

**आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**  
**AND**  
**SHRIB.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.78/Ind/2022**  
**Assessment Year: 2017-18**

Gaurang Metals Pvt. Ltd. Indore	<b><u>बनम/</u></b> Vs.	Pr. CIT-1 Indore
(Appellant / Assessee)		(Respondent / Revenue)
<b>PAN: AABCG2498Q</b>		
Assesseeby	Shri S.N. Agrawal & Shri Pankaj Mogra, ARs	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	18.11.2022	
Date of Pronouncement	20.01.2023	

**आदेश/O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by revision-order dated 11.03.2022 passed by learned Pr. Commissioner of Income-Tax-1, Indore["**Ld. PCIT**"]u/s 263 of Income-tax Act, 1961 ["**the Act**"], which in turn arises out of assessment-order dated 20.12.2019 passed by learned DCIT/ACIT-2(1), Indore["**Ld. AO**"]u/s 143(3) for Assessment-Year ["**AY**"] 2017-18, the assessee has filed this appeal on the grounds raised in the Appeal-Memo.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that the assessee filed return of income on 25.10.2017 which was subjected to scrutiny-assessment by

issuing statutory notices u/s 143(2)/142(1). Finally, the Ld. AO completed assessment u/s 143(3). Subsequently, the Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by Ld. AO is erroneous in so far it is prejudicial to the interest of revenue, which attracts revisionary-jurisdiction u/s 263. The reason of framing such a view, as mentioned by Ld. PCIT in the show-cause notice dated 25.02.2012 is such that the assessee made investment yielding exempt-income and in relation to those investments, although the tax-auditor of assessee had reported inadmissible expenditure at Rs. 18,28,089/- u/s 14A but the assessee made a disallowance of Rs. 21,086/- only while computing taxable income. According to Ld. PCIT, the Ld. AO has passed assessment-order accepting the disallowance of Rs. 21,086/- as well as without making enquiries therein, and thus committed a mistake which renders the assessment-order as erroneous-cum-prejudicial to the interest of revenue.

4. By the aforesaid show-cause notice, the assessee was asked to explain as to why the assessment-order may not be revised. In response thereto, the assessee made a detailed submission to Ld. PCIT, which is re-produced in Para No. 3 of the revision-order.

5. However, none of those submissions impressed the Ld. PCIT. The Ld. PCIT further observed that since the section 263 has been amended and Explanation 2, as reproduced below, had been introduced therein, the assessment-order is deemed to be erroneous-cum-prejudicial to the interest of revenue if the same had been passed without inquiries or verification which should have been made:

*“Explanation 2 – “For the purpose of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue, if in the opinion of the Principal Commissioner or Commissioner -*

- (a) The order is passed without making inquiries or verification which should have been made;*
- (b) The order is passed allowing any relief without inquiring into the claim;*

(c) ....

(d) ...”

6. Finally, the Ld. PCIT concluded that the Ld. AO has not carried out the inquiry/verification which he should have done and hence the assessment-order is erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, the Ld. PCIT passed revision-order u/s 263 whereby the assessment-order was set aside to the file of Ld. AO with a direction to re-frame assessment de novo and make disallowance as per provisions of section 14A.

7. Aggrieved by such revision-order, the assessee has filed this appeal.

8. By means of various grounds raised in the Appeal Memo which are not being reproduced for the sake of brevity, the appellant-assessee requires us to adjudicate whether or not the revision-order passed by Ld. PCIT u/s 263 is valid in the eyes of law?

9. Ld. AR straightaway carried us to a Paper-Book filed by him and submitted that during the course of assessment-proceeding, the Ld. AO has made specific queries to assessee *quat* the issue of disallowance u/s 14A and the assessee has also filed enough details/documents in response thereto, which is very much evident from the following details/documents forming part of assessment-record available with the department:

(i) Paper Book Page No. 81 to 86 – Vide Point No. 14 of the notice dated 20.08.2019 u/s 142(1), the AO raised following query to the assessee:

*“17. Please furnish working of disallowance u/s 14A r.w. Rule 8D considering the expenses claimed in P&L Account and the investment made income of which do not form part of taxable income and to explain why disallowance u/s 14A should not be made for the year under consideration.”*

- (ii) Paper Book Page No. 89 to 104 – Vide Point No. 17 of the reply-letter dated 15.11.2019, the assessee made following submission:

*“17. That disallowance u/s 14A of Rs. 18,28,089/- was mentioned in the tax audit report, however during the year under consideration dividend of Rs. 21,086/- was received which is being claimed exempt u/s 10(34) of the IT Act. Therefore the disallowance u/s 14A of Rs. 18,28,089/- was also restricted to Rs. 21,086/- upto the exempt income earned during the year.”*

- (iii) Paper Book Page No. 87 to 88 – Vide Annexure to notice dated 17.12.2019 u/s 142(1), the AO raised following query to the assessee:

*“Please explain why disallowance u/s 14A be restricted to the amount of dividend received.”*

- (iv) Paper Book Page No. 105 to 108 – Vide Point No. 2.1 of the reply-letter dated 18.12.2019, the assessee made following submission:

*“2.1] That after perusal of working of disallowance u/s 14A as furnished in para 17 of our last reply, you have asked from us to justify why disallowance u/s 14A were restricted to Rs. 21,086/- being amount of Dividend received which is claimed exempt vis-à-vis in the Tax Audit Report the disallowance mentioned at Rs. 18,28,089/-.*

*2.2] That no doubt disallowance u/s 14A of Rs.18,28,089/- was mentioned in the Tax audit Report, however during the year under consideration dividend of was received which is being claimed exempt u/s 10(34) of the IT Act. Therefore, the disallowance u/s 14A of Rs.18,28,089/- was also restricted to Rs.21,086/- i.e.upto the exempt income earned during the year.*

***2.3]That the Hon’ble ITAT Indore bench in the case of assessee for the assessment year 2005-06 being ITA No.255/Ind/2015***

***dated 13.07.2016 has restricted the disallowance u/s 14A to the extent of Dividend Income received which is claimed exempt after relying on various legal pronouncement Xerox Copy of the said order is enclosed herewith for your kind perusal.***

*2.4]In view of the above the disallowance of Rs.21,086/- as made by us in the computation of income is legal proper and correct the same may please be accepted.”*

10. Having demonstrated the preliminary aspect that during the course of assessment-proceeding the Ld. AO made detailed enquires on the impugned issue and the assessee also made replies from time to time, the Ld. AR emphasised that although the auditors reported the quantum of inadmissible expenditure at Rs. 18,28,089/-, the exempt income earned by assessee itself was Rs. 21,086/- and, therefore, the disallowance u/s 14A was required to the extent of Rs. 21,086/- only. Ld. AR submitted that this issue had earlier cropped up in assessee's own case for AY 2005-06 and the **Co-ordinate Bench of ITAT, Indore in ITA No. 255/Ind/2015 order dated 13-07-2016** accepted that the disallowance u/s 14A cannot exceed the amount of exempt income. The relevant para of ITAT is extracted below:

***“5. The Ld. Counsel for the assessee submitted that the assessee earned dividend income of Rs.1500/- during the year against which the disallowance of Rs.3,75,267/- has been made u/s 14A of the Act which is not justified. He submitted that the disallowance can be restricted to the extent of dividend income earned by the assessee and for this proposition he relied upon the decision of the Hon'ble Delhi High Court in the case of Joint Investment Pvt. Ltd. Vs. CIT (2015) 59 taxman.com 295 Del. He also relied upon the decision of the Delhi Bench of the Tribunal in the case of M/s Amar Packaging Pvt. Ltd. ITANo.2358/Del/2015 order dated 29.3.2016 wherein it was held***

***that disallowance u/s 14A cannot exceed the income claimed by the assessee as exempt. The Ld. DR could not controvert the submissions of the Learned counsel for the assessee by citing any contrary decision. Therefore, respectfully following the decision of the Delhi Bench of the Tribunal in the case of M/s Amar Packaging Pvt. Ltd. (supra) we restrict the disallowance of expenditure u/s 14A of the Act to Rs.1500/- and vacate balance disallowance of Rs.3,73,767/-. Thus this ground is allowed.”***

11. With these submissions, the Ld. AR contended that neither the assessment-order is erroneous nor it has caused any prejudice to the revenue, therefore the revision-order is not warranted and the same should be quashed.

12. Per contra, Ld. DR dutifully supported the revision-order passed by Ld. PCIT but, however, could not contradict the submissions of Ld. AR.

13. We have considered the rival submissions of both sides and perused the material held on record. Without repeating the pleadings made by Ld. AR which are already narrated at length in the foregoing paragraphs, we suffice it to note that during the course of assessment-proceeding, the Ld. AO has raised ample queries on the issue of disallowance u/s 14A and the assessee has also made sufficient replies. Therefore, it cannot be said that there is any kind of lack of enquiry. We further note that the legality of contention of assessee that the disallowance was attracted upto Rs. 21,086/- only being the amount of exempt-income, is well accepted by the Hon'ble Co-ordinate Bench of ITAT in assessee's own case in AY 2005-06. Being so, there is neither any error in the assessment-order nor any prejudice is caused to the revenue. Therefore, the revision-action taken in present case is not warranted at all. Being so, we quash the revision-order. The assessee succeeds in its appeal.

**14. Resultantly, this appeal of assessee is allowed.**

<i>Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 20/01/2023</i>
<i>Order pronounced in the open court on ...../...../2023</i>

Sd/-

Sd/-

(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक/Dated : 20.01.2023

Patel/Sr. PS

- Copies to:*
- (1) *The appellant*
  - (2) *The respondent*
  - (3) *CIT*
  - (4) *CIT(A)*
  - (5) *Departmental Representative*
  - (6) *Guard File*

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*

1.	Date of taking dictation	13.1.23
2.	Date of typing & draft order placed before the Dictating Member	13.1.23
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	13.1.23
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	