

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “B”, BANGALORE**

Before Shri N.V.Vasudevan, VP & Ms.Padmavathy S, AM

IT(TP)A No.262/Bang/2021 : Asst.Year 2016-2017

M/s.NSL Sugars Limited 60/1, 2 nd Cross Residency Road Bangalore – 560 025. PAN : AAGCS0938Q.	v.	The Assistant Commissioner of Income-tax, Circle 5(1)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.T.Gandhi, Advocate
Respondent by : Dr.Manjunatha Karkihalli, CIT-DR

Date of Hearing : 05.04.2022	Date of Pronouncement : 08.04.2022
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ORDER

Per Padmavathy S, AM :

This appeal is against the order of the DCIT passed u/s 143(3) r.w.s. 144C of the I.T.Act, 1961 (“the Act”) dated 30.04.2021 for the assessment year 2016-2017.

Brief facts of the case

2. The assessee is a company engaged in the business of manufacture of sugar and molasses etc. It filed the return of income for the assessment year 2016-2017 on 30.11.2016 with returned loss of Rs.78,24,50,827. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued. Reference was made to the Transfer Pricing Officer (TPO) for determination of Arm’s Length Price (ALP) of the specified domestic transactions entered into by the assessee. The TPO passed an order u/s 92CA on 30.10.2019 proposing the adjustment of Rs.96,57,60,845. The Assessing Officer (AO) passed a draft assessment order on 23.12.2019 incorporating the TP adjustment proposed by the TPO. In addition, the AO

also made an addition of Rs.1,91,49,505 u/s 14A of the Act read with Rule 8D of the I.T.Rules, 1962 and made a disallowance of Rs.5,66,93,000 on account of deduction claimed u/s 43B of the Act. The assessee raised objections before the Dispute Resolution Panel (DRP). The DRP deleted the transfer pricing adjustment made by the TPO and sustained the additions made by the AO on the corporate tax issue. The AO passed the final assessment order giving effect to the directions of the DRP.

3. Aggrieved by the order of the AO, the assessee is in appeal before the Tribunal. The assessee raised several grounds contending the below two disallowances made by the AO:-

- (i) Disallowance u/s 14A r.w.r. 8D – Rs.1,91,49,505
- (ii) Disallowance on account of deduction claimed u/s 43B - Rs.5,66,93,000

4. During the year under consideration, the assessee had investments in shares to various companies amounting to Rs.383,99,01,000. The AO took the income shown under the head 'income from other sources' of Rs.144.73 lakh as an income exempt earned against the various investments made by the assessee. The AO proceeded to disallow the amount of Rs.1,99,49,505 u/s 14A of the Act r.w.s 8D of the IT Rules. Before the DRP, the assessee contended that it has not earned any income during the year and that it has earned interest income from the margin money deposited with the bank for the purpose of running the business and the same is offered to tax. The DRP confirmed on facts that the assessee has not earned any income exempt from tax. However, the DRP sustained the disallowance made by the AO referring to Circular No.5/2014 dated 11.02.2014 stating that the expenses relating to earning of exempt income have to be considered for disallowance irrespective of whether any such income has been earned during the financial year or not. The DRP stated that since the assessee has

huge investments in shares and has incurred considerable amount towards legal, professional fees and consultancy fees for managing the shares and portfolio warranting the disallowance u/s 14A of the Act. The AO passed the final order based on DRP directions.

5. Aggrieved, the assessee is in appeal before us. The learned AR reiterated the submissions made before the lower authorities and stated that the assessee has not earned any exempt income during the year. The learned AR also stated that it is now settled principle that when there is no exempt income, no disallowance u/s 14A is warranted based on the judgment of Hon'ble Delhi High Court in the case of Cheminvest Limited v. CIT (2015) 378 ITR 33 (Delhi).

6. The learned Departmental Representative supported the orders of the lower authorities.

7. We heard rival submissions and perused the material on record. From the fact, as admitted by the DRP, it is clear that the assessee has not earned any income exempt under the tax during the relevant year under consideration. Hence, the ratio laid down in the case of Cheminvest Limited (supra) is clearly applicable to the case of the assessee. In the case of Cheminvest Limited (supra), the Hon'ble Delhi High Court held that

*“in the context of the facts enumerated hereinabove, the Court answers the question framed by holding that the expression **“does not form part of the total income”** in section 14A of the Act envisages that there should be an actual receipt of income which is not includible in the total income during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, section 14A will not apply if no exempt income is received or receivable during the relevant previous year.”*

This judgment of the Hon'ble Delhi High Court has reached finality since the Hon'ble Supreme Court has dismissed the SLP filed by the Revenue stating that there is no question of law arises on the said matter. We also notice that the Co-ordinate Bench of the Tribunal in assessee's own case (ITA Nos.597 and 598/Bang/2019) has held in favour of the assessee on the similar issue. Considering the judgment of the Hon'ble Apex Court and the binding decision of the Co-ordinate Bench of the Tribunal, we are of the considered view that there cannot be a disallowance u/s 14A of the Act when the assessee has not earned any income exempt under the Income-tax Act. We, therefore, direct the AO to delete the addition made on account of disallowance u/s 14A of the Act r.w.r.8D of the I.T.Rules. This ground is allowed in favour of the assessee.

8. The next issue is on the disallowance of deduction u/s 43B of the Act towards interest payment. The assessee had claimed a sum of Rs.5,66,93,000 as a deduction u/s 43B of the Act stating that the said amount was disallowed in the earlier year and now claimed as a deduction as the assessee has actually paid the amount of interest. The AO disallowed the expenditure based on the fact that the assessee has claimed that it is wrongly claimed and submitted a revised computation before the AO. However, the assessee raised an objection before the DRP stating that the assessee is entitled to claim the deduction as disallowance towards the same amount was made in the earlier year and also submitted proof of payment of expenses. The DRP confirmed the addition made by the AO holding that the assessee could not file any details of the disallowance made in the earlier years and also the evidence of payment of these expenses during the year under consideration.

9. The learned AR submitted that the assessee is entitled to claim deduction u/s 43B as the said sum is actually paid by the assessee during

the year under consideration and as per the proviso to section 43B, the assessee is entitled to claim the deduction in the year of payment provided the said sum is actually paid on or before the due date of filing the return of income as specified in section 139(1) of the Act. The learned AR also submitted that the bank statements evidencing the payment of interest was already submitted before the DRP, who did not consider the evidence while passing the directions.

10. We heard rival submissions and perused the material on record. We will look at relevant extract from the provisions of section 43B which reads as follows -

“Certain deductions to be only on actual payment.

43B. *Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—*

(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State financial corporation or a State industrial investment corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in [section 28](#) of that previous year in which such sum is actually paid by him :

Provided *that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date*

applicable in his case for furnishing the return of income under sub-section (1) of [section 139](#) in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.

11. From the reading of the section it is clear that the assessee is entitled to claim deduction in the year in which the actual payment happens provided the said payment is done by the assessee before the due date for filing the return of income u/s.139(1) of the Act. We notice that the assessee has submitted the bank statements in support of the payment made towards interest before the DRP (**Page 28 to 82 of the paper book**). We also notice that the evidence submitted by the assessee in the form of bank statements has not been properly examined by the lower authorities. Actual payment is the very basis on which deduction u/s.43B is to be allowed and the bank statement substantiating the payments needs to be verified. Hence we remit the issue back to the AO to verify the evidence afresh. Needless to say, the assessee should be given a proper opportunity of being heard by the AO. This ground is allowed for statistical purposes.

13. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 08th day of April, 2022.

Sd/-
(N.V.Vasudevan)
VICE PRESIDENT

Sd/-
(Padmavathy S)
ACCOUNTANT MEMBER

Bangalore; Dated : 08th April, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The DRP-2, Bangalore
4. The Pr.CIT-3, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore