

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.1124/Del./2020
(ASSESSMENT YEAR : 2015-16)**

Hexa Securities & Finance Company Ltd., vs. DCIT, Circle 11 (1),
28, Najafgarh Road, New Delhi.
New Delhi – 110 015.

(PAN : AABCH0944A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Anil Jain, CA
REVENUE BY : Shri Rajendra Jha, Sr. DR

Date of Hearing : 07.11.2022
Date of Order : 10.11.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id.

CIT (Appeals)-4, New Delhi for the assessment year 2015-16.

2. The grounds of appeal read as under :-

“1. On the facts and circumstances of the case and in law the Id. CIT (A) erred in upholding the disallowance of Rs.40,82,500/- made by AO in the assessable income of the appellant u/s 14A.

2. On the facts and circumstances of the case and in law the Id. CIT (A) erred in upholding AO's act of computing the disallowance u/s 14A on the total average investment of appellant of Rs.157,99,71,658/- instead of average amount of

investment of Rs.18,14,589/- on which appellant has earned exempt dividend income during the year .

3. On the facts and circumstances of the case and in law the Id. CIT (A) failed to appreciate that it is settled principle of law that in any case the disallowance u/s 14A cannot exceed the amount of exempt dividend income of Rs.2,48,776/- earned by the appellant during the year.

4. The order passed by the Id. CIT (A) is against the judicial proprietary as he has failed to follow the decisions of the Hon'ble Supreme Court and jurisdictional High Court relied by the appellant in the appellate proceedings.

5. All the above grounds are independent and mutually exclusive.”

3. Brief facts of the case are that assessee company is engaged in the business of lending money and making investment in shares of companies. During the year under consideration appellant's main income was from interest earned by lending funds to various corporate bodies. Besides this it had earned small amount of dividend income on its investment in shares of companies in whom it had made investment amounting to Rs.18,14,589/-. It had further made investment of Rs.157.82 crores in shares of companies on which, no dividend income was earned. Return of income was filed declaring income of Rs.5,98,91,720/- which included disallowance of Rs.40,82,500/- u/s 14A. During assessment proceedings, assessee revised its computation of disallowance u/s 14A and claimed that disallowance u/s 14A works out to Rs.9,073/- instead of Rs.40,82,500/-. It has been argued that the

disallowance should be made only on the amount of investments which had earned exempt income and no disallowance could be made on investments which had not earned any exempt income as provisions of section 14A would not apply to them. It was further contended by the assessee that there was error in the computation of disallowance in the return and consequently it was pleaded that the disallowance should be considered only at Rs.9073/-, alternatively at the most to the amount of exempt income of Rs.2,48,776/-. Ld. CIT (A) noted that assessee has not filed revised return before the AO. However, he entertained the same by observing as under :-

“6.2 Citing the decision of Hon'ble Delhi High Court in the case of Pr. CIT vs. WESTERN INDIA SHIPYARD LIMITED 379 ITR 289 (DEL), wherein the Hon'ble High Court held that "While there was a bar on AD to entertain claim of deduction without a revised return filed by Assessee, there was no such restraint on CIT (A) for allowing such claim during appellate proceedings", it was argued that the claim of the appellant be entertained.”

4. Ld. CIT (A) dismissed the assessee's submissions that it has not incurred any expenditure in earning the exempt income or that disallowance should be limited to the exempt income earned. It was rejected by the Id. CIT (A) relying upon the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Company Ltd. vs. DCIT.

5. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel of the assessee stated that this issue is squarely covered in favour of the assessee by the decision of Hon'ble jurisdictional High Court in the case of ACB India Ltd. vs. CIT 374 ITR 108 (Del.). He further submitted that amendment in the Income-tax Act, 1961 (for short 'the Act') is prospective which has been so held in Pr.CIT (Central)-2 vs. M/s. Era Infrastructure (India) Ltd. in ITA 204/2022 order dated 20.07.2022 and CBDT Circular No.23 dated 03.11.2022. As regards the alternative submission that disallowance should be restricted to the exempt income earned, ld. Counsel for the assessee placed reliance upon the decision of Hon'ble jurisdictional High Court in the case of Joint Investments Pvt. Ltd. vs. CIT 372 ITR 694 (Del.). On a query from the Bench about the applicability of Hon'ble Supreme Court decision in the case of Goetze (India) Ltd. – (2006) 284 ITR 323 (SC), ld. Counsel stated that the said decision was only applicable to the AO but not to ld. CIT (A).

7. Upon hearing both the parties and perusing the records, we find that Hon'ble Apex Court in the case of Goetze (India) Ltd. (supra) clearly held that AO and CIT (A) have no power to entertain a claim otherwise than revised return of income. However, Hon'ble Apex Court has also

expounded in their order in that case that their order would not impinge upon the powers of ITAT to admit claim otherwise the claim of revised return. We find that on the facts and circumstances of the case, various case laws which are now being cited by the Id. Counsel of the assessee were not relied upon and also not mentioned in the submissions of the assessee before the Revenue authorities below. Hence, in the interest of justice, we deem it appropriate to remit the issue to the file of AO. AO shall consider it afresh after taking into account various case laws cited by the assessee as above. Needless to add, assessee should be provided an opportunity of being heard.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 10th day of November, 2022.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 10th day of November, 2022

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-3, New Delhi
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**