

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

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

ITA No. 1847/Bang/2017
Assessment year: 2014-15

M/s Chartered Housing Pvt Ltd., No. 27, Victoria Road, Bangalore -560 047. PAN: AABCC 0044N	Vs.	The Deputy Commissioner of Income-Tax, Circle-2(1)(1), Bangalore.
APPELLANT		RESPONDENT

ITA No. 1923/Bang/2017
Assessment year: 2014-15

The Deputy Commissioner of Income-Tax, Circle-2(1)(1), Bangalore – 560 034.	Vs.	M/s Chartered Housing Pvt Ltd, No. 27 Victoria Road, Bangalore-560047 PAN: AABCC 0044N
APPELLANT		RESPONDENT

Assessee by	:	Shri S.N. Shyanbhag, Advocate
Revenue by	:	Shri Priyadarshini Mishra, Addl. CIT(DR)(ITAT), Bangalore.

Date of hearing	:	09.03.2022
Date of Pronouncement	:	09.03.2022

ORDER

Per Chandra Poojari, Accountant Member

These are cross appeals by the assessee and the department directed against the order dated 11.7.2017 of the CIT(Appeals)-2, Bengaluru for the assessment year 2014-15.

ITA No. 1847/Bang/2017 (Assessee's appeal)

2. The assessee has raised the following grounds:-

- “1. The order of the Learned Commissioner of Income-Tax (Appeals)-2, Bangalore is opposed to Law on the facts of the case.
2. The CIT(A) has erred in confirming the addition of Rs.1,43,255/- made by the A.O. u/s 14A r/w Rule 8D being 0.5% of the investment made in earning exempted income .
3. The A.O and CIT(A) failed to understand the fact that there was no exempted income during the year from the above investment in the mutual fund. As such addition at the rate of 0.5% of the investment cannot be made.
4. Rule 8D (ii) can not be invoked when investment is not made out of borrowed fund and no expenses is attributable to the investment made in mutual fund.
5. The CIT(A) erred in confirming the addition of Rs.1,09,00,000/- made by the A.O. being amount deducted from profit, which is the amount written back in the balance sheet out of BWSSB deposits (Rs.2,53,00,000) collected from the flat owners and already offered to tax in the assessment year 2012-13, at the time of survey conducted by the department.
6. The A.O. and CIT(A) failed to understand the fact that as per the Rule of accountancy, whenever any amount which is not income of the Appellant is offered to tax as income, the same has to be written back in the books of account as income. Therefore, in this case an amount of Rs.2,53,00,000/- being BWSSB deposit collected from the buyers of the flats, amount which was not paid to BWSSB as the connection was delayed, was offered to tax at the time of survey for the assessment year 2012-13. As the accounts of the Appellant Company were closed for the Assessment Years 2012-13 and 2013-14 when the income was offered to tax, Rs.1,09,00,000/- out of 2,53,00,000/- was written back

as income for the Asst. Year 2014-15 by including it in Miscellaneous Income, a sufficient disclosure was also made in clause 1(h) of the Notes to Accounts in Balance sheet and same was deducted from the profit as it was already offered to tax as income.

7. The CIT (A) erred in confirming the addition of Rs.5,79,500/- being claim of the appellant u/s 80G stating that no material was produced by the appellant at the time of hearing of appeal, when in fact your appellant has filed all the details before the A.O and CIT (A).
8. For the grounds stated above it is prayed that above additions may be deleted and such other orders may be passed to meet the Ends of Justice.”

3. Grounds No.2 to 4 relate to the issue of disallowance u/s. 14A r/w Rule 8D. The Assessing officer noticed that the appellant has made certain investments, the income from which is exempt from Income tax. The appellant had not debited any expenses incurred on these investments to earn tax-free income. Therefore, the AO made a disallowance of Rs.58,026 by invoking the provisions of section 14A of Income-tax Act, 1961 [the Act] read with Rule 8D(2)(iii) of the Income tax Rules [Rules].

4. The appellant submitted that A.O. assessed an amount of Rs.1,43,225 as expenses being 0.5% of the average investment made to earn exempted income, when there is no exempted income earned during the year. Moreover, 0.5% average works out to Rs. 57,324 as against Rs. 1,43,225 added by A.O. It was submitted the A.O. estimated the expenses to be added back at 0.5% of the average investment as per rule 8D, when the Act authorises to make such addition only when there is exempted income. He has applied the formula stated in rule 8 D (2)(ii) to disallow direct expenses under rule 8 D(2)(i) and disallowed common expenses proportionately. The Act and Rule does not authorise the A.O. to disallow the common expenses proportionately. Only expenses by way of interest

can be disallowed proportionately. Even this interpretation of Rule is also not upheld by the Hon'ble High Court of Delhi in the case of *Pr. CIT, Delhi V/s. Bharati Overseas Pvt. Ltd (ITA 802/2015) dated 17.12.2015*. The Hon'ble Court held that the department has failed to appreciate the scope of section 14A and Rules made thereunder, which are not applicable to common expenses incurred, to earn both exempted and taxable income. In the present case, A.O. has made addition of common expenses incurred to earn both exempted and taxable income. This is not justifiable and not authorised by law. In view of the stand taken by the department itself in the above case before the Hon'ble High Court, this addition needs to be deleted. Apart from this the A.O. has added an amount of Rs. 1,43,225 as against Rs. 57,324 being 0.05% of the investment. The CIT(Appeals) however confirmed the order of AO.

5. The main plea of the assessee before us is that the assessee has no exempt income, being so, there cannot be any disallowance u/s. 14A r/w Rule 8D. The AO observed in his order that disallowance u/s. 14A could be made even in a year in which no exempt income has been earned or received by the assessee. In our opinion, as decided by the Hon'ble High Court of Karnataka in the case of *PCIT v. Texport Overseas Pvt. Ltd., 313 CTR 485 (Kar)*, disallowance u/s. 14A should be limited to the exempt income. Accordingly, we hold that where there is no exempt income, no disallowance could be made by the AO and direct the AO to disallow the expenditure to the exempt income only. If there is no exempt income, no disallowance should be made.

6. Ground Nos.5 & 6 are with regard to sustaining addition of Rs.1,09,00000 on account of amount deducted from profit which is the amount written back in the balance sheet out of BWSSB deposit collected from the flat owners and already offered to tax in the AY 2012-13. The AO observed that this amount is not considered for taxation in the AY 2014-15

and the same was added back to the income of the assessee. The contention of the Id. AR is that this amount has been offered to tax in the AY 2012-13. Though it was credited to the P&L account in this assessment year, same was deducted from the computation of income. He also drew our attention to the Note 1(h) of the 'Notes forming part of the financial statements for the year ending 31.3.2014' wherein it is reported as follows:-

“(h) Miscellaneous Receipts

Miscellaneous receipts include Rs.10900000 being the unutilised portion of KEB, BWSSB deposits collected from the course of the scrutiny assessment proceedings for the said year.”

7. Further, the Id. AR drew our attention to the assessment order for AY 2012-13 dated 14.8.2014 and submitted that the unutilized deposits of Rs.2,35,00,000 has been offered to tax for the AY 2012-13 and amount of Rs.1.09 crores has been included in this amount and same cannot be treated as income for the current AY 2014-15. In our opinion, this requires verification at the end of AO whether the sum of Rs.2,53,00,000 is considered as income on account of unutilized deposits in the AY 2012-13 and if it is actually included, the same cannot be taxed in the assessment year under consideration. Accordingly, the issue is remitted to the AO for fresh consideration.

8. The last ground is regarding non-granting deduction u/s. 80G of Rs.5,79,500. The Id. AR submitted that the assessee made donation of Rs.5,79,500 and claimed deduction u/s. 80G of the Act. The same was denied on the reason that the assessee has not produced any documentary details of donation. The assessee before us filed copies of donation receipts which is placed at pages 36 to 65 of the PB and pleaded that the issue may be remitted to the AO for fresh consideration. The Id. DR submitted that these are fresh evidence which cannot be admitted.

9. We have heard both the parties and perused the material on record. In our opinion, these details were part of the books of account and produced before the AO which are not properly examined by him. Being so, in the interest of justice, we remit the entire issue to the file of AO for fresh consideration. He should take note of these donation receipts and decide the issue in accordance with law.

10. The assessee's appeal is partly allowed.

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11. The assessee collected amounts towards 'maintenance corpus funds' at the time of sale of sites and these amounts remained as corpus funds with assessee for regular maintenance of the project till the site owners association is formed. The corpus fund has to be transferred to the Association of site owners when it is formed. Accordingly assessee collected Rs.1,89,42,000 during the FY 2013-14 relevant to AY 2014-15. The corpus fund was invested in mutual fund and same was not utilized for business of the assessee. The AO treated the same as income u/s. 28 as there was no existing liability to the assessee.

12. The CIT(Appeals) observed that the said receipt is shown as liability and the same amount is received during ay 2013-14 and subsequently. In the absence of any other evidence brought on record by the AO, addition is not warranted u/s. 28 and deleted this addition. Against this, the department is in appeal before us.

13. The contention of the Id. AR is that the liability is still subsisting and there is no cessation of liability. Being so, there is neither application of section 28(iv) or 41(1) of the Act. The Id. DR submitted that the fund was in possession of the assessee and it could use it for any purpose as it wishes.

14. We have heard both the parties and perused the material on record. In the present case, the amount collected towards corpus fund was lying with assessee and it is not perquisites in the hands of the assessee so as to apply the provisions of section 28(iv) of the Act. There is no cessation of liability and it is shown as outstanding liability in the books of account. Being so, the CIT(Appeals) rightly deleted the same. We do not find any infirmity in his order and the same is confirmed. The revenue's appeal is dismissed.

15. In the result, the assessee's appeal is partly allowed and revenue's appeal is dismissed.

Pronounced in the open court on this 9th day of March, 2022.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 9th March, 2022.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.