

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'E' : NEW DELHI)

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND**

SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.8460/Del/2019, A.Y. 2013-14

Addl. CIT Special Range-7 New Delhi	Vs.	M/s. ONGC Tripura Power Company Limited 6 th Floor, IFCI Tower, A Wing, Nehru Place, New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	None
Revenue by	Shri Jeetender Chand, Sr. DR

Date of hearing:	20.09.2022
Date of Pronouncement:	20.09.2022

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Revenue against order dated 30.07.2019 passed in appeal no. 22/19-20/CIT(A)-22, New Delhi for assessment year 2013-14 by Commissioner of Income Tax (Appeals)-22, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 16.02.2016 u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by ITO, Ward-19(1), New Delhi.

2. The facts in brief are assessee company had filed return declaring income of Rs. 17,15,270/- and the case was selected for scrutiny. The Company is a Limited Company and is a joint venture of ONGC, IL&FS Energy Development Co. Ltd., II Fund and Govt, of Tripura. The company is formed for generation of power and supply of electricity in north eastern states. During the F.Y. 2012-13 the company has not commenced its business and sources of income shown are interest income, dividend income and other income out of this dividend income of Rs. 2,35,26,177/- has been claimed exempt u/sec. 10(33). Ld. AO observed that from the perusal of documents and details submitted during the assessment proceedings that the assessee company has invested to the tune of Rs. 1,23,42,00,000/- in the equity Shares and earned the dividend income on it. However, the assessee has not disallowed/ considered any expenses as per the provisions of Section 14A of the Act.

3. Assessee claimed that no expenses attributable to the earnings of the exempt income were claimed in the profit and loss account. The Ld. AO however, disallowed the claim and Ld. CIT(A) deleted the addition with following observations :

“5.2 I have carefully perused the finding of the ITAT. The Hon’ble ITAT has noted that when there is no claim for expenses to be adjusted against the income then no disallowance u/s 14A can be made. The facts of the case is identical to the facts of the case for A.Y. 2012-13 decided by ITAT. However, in the year under consideration the appellant has claimed expense of Rs. 2,52,102/-. No detail of the expenditure of Rs. 2,52,102/- is submitted. Therefore, respectfully following the decision of Hon’ble ITAT, the disallowance is restricted to Rs. 2,52,102/-. The balance addition is deleted.”

4. The revenue is in appeal raising following grounds :-

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not examining the fact that the assessee has claimed the expenses related to exempt income under other heads of expenses.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not examining the fact that the liability of the expenses has arisen during the impugned year and such expenses was supposed to be debited under specific head relating to exempt income.

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not examining the expenses relating to exempt income when the investment was made to the tune of Rs. 123.42 crores.

4. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not making proper enquiries in respect of actual expenses incurred to earn exempt income in light of decision by decision of Hon 'ble Delhi High Court in the case of CIT vs. Jansampark Advertising & Marketing (P.) Ltd. order dated 11.03.2015.

5. Any other ground that may be urged during hearing.”

5. Heard and perused the record. None has appeared for the assessee and the notices issued have been received back with report that assessee has left the address. So arguments for Revenue were heard.

6. It was submitted on behalf of the revenue that Ld. CIT(A) has fallen in error in making the deletion and failed to appreciate the reasoning of Id. AO.

7. Giving thoughtful consideration to the matter on record it can be appreciated that Ld. CIT(A) has merely followed the observations and findings of this tribunal in regard to the assessee's own case for assessment year 2012-13 that when there is no claim for expenses to be adjusted against the income then no disallowance u/s 14A can be made. The matter of fact remain same that assessee has not commenced its business in the financial year under consideration. The Id. CIT(A) has restricted the addition to Rs. 2,52,102/ in regard to expenses claimed during the year. The findings require no interference. There is no substance in the grounds of appeal.

8. The appeal of revenue is dismissed.

Order pronounced in the open court on 20th September, 2022.

**Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 20 .09.2022

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI