

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 1588/Bang/2017
Assessment Year : 2012-13

M/s. Century Real Estate Holdings Pvt. Ltd., JP Technopark, 4 th Floor, No. 3/1, Millers Road, Bangalore – 560 052. PAN: AADCC0651M	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 2 (2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ramakrishna, CA
Revenue by	:	Shri Sumer Singh Meena, CIT DR (OSD)

Date of Hearing	:	03-02-2022
Date of Pronouncement	:	17-02-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against the order dated 27/04/2017 passed by Ld.CIT(A)-11, Bangalore for assessment year 2012-13 on following revised grounds of appeal:

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, fact and circumstances of the case.

2. The order passed u/s 143(3) dated 24/02/2015 of the I.T. Act for the AY 2012-13 is time barred and the said order should have been passed on or before 31st December 2014.

3. The learned Assessing Officer has wrongly applied provision of Section 153B to extend the limitation of time to complete the assessment when the order passed u/s

143(3) being regular assessment and not search assessment u/s 153A

4. The learned Assessing Officer overlooked the fact that the appellant company has cross charged a sum of Rs.18,69,54,653/- to the related parties on a cost reimbursement basis and wrongly invoked the provisions of Section 14A rwr 8D.

5. Without adhering to the various judicial pronouncement of various High Courts. with regard to disallowance cannot exceed the exempted income, the learned Assessing Officer disallows an amount of Rs.93,85,17,696/- while the total exempted income u/s 10 was only Rs.52,25,436/-, on appeal, the first appellate authority Hon'ble Commissioner of Income Tax (Appeals) — 11, has ONLY party allowed.

6. No proper and cogent satisfaction has been arrived at by the learned AO before invoking the provisions of Section 14A rwr 8D and hence both the order u/s 143(3) dated 24/02/2015 and the confirmation of the same by the Hon'ble CIT(A) should be quashed and declared as null and void

7. Without prejudice, assuming without accepting, if the provisions of Section 14A rwr 8D are applicable, the disallowance cannot exceed the exempt income as per the judicial decisions of various Courts.

8. The investments made by the appellant company in subsidiaries/SPVs are to promote the core business on account of business expediency and not for investment per se to earn capital gains, and the strategic investments made by the appellant in its subsidiary/SPVs is not to be reckoned for disallowance u/s 14A rwr 8D.

9. For the above and any other grounds that may be urged and presented at the time of hearing of the appeal, the appellant humbly prays that the appeal may be allowed and justice rendered.

PRAYER

The assessment order passed u/s 143(3) being time barred beyond time limit and the said order passed by Deputy Commissioner of Income Tax, Central Circle 2(2) dated 24/02/2015 be quashed and as null and void.”

2. Brief facts of the case are as under:

The assessee is a Private Limited Company and carrying on the business of building and developing hi-technology, industrial parks, residential buildings, villas, farm houses, townships, vocational training centres and other infrastructural facilities either on its own or in joint venture with any person or by creating a Special Purpose Vehicle (SPV). The assessee filed its return of income for the A.Y. 2010-11 declaring a net income of Rs.NIL on 30.09.2011 u/s. 139(1). A search and seizure operation u/s 132 was conducted in the case of the assessee on 12.04.2011. Notice u/s. 153A dated 13.01.2012 was issued for the AY 2010-11. In response the assessee filed a return u/s 153A declaring a net income of Rs. NIL. The Ld.AO completed the assessment u/s. 153A rws 143(3) dated 24.02.2015 after making a disallowance of Rs.6,67,57,289/- u/s 14A rwr 8D.

Aggrieved by the order of Ld.AO, the assessee preferred appeal before Ld.CIT(A).

Aggrieved by the order of Ld.CIT(A), the assessee is in appeal before us now.

At the outset, the Ld.AR submitted that the issues stands squarely covered by the order of this *Tribunal* in assessee's own case in ITA Nos. 1589 & 1590/Bang/2017 by order dated 22.09.2021 for A.Ys. 2011-12 and 2010-11 and ITA No. 1583/Bang/2017 by order dated 28.06.2021 for A.Y. 2009-10.

3. Ground no. 1 is general in nature.

4. Ground nos. 2 and 4 has been not pressed by assessee at the time of arguments and accordingly they are dismissed.

5. Ground Nos. 5 to 8

It is submitted that assessee in its computation of income claimed following as exempt income for year under consideration. The Ld.AR submitted that assessee in this computation of total income.

a) Share of Profit from Partnership Firms - exempt u/s 10(2A):	
(i) Surya Builders & Developers	Rs.68,36,591
(ii) Century Golf Links	Rs.1,09,82,672
(iii) Century Northside	Rs.14,82,935
(iv) Vinayaka Builders & Developers	Rs.8,02,301
b) Dividend from Mutual Funds - exempt u.s 10(35)	Rs.1,96,460
c) Total claimed as exempt income	Rs.2,01,04,499

6. The Ld.AR further submitted that the quantum of disallowance u/s. 14A of the Act cannot exceed the exempt income. In support of the proposition, he also placed reliance on the decision of *Hon'ble Delhi High Court* in case of *Joint Investments (P) Ltd. vs. CIT* reported in *372 ITR 694 (Del.)*

We have perused the submissions advanced by both sides in the light of records placed before us.

7. We observe that identical issues has been considered by *Coordinate Bench* of this *Tribunal* in assessee's own case for A.Y. 2009-10 which is followed by this *Tribunal* in assessee's own case for A.Y. 2010-11 (supra).

"9. We have heard both the parties and perused the material on record. The Learned Departmental Representative submitted that in earlier assessment year, i.e., A.Y. 2009-2010 in ITA No. 1583/Bang/2017, similar issue came up for consideration before the Tribunal and the Tribunal vide order dated 28.06.2021 held as under:

4. We heard the parties and perused the record. The Ld. D.R. placed her reliance on the decision rendered by Hon'ble High Court of Karnataka in the case of CIT Vs.

Kingfisher Finvest India Ltd. (2020) 121 Taxmann.com 233. We have gone through the said decision and the same relate to a case where no dividend income was received. In this case, the assessee has earned dividend income and hence, in our view the said decision is not applicable to the facts of the present case.

5. We notice that the own funds available with the assessee was Rs.355.57 crores while the value of investment in partnership firm mutual funds and shares aggregated to Rs.251.82 crores. In view of the decision rendered by Hon'ble Karnataka High Court in the case of CIT Vs. Micro Labs Ltd. (2016) 383 ITR 490, no disallowance out of interest expenditure is called for. For the sake of convenience, we extract below the observations made by Hon'ble Karnataka High Court in the above said case.

"40. We have heard the rival submissions. A copy of the availability of funds and investments made was filed before us which is at pages 38 to 42 of the assessee's paper book and the same is enclosed as ANNEXURE-III to this order. It is clear from the said statement that the availability of profit, share capital and reserves & surplus was much more than investments made by the assessee which could yield tax free income.

41. The Hon'ble Bombay High Court in Reliance Utilities & Power Ltd. 313 ITR 340 (Bom) has held that where the interest free funds far exceed the value of investments, it should be considered that investments have been made out of interest free funds and no disallowance u/s. 14A towards any interest expenditure can be made. This view was again confirmed by the Hon'ble Bombay High Court in [CIT v. HDFC Bank Ltd., ITA No.330 of 2012](#), judgment dated 23.7.14, wherein it was held that when investments are made out of common pool of funds and non-interest bearing funds were more than the investments in tax free securities, no disallowance of interest expenditure u/s. 14A can be made.

42. In the light of above said decisions, we are of the view that disallowance of interest expenses in the present case of Rs.49,42,473 made under Rule 8D(2)(ii) of the I.T. Rules should be deleted. We order accordingly."

Thereafter, it was held by Hon'ble Karnataka High Court as under:-

"The aforesaid shows that the Tribunal has followed a decision of the Bombay High Court in the case of *CIT v. HDFC Bank Ltd.* [2014] 366 ITR 505/226 Taxman 132 (Mag.)/49 taxmann.com 335 . When the issue is already covered by a decision of the High Court of Bombay with which we concur, we do not find any substantial question of law would arise for consideration as canvassed."

Accordingly, we confirm the deletion of disallowance of interest expenses of 8D(2)(ii) of IT Rules

6. The next issue relates to disallowance out of expenditure under rule 8D(2)(iii). We notice that the Ld. CIT(A) has deleted the disallowance by accepting the submissions of the assessee that the assessee has cross charged a sum of Rs.1.19 crores out of operating and other expenses to the respective partnership firms. We are unable to agree with the view of Ld CIT(A) on this aspect. The cross charging of expenses is normally made in respect of services/facilities availed by one concern from another concern. Accordingly, the amount of Rs.1.19 crores cross charged by the assessee to other concerns, would represent facilities/services availed by the partnership firms from the assessee.

7. The object of provisions of [section 14A](#) of the Act is to disallow expenses relatable to exempt income, i.e., it is required to segregate the expenses debited to the Profit and Loss account as relatable to "taxable income" and "exempted income". Hence, what is required to be considered for the purpose of [section 14A](#) of the Act is the amount finally debited to profit & loss account. The actual expenses incurred by the assessee would have been reduced by the amount cross charged to the partnership firms and the net amount would have been charged to the profit & loss account. The disallowance u/s [14A of the Act](#) is called for out of the above said net amount.

8. We notice that the assessee has earned exempt income as detailed below:

Share profit from partnership firms -	Rs.2,46,49,618/-
Dividend from mutual funds -	Rs. 17,91,146/-
	Rs.2,64,40,765/-

The dividend received from mutual funds also does not require much expenditure for the assessee. In respect of partnership firms, we have earlier noticed that the services rendered in respect of partnership firms have been cross charged by the assessee. Hence over all supervision may be relevant for the purposes of [sec.14A of the Act](#). Under these set of facts, we are of the view

that the provisions of rule 8D need not be applied for computing the disallowance out of general expenditure. Accordingly, we are of the view that a lumpsum disallowance of Rs.15 lakhs may be made out of general expenditure and the same, in our view would meet the requirements of [section 14A](#) of the Act. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to restrict the disallowance under [14A of the Act](#) to Rs.15 lakhs.

9. The Ld. A.R. submitted that he will not press cross objection, if disallowance u/s [14A of the Act](#) is made on a reasonable figure. However, we notice that the cross objection filed by the assessee is delayed by more than a year. We notice that the assessee has not filed any petition for condoning the delay. Hence, the cross objection filed by the assessee is liable to be dismissed in limine. Accordingly, we decline to admit the cross objection filed by the assessee.

9.1 Further in assessment year 2014-2015, similar issue came up for consideration before the Tribunal in ITA No. 284/Bang/2020 and the Tribunal vide order dated 24.06.2020, held as under:-

6. We have heard the rival contentions and perused the records. The ground nos. 1, 2, 3, 5, 8 and 9 are general in nature. Ground no.4 is related to non-recording of dissatisfaction. As rightly pointed out that the Ld CIT(A), we notice that the AO has issued show cause notice to the assessee on due examination of financial statements of the assessee, since the assessee did not make any disallowance u/s [14A of the Act](#), even though it had earned exempt income. Hence the dissatisfaction of the AO has been demonstrated in the assessment order and it is not a case of mechanical invoking of provisions of Rule 8D. Accordingly we reject ground no.4 of the assessee.

7. In ground no.6, the assessee is contending that the assessee has got sufficient own funds and hence disallowance u/s 14A is not warranted. Before us, the Ld. A.R. submitted that the own funds available with the assessee is in excess of the value of investment made in shares and hence the A.O. should not have disallowed any expenditure out of interest expenses under Rule 8D(2)(ii) of I T Rules. In this connection, Ld. A.R. invited our attention to the copies of Balance Sheet placed in the paper book. On a perusal of the same, we notice that the Ld. A.R. has considered only the value of

investments made in shares for advancing this argument and did not consider the value of investments made in partnership firm. We have noticed earlier that the exempt income earned by the assessee included "share income from partnership firm", which is exempt u/s 10(2A) of the Act. Hence, we are of the view that the investments made in partnership firm are also required to be considered for comparing the value of investments with the available own funds. We notice that the value of investments held by the assessee as at the year end is Rs.1,444.46 crores, whereas the own funds available with the assessee was Rs.585.21 crores only. Hence, it cannot be said that the own funds available with the assessee was more than the value of investments. Hence, this argument of the assessee also fails on the above said facts.

8. Before addressing ground no.7, we prefer to adjudicate two more contentions urged orally by Ld A.R. The first contention of Ld A.R was that the share income from partnership firm should not be considered as exempt income, since the profits of partnership firm have already suffered tax in the hands of the partnership firm. We notice that the very same issue was considered by Ahmedabad Special bench of ITAT in the case of Shri Vishnu Anand Mahajan (ITA No.3002/Ahd/2009 dated 25-05-2012) and identical contentions made by the assessee were rejected by holding that, once the share income is excluded from the total income u/s 10(2A) of the Act, the provisions of section 14A of the Act would apply to it. Hence, this contention of the assessee would fail.

9. The next contention urged by the assessee is a partner in many firms. Some firms have earned profit and other firms have incurred loss. She submitted that the A.O. has considered only "share of profit received from partnership firm" for the purposes of sec.14A and did not consider "share of loss divided to the assessee". The Ld A.R submitted that the share of profit/loss from partnership firms should be cumulated and in that case, net result would be only loss from the partnership firms. Hence the AO should have ignored the share of profit received from some of the firms for the purposes of computing disallowance under sec.14A of the Act. We do not find any merit in this contention of the assessee, since what is exempted under the Act is share income received from the partnership firm u/s 10(2A) of the Act,

meaning thereby, the profit or loss received from the partnership firm does not enter into computation of income at all. Hence the question of setting off income from partnership firm inter se does not arise. Accordingly, once a particular income does not enter into the computation on the ground the same is exempt, as held by special bench in the case of Sri Vishnu Anand Mahajan (supra), provisions of [section 14A](#) of the Act would apply. In this case, there is no dispute that the share income from partnership firm to the tune of Rs.1,02,01,474/- has been claimed as exempt u/s [10\(2A\) of the Act](#). Hence the provisions of sec.14A shall apply to the above said exempt income.

10. In ground no.7, the assessee is contending that the disallowance made by the tax authorities u/s [14A of the Act](#) is much more than exempt income. Before us, the Ld. A.R. submitted that the quantum of disallowance u/s [14A of the Act](#) should not exceed the amount of exempt income. In support of this proposition, the Ld. A.R. placed reliance on the decision rendered by Hon'ble High Court of Delhi in the case of Joint Investment Private Limited Vs. CIT 372 ITR 694 and also the decision rendered by Mumbai bench of Tribunal in the case of Future Corporate Resources Limited Vs. DCIT (ITA No.4658/Mum/2015 dated 26.7.2017).

11. The Hon'ble Delhi High Court has considered an identical issue in the case of PCIT vs. Caraf Builders & Construction (P) Ltd (2019)(101 taxmann.com 167) and has held as under:-

"25. Total exempt income earned by the respondent-assessee in this year was Rs. 19 lakhs. In these circumstances, we are not required to consider the case of the Revenue that the disallowance should be enhanced from Rs. 75.89 crores to Rs. 144.52 crores. Upper disallowance as held in [Pr. CIT v. McDonalds India \(P.\) Ltd](#). ITA 725/2018 decided on 22nd October, 2018 cannot exceed the exempt income of that year."

The Mumbai bench of Tribunal has also taken an identical view in the case of Future Corporate Resources Ltd (supra) and the relevant observations made by the Tribunal in the above said case are extracted below:-

"10. Coming to the second argument of the assessee, the assessee argued that it had earned meager dividend income of Rs. 24,138 as against which, the assessing officer disallowed a sum of Rs. 3,36,28,000 which is more than the exempt income. The assessee further argued that dis-allowance under [section](#)

14A cannot exceed amount of exempt income. The assessee relied upon case laws in support of its arguments. We find that the Hon'ble Delhi High Court in the case of Joint Investments (P.) Ltd. (supra) held that the window for dis allowance is indicated in section 14A and is only to the extent of disallowing expenditure incurred by the assessee in relation to tax exempt income. This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case. We further notice that the Hon'ble Delhi High Court in the case of CIT v. Holcim India (P.) Ltd. (2014) 272 CTR 282 (Delhi) has held that there can be no dis allowance under section 14A in the absence of exempt income. The rationale behind these judgments is that the amount of dis allowance cannot exceed exempt income. In this case, on perusal of the facts, we find that the assessee has earned exempt income of Rs. 24,138, whereas the assessing officer disallowed an amount of Rs. 3,36,28,000. Therefore, considering the facts and circumstances of the case and also following the ratios of the case laws discussed above, we are of the view that dis allowance under section 14A cannot exceed the exempt income. Hence, we direct the assessing officer to restrict dis allowance under section 14A to the extent of exempt income earned by the assessee."

The above said decisions would support the contention of the assessee on this point. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to restrict the disallowance u/a 14A to the amount of exempt income.

12. Since appeal itself is disposed of, the stay petition shall become infructuous.

13. In the result, the appeal of the assessee is partly allowed."

9.2 Further, the Hon'ble jurisdictional High Court in the case of Biocon Limited v. DCIT (2021) 431 ITR 326 (Kar.), wherein it was held that when there is exempt income, there cannot be any disallowance u/s 14A of the Act. In other words, it means that disallowance u/s 14A of the Act should be limited to the exempt income.

9.3 In view of the above judgment of the Hon'ble jurisdictional High Court, we direct the A.O. to disallow the amount made u/s 14A of the Act to the extent of exempted income only as decided by the Tribunal in assessment year 2014-15."

8. No new facts has been brought on record by revenue. Respectfully following the view taken hereinabove, we direct the Ld.AO to restrict the disallowance to the extent the exempted income has been earned by assessee.

In the result, the appeal filed by assessee stands partly allowed.

Order pronounced in the open court on 17th February, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 17th February, 2022.
/MS /

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore