

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.65/Hyd/2022		
Assessment Year: 2017-18		
Shalivahana Green Energy Ltd Hyderabad PAN:AALCS2217B (Appellant)	Vs.	ACIT Circle 3(1) Hyderabad (Respondent)
Assessee by:	Shri S. Rama Rao, Advocate	
Revenue by:	Shri Rajendra Kumar, CIT(DR)	
Date of hearing:	18/07/2022	
Date of pronouncement:	19/07/2022	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 15.12.2021 of the learned CIT (A)/NFAC relating to the A.Y 2017-18.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the NFAC in sustaining the addition of Rs.1,36,34,221/- made by the Assessing Officer by invoking the provisions of section 14A r.w. Rule 8D.

3. Fact of the case, in brief, are that the assessee is a company engaged in the business of generation and distribution

of power and filed its return of income on 1.11.2017 declaring loss of Rs.24,10,80,987/- which was revised on 19.06.2018 declaring the original declared loss of Rs.24,10,80,987/-. The case was selected for scrutiny and the Assessing Officer completed the assessment u/s 143(3) of the I.T. Act on 26.12.2019 determining the total loss of Rs.22,74,46,766/- by disallowing an amount of Rs.1,36,34,221/- u/s 14A of the I.T. Act. The reason for the addition/disallowance is that the assessee company has investment to the tune of Rs.136,34,22,120/- as on 31.3.2017 from which the assessee company derives exempt income and therefore, provision of section 14A are clearly applicable. The Assessing Officer further relied on CBDT Circular No.5/2014 dated 11.2.2014 according to which the disallowance of expenditure for earning exempt income u/s 14A r.w. Rule 8D would be attracted even if the corresponding exempt income has not been earned during the financial year.

4. The assessee filed appeal before the learned CIT(A)/NFAC and the CIT(A)-NFAC confirmed the addition made by the Assessing Officer.

4.1 Aggrieved with such order of the CIT (A)-NFAC, the assessee is in appeal before the Tribunal.

5. We have heard the rival arguments made by both the sides and perused the record. We find the Assessing Officer in the instant case made addition of Rs.1,36,34,221/- by invoking the provisions of section 14A r.w. Rule 8D. We find the learned CIT (A) sustained the addition. It is the submission of the learned Counsel for the assessee that since the assessee has not received any dividend income, therefore, no addition is called for. We find

the Finance Act 2022 has drastically amended the provisions of section 14A and a Coordinate Bench of the Tribunal has held the amendment to be retrospective in nature i.e. w.e.f. 1.4.1962. We, therefore, in the interest of justice deem it fit and proper to restore the issue to the file of the Assessing Officer with a direction to decide the issue afresh in the light of the amendments to the provisions of section 14A by the Finance Act, 2022 and decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the Open Court on 19th July, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 19th July, 2022.

Vinodan/sps

Copy to:

S.No	Addresses
1	Shalivahana Green Energy Ltd, 94, 7 th Floor, Minerva Complex, SD Road, Secunderabad 500003
2	ACIT, Circle 3(1) Hyderabad
3	CIT (A)-NFAC, Delhi
4	Pr. CIT-, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order