

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 173/Hyd/2023  
(निर्धारण वर्ष / Assessment Year: 2013-14)

Sunder Steels Limited, Vs. ITO, Ward-3(4),  
Secunderabad Hyderabad  
[PAN No. AACCS8222K]

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Ms. Vaishnavi for  
Shri Sunil Kumar Jain, AR

राजस्व द्वारा/Revenue by: Shri A.G.V. Prasad, DR

सुनवाई की तारीख/Date of hearing: 02/05/2023

घोषणा की तारीख/Pronouncement on: 08/05/2023

आदेश / ORDER

Aggrieved by the order dated 24/01/2023 passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Sunder Steels Limited ("the assessee") for the assessment year 2013-14, assessee preferred this appeal.

2. Brief facts of the case are that assessee is engaged in the business of manufacturing of pig iron and steel. During the scrutiny of the return of income, learned Assessing Officer noticed that the assessee made certain investments in various equities and also incurred interest expenses. learned Assessing Officer, therefore, invoked the provisions of section 14A of the Income Tax Act, 1961 (for short "the Act") read with Rule 8D(2) of Income Tax Rules, 1962 (for short "the Rules") and made an addition to the tune of Rs. 16,41,868/-.

3. Assessee preferred appeal and pleaded that the provisions under section 14A read with Rule 8D(2) of Rules are not applicable to them and also that the assessee did not earn any dividend income during the year.

4. Learned CIT(A) found that the assessee borrowed funds for repayment of share application money, which was utilized for procuring the shares of M/s. SMS Steels Pvt. Ltd., and, therefore, the borrowed funds were indirectly utilized for purchase of equity shares of M/s. SMS Steels Pvt. Ltd. On this score learned CIT(A) found that the provisions of section 14A read with Rule 8D(2) of Rules are applicable to the facts of the case.

5. Referring to the explanation inserted in the form of amendment to section 14A by way of Finance Act, 2022, learned CIT(A) held that even though there is exempt income during the year, the provisions of section 14A read with Rule 8D(2) of Rules are applicable. However, learned CIT(A) recorded a factual observation that the assessee in fact earned certain dividend. Learned CIT(A) accordingly dismissed the appeal.

6. Hence, the assessee is in appeal before us mainly contending that the amendment to section 14A by way of Finance Act, 2022 is prospective in nature and cannot be made application to the assessment year 2013-14. Secondly, the counsel submitted across the Bench that it is only Rs. 75/- assessee earned by way of dividend and not much. Learned AR placed reliance on the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Era Infrastructure (India) Ltd. (2022) 141 taxmann.com 289 (Delhi) and PCIT vs. Delhi International Airport (P.) Ltd., (2022) 144 taxmann.com 80 (Delhi).

7. Learned DR submitted that assessee borrowed funds for repayment of share application money which was utilized for purchase of shares of M/s. SMS Steels Pvt. Ltd., and, therefore, the borrowed funds were indirectly utilized for purchase of equity shares. He further submitted that

there is some dividend earned during the year and, therefore, section 14A read with Rule 8D(2) of Rules is applicable to the facts of the case.

8. I have gone through the record in the light of the submissions made on either side. The basis for making the addition is that the assessee incurred interest expenditure in respect of the amounts that were used for making investment also. In that process, learned CIT(A) relied upon the amendment to section 14A of the Act by insertion of explanation by Finance Act, 2022 and also that the assessee utilized the share application money for investments and for repayment of such share application money, the assessee borrowed funds. Learned CIT(A), therefore, found that the assessee indirectly utilized the borrowed funds for investment.

9. In the case of Era Infrastructure (India) Ltd., (supra) Hon'ble Delhi High Court considered the effect of amendment made by the Finance Act, 2022 to section 14A of the Act by insertion of a non obstante clause and explanation after the proviso, subsequent to the decision of the Hon'ble Delhi High Court in the case of PCIT vs. IL&FS Energy Development Co. Ltd., (2017) 84 taxmann.com 186, Hon'ble Delhi High Court and also the memorandum of Finance Bill, 2022 accordingly to clauses 5 to 7 thereof. The Hon'ble High Court analysed the same in the light of the decision of the Hon'ble Supreme Court in the case of Sedco Forex International Drill. Inc. vs. CIT (2005) 149 Taxman 352 reiterated in M.M. Aqua Technologies Ltd. vs. CIT (2021) 129 taxmann.com 145 and held that the amendment of section 14A of the Act which is 'for removal of doubt' cannot be presumed to be retrospective even where such language is used, if it alters or changes law as it earlier stood.

10. Further the assessee pleaded that at any rate, the disallowance under section 14A of the Act read with Rule 8D of the Rules cannot exceed the quantum of exempt income earned during the year. For this purpose, assessee placed reliance on the decision in the case of Era Infrastructure (India) Ltd., (supra).

11. It is the settled principles of law by now that the disallowances u/s.14A of the Act read with Rule 8D of the Rules cannot exceed amount of exempt income. In the case of Pr. CIT Vs State Bank of Patiala, (2018) 99 taxmann.com 285 while dismissing SLP filed by the Revenue against order of the Hon'ble Punjab & Haryana High Court in the case of Pr.CIT Vs State Bank of Patiala, held that disallowance u/s.14A has to be restricted to amount of exempt income only. The Hon'ble High Court of Madras in the case of Marg Ltd Vs. CIT (2020) 120 Taxmann.com 84, has taken a similar view and held that disallowances under section 14A read with Rule 8D can never exceed exempt income earned by the assessee during particular assessment year.

12. Respectfully following the decision of Hon'ble Delhi High Court in the case of Era Infrastructure (India) Ltd., (supra), I hold that the operation of explanation to provisions under section 14A by way of Finance Act, 2022 is only prospective in nature and cannot be made applicable to the year under consideration. So also, while respectfully following the decision of Hon'ble Punjab & Haryana High Court in the case of Pr.CIT Vs State Bank of Patiala and Hon'ble High Court of Madras in the case of Marg Ltd Vs. CIT (supra), I hold that the disallowance under section 14A read with Rule 8D(2) of Rules cannot exceed the exempt income.

13. I accordingly direct the learned Assessing Officer to verify the quantum of exempt income earned by the assessee during the year and to restrict the disallowance to such amount only.

14. In the result, appeal of assessee is allowed in part.

Order pronounced in the open court on this the 8<sup>th</sup> day of May, 2023.

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad, Dated: 08/05/2023  
TNMM

Copy forwarded to:

1. M/s. Sunder Steels Limited, 1-7-228/44, U.B. Complex, Paradise Circle, Secunderabad.
2. ITO, Ward-3(4), Hyderabad.
3. DR, ITAT, Hyderabad.
4. GUARD FILE.

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD