

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member  
AND  
Shri Laliet Kumar, Judicial Member**

ITA Nos.209 to 212/Hyd/2022		
Assessment Years: 2016-17 to 2019-20		
Solex Commercial & Credit Private Limited Plot No.82, IDA, Kattedan, Hyderabad-500 077  PAN : AADCS7899F  (Appellant)	Vs.	DCIT, Central Circle-1(3) Aaykar Bhawan, Basheerbagh Hyderabad-500 029  (Respondent)
Assessee by:		Shri S.Rama Rao, Advocate
Revenue by:		Shri K.P.R.R.Murthy, Sr.AR
Date of hearing:		04.08.2022
Date of pronouncement:		10.08.2022

**ORDER**

**Per Bench:-**

The above bunch of four appeals filed by the assessee are directed against the separate orders dated 23.03.2022 of the Learned Commissioner of Income tax (Appeals)-11, Hyderabad relating to the AY 2016-17 to 2019-20 respectively. Since identical grounds have been raised by the assessee in all these appeals, therefore these were heard together and are being disposed-of by this common order.

2. In all these appeals, the assessee has challenged the order of the Id.CIT(A) in confirming the disallowances made by the AO u/s. 14A of the Act which are as under:-

Assessment Year	Amount(Rs.)
2016-17	11,29,192
2017-18	14,18,482/-
2018-19	14,96,166/-
2019-20	14,49,105/-

3. First, we take up ITA No.209/Hyd/2022 for AY 2016-17 as the lead case.

4. Facts of the case, in brief, are that the assessee is a Non-Banking Financial company and engaged in the business of lending, trading and investments in shares. It filed its return of income 17.10.2016, declaring total income of Rs.9,13,18,220/-. A search and seizure operation u/s. 132 of the I.T.Act was conducted on 15.11.2018 in the case of the assessee. In response to notice u/s. 153A issued on 23.10.2019, the assessee filed its return of income on 13.11.2019 declaring total income of Rs.9,13,18,220/-.

5. During the course of assessment proceedings, the AO observed from the details furnished by the assessee that the assessee company has earned dividend income of Rs.5,63,736/- and agriculture income of Rs.90,000/- which were claimed to be exempt. Since the assessee has earned exempt income, the AO held that expenses related to exempt income are required to be disallowed as per provisions of section. 14A read with Rule 8D. He accordingly invoking the provisions of section 14A r.w.Rule8D made disallowances of Rs.11,29,192/-

6. Before the Id.CIT(A), it was argued that application of provision of Rule 8D are not applicable to the assessee, since the assessee has sufficient interest free funds, which were more than the investment. Further, the exempt income is only Rs.4,73,736/-

and therefore, the disallowances under no circumstances could have exceeded the actual amount of exempt income received.

7. Based on the arguments advanced by the assessee, the Id.CIT(A) held that the provisions of section 14A r.w.Rule 8D are clearly applicable to the case of the assessee. The assessee has not proved by establishing a direct nexus of all the expenditure debited to different activities, but for investment to justify its claim. Therefore, the contention of the assessee that no expenditure were incurred and no borrowed funds were utilized for earning exempt income and therefore, no disallowances can be made u/s. 14A cannot be accepted. He, however, relying on various decisions directed the AO to restrict the disallowances only to the extent of exempt dividend income earned by the assessee during the year, which is Rs.4,73,736/-

8. Aggrieved with such order of the Id.CIT(A), the assessee is in appeal before the Tribunal .

9. The Id. Counsel for the assessee submitted that no incriminating materials were found during the course of search and the AO has made the disallowances by applying the provisions of section 14A r.w.Rule 8D on the basis of the documents available on record. Further, referring to the balance sheet of the assessee company, the Id. Counsel for the assessee in his second alternative argument submitted that since the own capital and free reserves of the assessee far exceeds the investments made, therefore, no disallowances u/s. 14A r.w. Rule 8D can be made. In his last plank of argument, the Id. Counsel for the assessee referring to various decisions submitted that the total disallowances made by the AO u/s. 14A r.w.Rule 8D cannot exceed the actual dividend income received.

10. The ld. DR on the other hand submitted that the Finance Act, 2022 has amended the provisions of section 14A according to which disallowances u/s. 14A shall be made even if no tax free income has been received by the assessee and therefore, the matter may be restored to the file of the AO with direction to adjudicate the issue afresh.

11. The ld. Counsel for the assessee in his rejoinder referring to the following decisions submitted that the explanation inserted by the Finance Act, 2022 to provisions of section 14A does not apply to assessment year prior to 2023.

1. *ACIT vs Bajaj Capital Ventures Pvt Ltd reported in 140 taxmann.com 1 (2022) (29.06.2020) (ITAT Mumbai)*
2. *Maxivision Eye Hospital Pvt.Ltd. vs DCIT in ITA No.139/CHNY/2020 order dated 22.07.2022 (ITAT Chennai)*
3. *Pr.CIT vs.Era Infrastructure (India) Ltd. in ITA No.204/2022 and CM Appl.31445/2022.(Delhi High court)*

12. We have considered the rival arguments made by both the sides, perused the orders of the ld. AO and ld.CIT(A) and paper book filed on behalf of the assessee. We have also considered the various decision cited before us. We find the AO in the instant case, applying the provision of section 14A r.w.Rule 8D, made disallowance of Rs.11,29,192/- on the ground that assessee has received exempt income of Rs.5,63,736/- from dividend and agricultural income. The assessee has shown investment of Rs.22,58,38,367/- and has incurred interest expenditure of Rs. 10,57,08,956/-. We find the ld.CIT(A) while upholding the applicability of provisions of section 14A r.w.Rule 8D, directed the AO to restrict the disallowances u/s. 14A to the actual exempt income received which in the instant case is Rs.4,73,736/-. It is the submission of the ld. Counsel of the assessee that no disallowances can be made u/s. 14A r.w.Rule 8D in the instant case, since no incriminating materials were found during the

course of search and therefore, no disallowances u/s. 14A can be made. The second plank of his argument is that since the own capital and free reserves of the assessee company far exceeds the amount of investment no disallowances should be made. The last argument of the ld. Counsel for the assessee is that the disallowances, if any, cannot exceed the actual dividend income received.

13. So far as the argument of the ld. Counsel for the assessee that no addition can be made in absence of any incriminating material is concerned, we find the same cannot be accepted. We find the Hon'ble Andhra Pradesh High court in the case of Gopal Lal Bhdaruka vs DCIT reported in 346 ITR 106 has held that for the purpose of section.153A/153C, the AO can take into consideration material other than what was available during the search and seizure operation for making an assessment of the undisclosed income of the assessee. So far as, the argument of the ld. Counsel for the assessee that assessee has sufficient own funds and free reserves which far exceeds the investment is concerned, we find the ld.CIT(A), while deciding the issue has observed that the assessee was unable to substantiate with evidence as to how no borrowed funds were utilized for making investment. Therefore, this argument of ld. Counsel for the assessee is also rejected in absence of any contrary material.

14. However, the last alternate argument of the ld. counsel for the assessee that the disallowances u/s. 14A cannot exceed the actual amount of dividend income received is acceptable in view of the decision of Hon'ble Delhi High court in the case of PCIT vs Caraf Builders & constructions (P.) Ltd. reported in 261 Taxman 47. Since, the ld.CIT(A) in the instant case has already directed the AO to restrict the disallowances u/s. 14A to the extent of actual dividend income received, therefore, upholding the order of

the ld.CIT(A) on this issue, we direct the AO to restrict the disallowance u/s.14A to the extent of actual dividend income received. The grounds raised by the assessee are accordingly partly allowed.

15. In the remaining three years, we find the assessee has received actual dividend income of Rs.5,77,899/- in AY 2017-18, Rs.5,95,575/- in AY 2018-19, Rs.2,55,263/- in AY 2019-20. Following our reasonings given in the preceding paragraph, we direct the AO to restrict the disallowances u/s. 14A to the extent of actual dividend income received subject to verification.

16. In the result, all the four appeals filed by the assessee are partly allowed in the terms indicated above.

Order pronounced in the Open Court on 10<sup>th</sup> August, 2022.

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 10<sup>th</sup> August, 2022.

**Thirumalesh/sps**

Copy to:

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1	Solex Commercial & Credit Private Limited Plot No.82, IDA, Kattedan, Hyderabad-500 077
2	DCIT,Central Circle-1(3) Aaykar Bhawan, Basheerbagh Hyderabad-500 029
3	CIT(A)-11, Hyderabad
4	Pr.CIT(Central), Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*