

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 1109/Mum/2018 (A.Y. 2014-15)

ACIT-1(3)(2),
Room No. 540, 5th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020

..... Appellant

Vs.

M/s Varsity Education Mgt. Pvt. Ltd.
6A/1, Court Chambers, 35,
New Marine Lines,
Mumbai-400020.

PAN: AADCV6100E

..... Respondent

Appellant by	:	Vranda U Matkarni, Sr.-DR
Respondent by	:	None
Date of hearing	:	17/10/2022
Date of pronouncement	:	13/01/2023

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-3, Mumbai [for short 'CIT(A)'] dated 25.10.2017 under section 143(3) of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2014-15. The Revenue has raised the following ground of appeal:

“1. Whether on the facts and in the circumstances of the case and in law, the CIT(A) was correct in deleting the disallowances u/s 14A r.w. Rule 8D without considering the Circular No.5 of 2014?”

2. Brief facts of the case are that the assessee is service provider like curriculum development, teacher recruitment and training, accounting services, payroll services, marketing services, I.T. management services, facility management, sale of text book and school uniform. Assessee e-filed its return of income declaring total income at Rs. 198, 28, 67,080/-. The case was selected for scrutiny and assessed u/s 143(3)

3. During the assessment proceedings AO made disallowance u/s 14A amounting to Rs. 1, 29, 99,850/- in addition to other disallowances. Against this order of AO assessee preferred an appeal before the Ld.CIT(A) (3)- Mumbai. Ld.CIT(A) deleted the disallowances made u/s 14A and sustained other additions made by AO. Against this deletion of disallowance u/s 14A revenue is in appeal before ITAT.

4. We have gone through the order of the AO, order of the Ld. CIT(A) and submissions of the assessee. assessee made investment in equity shares. The value of such investment were Rs. 259, 99, 70,060/-. During the assessment proceedings AO relied on circular no. 5/214 dated 11-02-2014 where in it was clarified by the board that sec 14A can be invoked even in those cases where no exempt income has been earned by the assessee. AO invoked the provisions of sec 14A r.w.r 8D (2)(iii) and worked out the disallowance at Rs. 1,29,99,850/-.

5. We have considered the order of AO along with circular mentioned supra. We observed during the year under consideration assessee has not earned any exempted income in the form of dividend etc. It is further observed that the

investment in the equity shares made by the assessee were in 100% subsidiary companies.

6. Considering the facts emanated we can reasonably conclude that when there is no exempt income during the year under consideration no disallowance can be made. In this regard we rely on the decision of honourable jurisdictional high court in the case of CIT Vs Delite Enterprises 135 TTJ 663 (2009). IT IS FURTHER observed that disallowance u/s 14A can't exceed the exempt income earned by the assessee this, we rely on CIT Vs Walfort Share and Stock Brokers Pvt Ltd 326 ITR 001 (SC).

7. The order of AO we found to be on wrong foundation as there is no satisfaction has been brought on record while applying sec 14A before rejecting assessee plea that no exempted income had been earned and there is no corresponding expenses incurred by the assessee as the investments are strategic in nature i.e. investment in 100% subsidiary companies. Moreover, the circular on which AO relied upon against the assessee was issued on 11-02-2014 and matter pertains to FY 2013-14. THE basic principle of interpretation has also been violated as any circular against the assessee has to be applied prospectively and circular beneficial to the assessee has to be applied on all the pending proceedings.

8. In view of the above judicial pronouncement, wrong assumption of charge and misinterpretation of the board circular, we confirm the order of relief passed by Ld. CIT(A).

9. **In the result, appeal filed by the revenue is dismissed.**

Order pronounced in the open court on 13th day of January, 2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai, दिनांक / Dated: 13/01/2023
SK, Sr.PS

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

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BY ORDER,

(Dy. /Asstt.Registrar)
ITAT, Mumbai