

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.120/Bang/2023 : Asst.Year 2012-2013

M/s.NSL Sugars Limited No.60/1, 2 nd Cross Residency Road Bengaluru - 560 025. PAN : AAGCS0938Q.	v.	The Deputy Commissioner of Income-tax, Circle 5(1)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.T.Gandhi, CA
Respondent by : Ms.Neera Malhotra, CIT-DR

Date of Hearing : 18.04.2023	Date of Pronouncement : 19.04.2023
-------------------------------------	-----------------------------------------------

ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 27.01.2023 passed u/s 250 of the I.T.Act. The relevant assessment year is 2012-2013.

2. The solitary issue raised is whether the CIT(A) is justified in confirming disallowance u/s 14A of the I.T.Act.

3. The brief facts of the case are as follows:

The assessee is a company engaged in the business of manufacture of sugar. For the assessment year 2012-2013, the return of income was filed on 28.09.2012 by declaring a loss of Rs.51,74,48,709. The assessment was completed u/s 143(3) of the I.T.Act on 31.03.2015. Subsequently, an order u/s 154 of the I.T.Act was passed on 28.03.2019 by making

disallowance u/s 14A of the I.T.Act amounting to Rs.6,22,04,600.

4. Aggrieved by the order passed u/s 154 of the I.T.Act, the assessee filed appeal before the first appellate authority. The CIT(A) vide the impugned order dated 27.01.2023, rejected all the contentions raised and dismissed the appeal of the assessee.

5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned AR submitted that the assessee has not received any exempt income during the relevant assessment year. Consequently, there is no disallowance warranted u/s 14A of the I.T.Act. The learned AR submitted that the issue in question is squarely covered by the orders of the Tribunal in assessee's own case for assessment years 2010-2011 and 2011-2012 in ITA Nos.597/Bang/2019 and 598/Bang/2019 (order dated 31.07.2019) and also for the assessment year 2016-2017 in IT(TP)A No.262/Bang/2021 (order dated 08.04.2022).

6. The learned Departmental Representative supported the orders of the A.O. and the CIT(A).

7. We have heard rival submissions and perused the material on record. The learned AR had contended that the assessee is not in receipt of any exempt income during the relevant assessment year and, hence, the disallowance u/s 14A of the I.T.Act is not warranted. It is settled law for the

relevant assessment year that when the assessee is not in receipt of any exempt income, no disallowance u/s 14A of the I.T.Act is warranted. In this context, we rely on the following judicial pronouncements:-

- (i) Pr.CIT v. IL and FS Energy Development Co. Ltd. (2017) 399 ITR 483 (Delhi)
- (ii) Cheminvest Ltd. v. CIT (2015) 378 ITR 33 (Delhi)
- (iii) Redington (India) Ltd. v. Addl.CIT (2017) 392 ITR 633 (Mad.)
- (iv) Pr.CIT v. Novell Software Development (India) Pvt. Ltd. (2021) 434 ITR 154 (Karn.)

8. It is to be mentioned that Finance Act, 2022 had amended section 14A of the I.T.Act, whereby it is stated that irrespective whether the assessee is not in receipt of exempt income, disallowance u/s 14A of the I.T.Act can be made. However, the Hon'ble Delhi High Court in the case of Pr.CIT v. Era Infrastructure (India) Ltd reported in (2022) 448 ITR 674 (Delhi) had held that the amendment is prospective and applies for and from assessment year 2022-2023 onwards. Since we are concerned with assessment year 2012-2013, the aforesaid amendment brought out by Finance Act, 2022 will not have application for the relevant assessment year.

9. However, on the facts on record, it is not clear whether the assessee had earned any exempt income during the relevant assessment year. Therefore, we deem it appropriate to restore the issue to the files of the A.O. and we accordingly do so. The A.O. is directed to examine whether the assessee

has earned any exempt income for the relevant assessment year. In the event it is found that the assessee has not earned any exempt income, no disallowance u/s 14A of the I.T.Act shall be made by the A.O. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 19th day of April, 2023.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 19th April, 2023.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-NFAC Delhi
4. The Pr.CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore