



IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH, MUMBAI

BEFORE SHRI S. RIFAUZ RAHMAN, ACCOUNTANT MEMBER AND

SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA no.779/Mum./2014
(Assessment Year : 2009–10)

Alpex International Pvt. Ltd.
(Now known as Piramal Estates P. Ltd.)
Piramal Tower, Ganpatrao Kadam Marg
Lower Parel, Mumbai 400 013
PAN – AACCA777K

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle–6(1), Mumbai

..... Respondent

Assessee by : Shri J.D. Mistry
Revenue by : Shri Mehul Jain

Date of Hearing – 01.11.2021

Date of Order – 11.11.2021

ORDER

PER PAVAN KUMAR GADALE, J.M.

The assessee company has filed the appeal against order of the CIT(A)–14, Mumbai.

2. The appeal was heard on 26-6-2019 and vide order ITA no.779/ Mum./2014 dated 23-09-2019 was partly allowed. Subsequently, the assessee has filed Miscellaneous (M.A.) no.252/Mum./2020 for rectifying the mistake apparent on

record and with the specific ground that in the absence of any exempt income earned by the assessee, no disallowance under section 14A of the Act is warranted including, suo motu disallowance made by the assessee was not adjudicated. The Honble Tribunal in Miscellaneous Application order dated 27-09-2021 has observed at page 2 Para 4 to 7 which is read as under;

“4. We have considered rival submissions and perused materials on record. On perusal of the appellate order, we find that while deciding the appeal, the Tribunal has disposed of main grounds I and II, which are as under:-

"GROUND I: Disallowance of interest u/s. 36(l)(iii) of the Act:

1. On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals)-14, Mumbai [the CIT(A)] erred in upholding the action of the Assistant Commissioner of Income Tax-6(l), Mumbai [the AO] in disallowing interest amounting to Rs. 36,27,7967- u/s. 36(1)(iii) of the Act.

2. The Appellant prays that the aforesaid disallowance of interest expenses be deleted.

GROUND II : Disallowance u/s. 14A of the Act r.w.r. 8D of the Rules:

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in partly upholding the action of the AO by making a disallowance u/s. 14A of the Act.

2. The CIT(A) further erred in upholding the action of the AO despite the fact that no exempt income was earned by the Appellant during the year under consideration.

3. Further, the CIT(A) erred in making an observation that no suo-moto disallowance has been made by the Appellant which is contrary to the facts on record.

The Appellant, therefore, prays that the disallowance made by the AO and to the extent sustained by the CIT(A) be deleted or substantially reduced."

5. whereas, inadvertently, the Tribunal has not decided sub-ground 3 of additional/modified ground II filed on 6-07-2018, which reads as under;-

“3.The Appellant humbly prays that in absence of any exempt income earned by the appellant , no disallowance under section 14A of the Act (irrespective of whether made by the Appellant suo moto or by the Assessing officer) be made”

M/s Alpex International Pvt. Ltd.(Now Known as Piramal estates P Ltd) ITA.no.779/Mum/2014.

Thus, there is a mistake apparent on the face of record due to non disposal of the afore said ground raised by the assessee. In view of the aforesaid, we recall the order dated 23-09-2019 passed in ITA No.779/Mum/2014 for the limited purpose of deciding sub-ground 3 of additional/modified ground II as reproduced above.

6. Registry is directed to fix the appeal in ITA No.779/Mum/2014 for hearing in due course.

7. In the result, miscellaneous application is allowed.”

3. At the time of hearing, the Ld.AR submitted that the only modified ground of appeal has to be adjudicated and restricted his contentions with respect to the above ground only. It was submitted that the assessee has not received any exempt income and disallowance under section 14A of the Act is not applicable and referred to the financial statements and demonstrated the facts that the assessee has not received any exempt income and substantiated his submissions with the paper book and judicial decisions. Contra, the learned Departmental Representative accepted the fact based on the material evidence filed that there is no exempt income earned by the assessee during the year under consideration.

4. We have heard the rival submissions and perused the material on record. The sole crux of the disputed issue is that the CIT(A) has erred in sustaining the partial disallowance under section 14A of the Act though there is no exempt income earned during the year and also suo motto disallowance by the assessee. The assessee has filed a modified ground of appeal in the hearing proceedings earlier. But the Honble Tribunal has inadvertently could not adjudicate. The Ld.AR has relied on the catena of judicial decisions, in the absence of exempt income, no

disallowance under section 14A of the Act including suo-moto disallowance of the assessee is warranted as under:–

- i) *Tejaskiran Pharmachem Industries P. Ltd. v/s DCIT, ITA no. 3307/Mum./2014, order dated 13.12.2017;*
- ii) *Sajjan India Ltd. v/s ACIT, [2018] 89 taxmann.com 21 (Mum.);*
- iii) *Chand N. Bhojwani v/s DCIT, ITA no.272/Mum./2015, etc., order dated 28.07.2017;*
- iv) *HDFC Bank Ltd. v/s ACIT, ITA no.5480 & 5481/Mum./2019, order dated 24.08.2016;*
- v) *Chalet Hotels Ltd. v/s DCIT, ITA no.3747/Mum./2019, order dated 11.02.2021;*
- vi) *ACIT v/s Sundaram Multipap Ltd., ITA no.6269/Mum./2017, etc., order dated 15.04.2019.*

5.For the sake of brevity, we consider the decision of the Co–ordinate Bench of the Tribunal in case of M/s Chalet Hotels Ltd Vs DCIT ITA no. 3747/Mum./2019, for A.Y. 2015–16, dated 11.01.2021. The Honble Tribunal has observed at Page–2/Para–3 to 6 as under:–

“3. We have heard rival contentions and gone through the facts and circumstances of this case. We noted that that the Assessing Officer while framing assessment has made disallowance by invoking the provisions of section 14A of the Act r.w.r 8D of the Income Tax Rules, 1962 (hereinafter 'the Rules'). The Assessing Officer made disallowance under Rule 81)(2)(ii) at Rs. 27,15,12,687/- under Rule 8D(2)(iii) at Rs.2,14,47,136/-. Thereby the total disallowance made was Rs. 29,29,59,823/-.

4. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) deleted the disallowance made by Assessing Officer under Rule 81)(2)(ii) i.e. interest expenditure amounting to Rs. 27,15,12,687/-, but CIT(A) confirmed the disallowance under Rule 81)(2)(iii) being administrative expenses at Rs. 5,86,52,973/- as against the exempt income claimed by assessee at Rs. 13,17,233/-. Before the CIT(A), the assessee claimed that the assessee has

earned exempt income only to the extent of Rs. 13,17,233/- and the same may be adopted for making disallowance under Rule 81(2)(iii) of the Rules. Before the CIT(A), the assessee relied on the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (91 Taxman.com 154) but CIT(A) noted that the assessee has itself made suo-moto disallowance of Rs. 5,86,52,973/- and the same has to be adopted for this the CIT(A) gave his in para-5.21 as under:

"5.21. In view of the above discussion, the AO is accordingly directed to re-compute the disallowance u/s 14A as explained in paras 5.9 to 5.20 above. However, since, the assessee itself had computed disallowance u/s. 14A of Rs. 5,86,52,973/- which it had added back in the computation of income, the disallowance u/s 14A so re-computed cannot be less than the said amount of Rs. 5,86,52,973/-. Accordingly, this ground of appeal is partly allowed."

5. *Aggrieved, assessee came in appeal before the Tribunal.*

6. *We noted that the short point of dispute is whether the disallowance under Rule 81(2)(iii) is to be restricted to the extent of exempt income i.e. dividend income earned by assessee at Rs. 13,17,233/- or the disallowance as suo-moto computed by assessee at Rs. 5,86,52,973/-. Here, we have gone through the decision of Hon'ble Supreme Court in the case of Maxopp Investments Ltd. (supra), wherein the Hon'ble Supreme Court has categorically held that the disallowance cannot exceed the exempt income. Hence, we delete the suo-moto disallowance made by assessee at Rs. 5,86,52,973/- and restricted the disallowance to the extent of exempt income claimed by assessee at Rs. 13,17,233/-. We direct the Assessing Officer accordingly.*

7. *In the result, appeal of assessee is allowed."*

6. On applying the ratio of the decision of the Co-ordinate Bench of the Tribunal, we find that the Assessing Officer has made disallowance in respect of the expenditure incurred on exempt income but it has been proved and demonstrated by the learned Authorised Representative for the assessee that the assessee has not received any exempt income, therefore, no addition under section 14A of the Act will be sustainable. Accordingly, we considering the facts, circumstances and the decisions of the Honble High Court and the Honble Tribunal direct the Assessing

Officer to delete the suo moto disallowance made by the assessee because there is no exempt income earned by the assessee . Since there is no exempt income and no disallowance related to the exempted income u/sec14A of the Act is applicable and we allow this ground of appeal of the assessee.

7.In the result, this ground of appeal is allowed.

Order pronounced in the open court on 11.11.2021

Sd/-
S. RIFAUR RAHMAN
ACCOUNTANT MEMBER

Sd/-
PAVAN KUMAR GADALE
JUDICIAL MEMBER

MUMBAI, DATED: 11.11.2021.

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai