee he is authorised to invoke the provisions of Rule 8D of the IT Rules, 1962. In the case of the assessee such exercise is lacking. Factually it is also obvious that the assessee would have definitely incurred some expenditure towards investments made, which earns exempt income, such as:-

- (i) Interest on interest bearing funds that is utilised for the purpose of making such investment.*
- (ii) Direct and indirect expenses attributable to the process of making such investment such as expenditure incurred for due diligence, managerial expenditure, clerical expense, stationary expenditure and portfolio management expenditure etc..*

6. Therefore, in the interest of justice, we hereby remit the entire matter back to the file of the Ld. AO thereby providing an opportunity to the assessee to compute the actual expenditure incurred by it for making investment which earns exempt income. Needless to mention that any income/loss derived from any commercial/investment activity is not directly proportional to the expenditure incurred on such commercial/investment activity. Since We have remitted the matter back to the file of Ld.AO, We also hereby directed the assessee to promptly co-operate before the Ld. Revenue Authorities by furnishing the above

stated statement of actual expenditure incurred by it for making investment which earns exempt income in order to expedite the proceedings of the Ld. Revenue Authorities failing which the Ld. Revenue Authorities shall be at liberty to pass appropriate order in accordance with law and merits based on the materials on record.”

5. In the case before us for both the AYs also we find that the assessee had not exercised its option to compute the actual amount of expenditure incurred by it for earning exempt income as provided U/s. 14A(2) of the Act. Therefore, in the interest of both the parties, as decided by us on the earlier occasion, we hereby remit the entire matter back to the file of the Ld. AO thereby providing an opportunity to the assessee to compute the actual expenditure incurred by it for earning exempt income and for the Revenue to verify the same and decide the matter in accordance with law and merit.

6. In the result, both the appeals of the Revenue are allowed for statistical purposes as indicated herein above.

Order pronounced in the open court on the 07th October, 2021.

Sd/-

(S.S. GODARA)
JUDICIAL MEMBER

Sd/-

(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 07th October, 2021.

OKK

Copy to:-

- 1) SMR Builders Private Limited, Plot No. 73, SMR House Nagarjuna Hills, Panjagutta, Hyderabad – 500 082.

- 2) (i) Asst. Commissioner of Income Tax, Circle-3(1), 7th Floor, Signature Towers, Kondapur, Hyderabad.
(ii) Dy. CIT, Circle-3(2), 7th Floor, Signature Towers, White Fields, Kondapur, Opp. Botanical Gardens, Hyderabad.
- 3) The CIT(A)-3, Hyderabad.
- 4) The Pr. CIT-3, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File