

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1655/CHNY/2018**

निर्धारण वर्ष / Assessment Year: 2013-14

The DCIT,
Corporate Circle – 2(2),
Chennai – 34.

Vs **M/s. Hi-Tech Housing**
Projects Pvt. Ltd.,
Old No.19, New No.32,
Cathedral Garden Road,
Nungambakkam,
Chennai – 600 034.
PAN: AAACH 2527C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri G.Johnson, Addl.CIT
: None

सुनवाई की तारीख/Date of Hearing

: 29.11.2021

घोषणा की तारीख/Date of Pronouncement

: 29.11.2021

आदेश / O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-6, Chennai in ITA No.583/CIT(A)-6/2016-17 dated 27.02.2018. The assessment was framed by ACIT (OSD), Corporate Range-2, Chennai for the assessment year 2013-14 u/s. 143(3) of the Income Tax Act (hereinafter the 'Act'), vide his order dated 30.03.2016.

2. The first issue in this appeal of Revenue is against the order of CIT(A) deleting disallowance of expenses made by the AO by stating that the assessee has not earned any exempt income and hence, there is no application of provision of Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (hereinafter the 'Rules'). For this, the Revenue has raised following Ground Nos.2.1 & 2.2:-

“2.1 The CIT(A) erred in directing the AO to delete the disallowance made u/s.14A as the assessee has not earned any exempt income, when there is no such exception provided in Rule 8D of IT Rules.

2.2 The CIT(A) ought to have appreciated the fact that the CBDT circular No.5/2014 wherein it is clarified that, disallowance u/s.14A r.w.r. 8D has to be made even if the taxpayer in a particular year not earned any exempt income.”

3. We have heard the Id. senior Department Representative and gone through facts and circumstance of the case. We noted that the AO has made disallowance of expenses relatable to exempt income by invoking the provisions of section 14A r.w.r 8D of the Rules. The AO had made disallowance u/s.8D(2)(ii) at Rs.1,41,10,978/- i.e., interest disallowance and administrative expenses being amount equal to 0.5% of average value of investment under Rule 8D(2)(iii) at Rs.3,02,89,388/-, thereby

aggregate disallowance was at Rs.4,44,00,366/-. The CIT(A) deleted disallowance by stating that there was no exempt income and hence, there cannot be any disallowance. We also noted that now Hon'ble Supreme Court in the case of Maxopp Investment Ltd vs. CIT, 402 ITR 640, has held that once there is no exempt income, no disallowance can be made by invoking the provisions of section 14A r.w.r 8D of the Rules. Hence, we find no infirmity in the order of CIT(A) and the same is affirmed. The appeal of Revenue on this issue is dismissed.

4. The next issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the disallowance of expenses made by the AO by invoking the provisions of section 14A of the Act r.w.rule 8D of the Rules, while computing book profit u/s.115JB of the Act. For this, Revenue has raised following Ground No.3.1:-

“3.1 The CIT(A) failed to appreciate the fact that when the AO made disallowance u/s.14A which has to be necessarily added to the income of the assessee while computing the book profit u/s.115JB of the Act.”

5. At the outset, it is noticed that this issue is squarely covered by the decision of Special Bench of ITAT, Delhi in the case of Vireet Investment P. Ltd. in ITA No.502/Del/2012 & CO No.68/Del/2014,

wherein the Special Bench held that no adjustment of disallowance can be made while making computation u/s.115JB of the Act. We noted that Special Bench of this Tribunal observed while holding that disallowance u/s.14A r.w.rule 8D cannot be added while computing book profits as per section 115JB of the Act, as Explanation to that section does not specifically mention the provisions of section 14A of the Act. Hence, we find no infirmity in the order of CIT(A) and the same is affirmed. This issue of Revenue's appeal is also dismissed.

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

Order pronounced in the open court on 29th November, 2021 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 29th November, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |