

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1926/DEL/2020
Assessment Year 2011-12

DCIT, Central Circle-31, New Delhi.	Vs.	RSWM Ltd., Kharigram, Gulabpura, Karouli, Rajasthan.
TAN/PAN: AAACR9700M		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri R.K. Gupta, CIT-DR		
Date of hearing:	06	10	2022
Date of pronouncement:	18	10	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Revenue against the order of the Commission of Income Tax (Appeals)-XXX, New Delhi ['CIT(A)' in short] dated 17.09.2020 arising from the assessment order dated 29.12.2018 passed by the Assessing Officer (AO) under Section 153A of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. The grounds of appeal raised by the Revenue read as under:

"1. That on the facts and in circumstances of the case, the ld. CIT(A) has erred in law and on facts in restricting the addition of Rs.1,73,38,318/- (to the extent of dividend income) as against Rs.3,21,91,000/- made u/s.14A by the Assessing Officer, without appreciating the detailed reasons given in the assessment order.

2. That on the facts and in circumstances of the case, the ld. CIT(A) has erred in law and on facts in restricting the addition to the extent of Gross profit earned by the appellant as against of

Rs.16,62,108/- made by the Assessing Officer, without appreciating the detailed reasons given in the assessment order and without appreciating the fact that incriminating documents, supported the bogus purchases made by the assessee company.”

3. When the matter was called for hearing, none appeared for the assessee. Therefore, the matter was proceeded ex-parte.

4. Briefly stated, the assessee has earned dividend income of Rs.1,73,38,318/- which is claimed as exempt under Section 10(34) of the Act. The Assessing Officer computed the disallowance of Rs.3,21,91,000/- in terms of Section 14A of the Act r.w. Rule 8D of the Income Tax Rules.

5. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) restricted the disallowance to the extent of the income and granted relief towards disallowance in excess of exempt income. The relevant operative paragraph of the CIT(A) is reproduced as under for ready reference.

“Ground No. 1 of the appeal is directed against disallowance of Rs. 3,21,91,000/- u/s 14A r.w.r. 8D of the Income Tax Act, 1961. The appellant has disputed the disallowance on the ground of non-recording of satisfaction as well as non sustainability of disallowance in excess of exempt income. It has also been contended by the appellant that investment appearing in the Balance sheet are strategic investment and as such the provisions of section 14A are not applicable.

8.1 The assessing officer has computed the disallowance under Rule 8D(2)(ii) and 8D(2)(iii) of the IT Rules, 1962. I have considered the submissions of the appellant and have perused the assessment order. I find that during the year under reference, the appellant has earned exempt income in the form of dividend of Rs. 1,48,52,682/-. Further, the assessing officer has invoked provisions of section 14A after duly recording satisfaction in terms of provisions of 14A(2) which is evident from the observation recorded at Page 9-12 of the assessment order wherein the AO has discussed about the applicability of section 14A r.w.r 8D in the case of the appellant. Thus, I do not find force in the submission of the appellant on the issue of satisfaction.

8.2 However, I also fail to find justification behind the action

of the assessing officer in making huge disallowance of Rs. 3,21,91,000/- against exempt dividend income of Rs. 1,48,52,682/-. It is trite law, as settled by Jurisdictional High Court, that disallowance u/s 14A cannot exceed exempt income. This legal position is in consonance with principle that provision of section 14A is not applicable where there is no claim of exempt income. In these circumstances, I am inclined to agree with alternate plea raised by the AR that disallowance u/s 14A should be restricted to the extent of exempt income which is supported from decision of Hon'ble Delhi High Court in the case of Joint Investments Private Limited vs. CIT [2015] 372 ITR 694 (Del) and Pr.CIT v. Caraf Builders & Constructions (P.) Ltd. [2019] 414 ITR 122 (Delhi) [SLP dismissed by SC]

8.3 In view of finding recorded in aforesaid para, I hereby direct the assessing officer to restrict the disallowance to the extent of dividend income of Rs. 1,48,52,682/- and delete the remaining disallowance. The Ground No. 1 is thus partly allowed."

6. We have carefully considered the objections raised on behalf of the Revenue on the action of the CIT(A). However, we see not merit in such objection. The CIT(A) has rightly applied the principles laid down by plethora of judicial precedents. Thus, the action of the CIT(A) is found to be in consonance with the judgments rendered in this regard whereby it was consistently held that the disallowance under Section 14A cannot exceed the exempt income itself. Hence, we see no reason to interfere with the order of the CIT(A) on the issue involved. Hence, Ground No.1 of the Revenue is dismissed.

7. Ground No.2 concerns disallowance on account of bogus purchases. The Assessing Officer made an addition of Rs.16,62,108/- on account of purchases made from one party, namely, M/s. Jagdambe Cotton holding that the purchase shown is only an accommodation entry.

8. The CIT(A) in the first appeal scaled down the disallowance out of bogus purchases of Rs.16,62,108/- to be recomputed to the extent of gross profit percentage earned by the assessee instead of

whole of the so called bogus purchases. The CIT(A) has dealt with the issue as under:

“9. Ground No. 2 of the appeal is directed against disallowance of purchase of Rs. 16,62,108/-. The assessing officer has considered the disallowance on the basis of Information received from DDIT (investigation) New Delhi which contained incriminating information against the booking of bogus purchases by the appellant from M/s. Jagdambe Cotton prop concern of Sh. Dilip Kumar.

9.1 The appellant had disputed the said disallowance on the ground that purchases recorded in the books of account is genuine and supported from documentary evidence. It was also contended that purchases made from M/s. Jagdambe Cotton is supported from quantitative record of the appellant.

9.2 I have considered the assessment order and submissions of the appellant. The information received from DDIT(Inv), New Delhi was categorically wherein after making necessary investigation, it was concluded that M/s. Jagdambe Cotton was engaged in business of proving bogus billing to various assessee. Undisputedly, the appellant company has also made payment to said concern against purchases of Rs. 16,62,108/- recorded in its books. I also find that appellant has unable to discharge the burden of proving genuineness of purchases made from M/s. Jagdambe Cotton and has failed to produce the principle officer of the said concern. The mere fact that books of account are audited will not help the case of the appellant particularly when specific information from investigation wing is there on record. In these circumstances, the allegation of bogus purchases is sound footed.

9.3 However, in the same breath, I find considerable merit in the alternate contention of the appellant that without there being any dispute with regard to quantitative details, trading result and corresponding sales, the disallowance of entire purchase of Rs. 16,62,108/- is ill-founded. It is well known fact that assessee obtains bogus bills in respect of those transaction where goods are actually procured from grey market at a discounted price and bills are obtained from entry providers so as to route the purchases in the books of account without disturbing the quantitative result.

9.4 In the present case, the assessing officer has not adversely commented on quantitative result and even the appellant is heavily relying upon the correctness of trading result to justify the purchases. In view of these facts and keeping in mind the nature of transaction, it would be appropriate to make addition to the extent profit earned on such bogus purchase which will take into account the unaccounted portion of income earned by the appellant. This is in consonance with principle laid down by Hon'ble Bombay High

Court PCIT vs. Mohommad Haji Adam (Bombay High Court) (ITA 1004 of 2016 dated 11/02/2019) and Hon'ble Gujarat High Court in the case of PCIT v. Jagdish H Patel [2017] 84 taxmann.com 259 (Gujarat).

9.5 Accordingly, I direct the Assessing Officer to restrict the disallowance to the extent of Gross profit earned by the appellant as mentioned in tax audit report of the appellant. The ground no. 2 is partly allowed."

9. We have carefully considered the objection raised on behalf of the Revenue on the action of the CIT(A) towards reduction of the disallowance on account of bogus purchases. The CIT(A) has restricted the disallowance towards bogus purchases to the extent of gross profit as applicable on such purchases having regard to the quantitative results etc. the action of the CIT(A) appears to be based on just and proper appreciation of facts and in consonance with the judicial precedents.

10. In the absence of any perversity shown, we are not inclined to interfere with the action of the CIT(A). Hence, the Ground No.2 of the Revenue is dismissed.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 18/10/2022.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

DATED: /10/2022

prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER