

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.376/Bang/2020
Assessment Year : 2017-18

M/s Atria Power Corporation Pvt. Ltd., No.1/1, Palace Road, Bangalore -560 001. PAN NO : AABCA 1880 E	Vs.	The Income-tax Office, Ward-1[1][4], Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri V Srinivasan, Advocate
Respondent by	:	Shri K.R Narayana, Addl. CIT

Date of Hearing	:	08.08.2022
Date of Pronouncement	:	10.08.2022

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of CIT(A)-11, Bangalore dated 29.11.2021 for the assessment year 2017-18. The assessee has raised following grounds of appeal:-

- "1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- 2. The learned CIT[A] is not justified in upholding the disallowance of Rs.81,67,657/- made u/s. 14A r.w.Rule 8D of the Act without appreciating that the provisions of sec. 14A of the Act were inapplicable to the appellant's case in the absence*

of any expenditure incurred to earn exempt income and therefore, the impugned disallowance made deserves to be deleted.

2.1 Without prejudice to the above, the learned CIT[A] ought to have appreciated that the disallowance u/s. 14A of the Act cannot exceed the exempt income of Rs. 6,22,816/- earned by the appellant and therefore, the disallowance of Rs. 81,67,657/- made was highly excessive and the same deserves to be reduced substantially.

3. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234-B of the Act, which under the facts and in the circumstances of the appellant's case and the same deserves to be cancelled.

4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

2. There is delay of _____ days in filing the appeal before this Tribunal. The assessee has explained the reason for the delay.

3. We have heard the rival submission of both the parties and after perusing of the materials placed before us and we are satisfied that the delay in filing the appeal was due to reasonable and sufficient cause and the delay in filing the appeal deserves to be condoned. We accordingly condone the delay in filing the appeal after relying on the judgment of Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (Supra).

4. The brief facts of the case are that the assessee company is engaged in the business of generating and transmission of electric power through hydel and solar renewable energy sources. Its filed its return of income on 31/10/2019 declaring a loss of Rs.12,88,69,400/- and filed revised return of income on 19/12/2017 declaring a total income of Rs.1,92,97,500/- under the general provisions of the Act and book profit u/s 115JB of the Act was revised to Rs.3,69,14,485/-. The return was processed and subsequently the case was selected for scrutiny under CASS and statutory notices were issued to the assessee. During the course of assessment proceedings, the AO observed that there is investment of Rs.68.52 crores in associates and the company received dividend income of Rs.6,22,816/- which is exempt under the Income-tax Act 1961, hence, the AO applied sec. 14A and calculated the disallowance u/s 14A r.w.rl 8D. He also observed that when assessee incurred finance cost of Rs.2,00,67,165/-, in this regard the assessee has asked to provide the details submissions regarding applicability of sec. 14A and the assessee filed written submission but the AO was not satisfied and calculated disallowance of Rs.81,67,657/ after applying sec.14A r.w.r 8D.

5. Aggrieved from the order of the AO, the assessee filed appeal before the CIT(A) and he also filed written submission along with case law. But the CIT(A) after relying on some case

law upheld the action of the AO and dismissed the appeal of the assessee.

6. Aggrieved from the order of the CIT(A), the assessee filed appeal before the ITAT.

7. The ld.AR retreated the submission made before the lower authorities and further submitted that the addition cannot be more than the exempt income received by the assessee during the impugned assessment year. The AO was not justified to calculate the disallowance u/s 14A r.w.r 8D to the extent of Rs.81,67,657 and he also relied on judgment of Hon'ble High Court of Karnataka in the case of Pragathi Krishna Gramin Bank. The AR of the assessee filed paper book containing page no.1 to 79, which is placed on record. He further submitted that amendment in Finance Act 2022 is applicable from the 1/4/2022 onwards and it does not have retrospective effect which has been clarified by the Hon'ble Delhi High Court in recent judgment in the case of M/s Era Infrastructure (India) Ltd. in ITA 204/2022 & CM APPL.31445/2022 dated 20th July, 2022.

8. The ld.DR relied on the order of the lower authorities. He further submitted that the CIT(A) has rightly dismissed the appeal of the assessee, there was huge investments made by the assessee and no disallowance made by the assessee suo moto u/s 14A r.w.r 8D. The assessee was unable to

substantiate that on the date of making investments he had sufficient own funds and the borrowed funds has not been utilized, every investments require cost of capital and managerial activities. The assessee has invested in his subsidiary and partnership firm and huge capitals has invested. He further submitted that the amendments made by the Finance Act 2022 is only a for the removal of doubts there was no any new sections/rules introduced and therefore it is a retrospective amendment as decided by the ITAT Gouhati Bench of the Tribunal in ITA No.154 to 156/GOU/2019 in the case of Williamson Financial Services Ltd., vide order dated 6/7/2022, and the Bench has considered in detail applying various judgments and came to conclusion that the amended is retrospective in nature.

9. We have heard the rival submissions and perused the materials available on record and order of the lower authorities below that the assessee has received exempt income to the tune of Rs.6,22,816/- from the mutual funds which is exempt under income tax and there is finance cost of Rs.2 crores. The AO has calculated the disallowance of Rs.81,67,657/-. We found substance in the submission of ld.AR that the disallowance cannot be exceed more than the exempt income received during the year as per the decision of Hon'ble jurisdictional High Court in the case of Pragathi Krishna Gramina Bank cited supra

10. However, both parties contended regarding the applicability of the amendments made by the Finance Act 2022, we observe that the co-ordinate bench of ITAT Gauhati the date of decision is 6th July, 2022, whereas the judgment rendered by the Hon'ble Delhi High Court cited supra is dated 20th July, 2022, which is later judgment on the same issue. Therefore, we are allowing the appeal of the assessee subject to para No.10 of the said judgment of Hon'ble Delhi High Court in the case of M/s Era Infrastructure (India) Ltd. cited supra which reads as under:-

“Accordingly, the appeal and application are dismissed. However, it is clarified that the order passed in the present appeal shall abide by the final decision of Supreme Court in the SLP filed in the case of PCIT Vs. IL & FS Energy Development Company Ltd.”

11. Respectfully following the above judgment, we allow the appeal of the assessee by following the decision of the Hon'ble Delhi High Court Judgment cited supra.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 10th August, 2022.

Sd/-

Sd/-

(N.V. Vasudevan)
Vice President

(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated 10th August, 2022.
Vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr. P. S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.
14. Dictation note enclosed.....