

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1404/PUN/2019
निर्धारण वर्ष / Assessment Year: 2014-15

Babanrao Dagdu Shelke, Flat No.08, Ganesh Gaytri Apt. 291, Somwar Peth, Pune-411011. PAN : ARXPS0079D	Vs.	ITO, Ward- 6(2), Pune.
Appellant		Respondent

Assessee by : None
Revenue by : Shri Arvind Desai

Date of hearing : 01.06.2022
Date of pronouncement : 06.06.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)- 13, Pune [‘the CIT(A)’] dated 25.06.2019 for the assessment year 2014-15.

2. The appellant raised the following grounds of appeal :-

“1. On facts and circumstances of case and in law the learned CIT (A) erred in dismissing appeal of appellant without serving notice’s of hearing as mentioned in appellate order.

2. On facts and circumstances of case, the learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs.3,86,017/- u/s 14A when no exempt income is earned by appellant.

3. On facts and circumstances of case, the learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs 3,86,017/- u/s 14A when no expenditure was incurred by appellant for earning any exempt income.

4. *On facts and circumstances of case, the learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs.3,86,017/- u/s 14A even though appellant was having interest free own funds for the investments.*

5. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

3. Briefly, the facts of the case are as under :

The appellant is an individual engaged in the business of execution of civil contracts of the Government Department. The return of income for the assessment year 2014-15 was filed on 29.11.2014 declaring total income of Rs.2,80,43,750/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward- 6(2), Pune ('the Assessing Officer') vide order dated 06.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at total income of Rs.2,84,29,770/- after making addition of Rs.3,86,017/- u/s 14A of the act.

4. Being aggrieved by the above addition, an appeal was filed before the ld. CIT(A) contending that no addition u/s 14A can be made in the absence of any exempt income. Without prejudice to the above, it was also contended that the investments in shares of the private limited company were made out of its own funds and no borrowed funds were utilized for the purpose of making the investments in shares. However, the ld. CIT(A) dismissed the claim of the appellant by holding that the appellant had failed to substantiate this contention.

5. Being aggrieved by the above decision of the Id. CIT(A), the appellant is in appeal before us with the above extracted grounds of appeal.

6. When the appeal was called on, none appeared on behalf of the appellant despite due service of notice of hearing. Therefore, we proceed to dispose of the matter after hearing the Id. CIT-DR.

7. We heard the Id. CIT-DR and perused the material on record. The issue in the present appeal relates to the addition u/s 14A of the Act. The contention of the appellant that no exempt income was earned and no interest bearing funds were utilized for the purpose of making investments in share which yielded the exempt income, was not accepted by the lower authorities. We find from the orders of the lower authorities that the appellant had contended that no addition u/s 14A can be made in the absence of any exempt income. Also, when the books of accounts and financial statements are available with the Assessing Officer, the Assessing Officer can easily find out whether there is an exempt income or not, which the Assessing Officer failed to do so. The contention of the appellant is based on the several judicial precedents, wherein, it is held that in the absence of any exempt income, resort to the provisions of section 14A of the Act cannot be made. The various High Courts in catena of decisions held the same view and reference can be made to the following decisions :-

- (i) Redington (India) Ltd. vs. Addl. CIT, 392 ITR 633 (Mad);
- (ii) CIT vs. Celebrity Fashion Ltd., 428 ITR 470 (Mad);
- (iii) CIT vs. Chettinad Logistics Pvt. Ltd., 80 taxmann.com 221 (Mad) (Against which the SLP filed by the Department was dismissed by the Hon'ble Supreme Court in the case of CIT vs. Chettinad Logistics P. Ltd., 95 taxmann.com 250 (SC);
- (iv) CIT vs. Continuum Wind Energy (India) Pvt. Ltd., 430 ITR 52 (Mad);
- (v) PCIT vs. Kohinoor Project Pvt. Ltd., 425 ITR 700 (Bom.);
- (vi) Cheminvest Ltd. vs. CIT, 378 ITR 33 (Delhi);
- (vii) MAN Infraprojects Ltd. (ITA No.259 of 2017 dated 09.04.2019) (Bom.).

8. The Jurisdictional High Court in the case of PCIT vs. Kohinoor Project Pvt. Ltd. (supra) placing reliance on the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT (supra) and its own decision in the case of MAN Infraprojects Ltd. (supra) held as follows :-

“8. Section 14A of the Act deals with expenditure incurred in relation to income not includible in total income. As per sub-section (1) of section 14A, for the purpose of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income. In Cheminvest Ltd. (supra) Delhi High Court examined the expression "does not form part of the total income" as appearing in sub-section (1) of section 14A of the Act. Delhi High Court held that the said expression 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. It was clarified that section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

9. This view has been followed in several decisions by this Court. In fact in Pr. CIT v. Man Infraprojects Ltd. [IT Appeal No. 259 of 2017, dated 9-4-2019], this Court followed the decision of the Delhi High Court in Cheminvest Ltd. (supra). It was further noted in MAN Infraprojects Ltd. that the decision of the Delhi High Court was challenged by the revenue before the Supreme Court by filing SLP but the SLP was dismissed.”

9. In view of the above settled position of law, we hold that the provisions of section 14A of the Act have no application in the absence of any exempt income. In the present case, we remand the matter to the file of the Assessing Officer with the direction that on verification of books of accounts, if it is found that no exempt income was earned during the previous year relevant to the assessment year under consideration, no disallowance can be made u/s 14A in view of the law laid down in the cases cited (supra). Accordingly, the issue raised by the assessee in the various grounds of appeal stands partly allowed.

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

Order pronounced on this 06th day of June, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 06th June, 2022.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-13, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.