

**आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.72/RPR/2022
निर्धारण वर्ष / Assessment Year : 2017-18**

Vandana Rolling Mills Ltd.
Vandana Building, M.G. Road,
Raipur (C.G.)-492 001
PAN : AAACV7614A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Pr. Commissioner of Income Tax,
Raipur-1

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri S.K Meena, CIT-DR

सुनवाई की तारीख / Date of Hearing : 02.05.2023
घोषणा की तारीख / Date of Pronouncement : 29.05.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Pr. Commissioner of Income Tax, Raipur-1 (for short 'Pr. CIT') u/s.263 of the Income Tax Act, 1961 (for short 'the Act') dated 08.03.2022, which in turn arises from the order passed by the A.O. u/s.143(3) of the Act, dated 10.12.2019 for A.Y. 2017-18. Before us, the assessee has assailed the impugned order on the following grounds of appeal:

“1. Ld. Pr. CIT erred in invoking the provisions of Sec.263 and in setting aside the assessment order for fresh enquiry. Order passed u/s.263 is unsustainable and is passed without properly appreciating the facts and evidences on record. The assessment order is neither erroneous nor prejudicial to the interest of the revenue.

2. The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”

2. Succinctly stated, the assessee company which is engaged in the business of manufacturing of iron & steel had filed its return of income for A.Y.2017-18 on 04.11.2017, declaring an Income of Rs.21,55,450/-. Case of the assessee was, thereafter, selected for scrutiny assessment u/s.143(2) of the Act.

3. Original assessment was framed by the A.O u/s.143(3) of the Act dated 10.12.2019, wherein the returned income of the assessee was accepted as such.

4. After culmination of the assessment proceedings, the Pr. CIT called for the assessment records of the assessee company. The Pr. CIT taking cognizance of the substantial investments made by the assessee company in exempt income yielding investments, observed that the A.O while framing the assessment had failed to examine the issue of disallowance of expenses incurred towards earning of exempt income u/s.14A r.w.r. 8D of the Income Tax Rules, 1962 in the backdrop of the CBDT Circular No.5/2014 dated 11.02.2014. Accordingly, the Pr. CIT on the basis of his aforesaid observations called upon the assessee to show cause as to why the order passed by the A.O may not be revised u/s.263 of the Act. In reply, it was submitted by the assessee that as the issue qua disallowance u/s.14A was queried into by the A.O and duly replied by the assessee in the course of assessment proceedings, therefore, no jurisdiction could be assumed u/s.263 of the Act for dislodging the plausible view so arrived at by him. Apart from that, it was submitted by the assessee that as it had not earned any exempt income during the year under consideration, therefore, provisions of Section 14A r.w.r.8D were not attracted in its case.

5. The Pr. CIT was, however, not persuaded to subscribe to the explanation of the assessee. Holding a conviction that the A.O while framing the assessment had failed to examine the aspect of disallowance of expenses u/s.14A r.w.r.8D, the Pr. CIT held the order passed by him as erroneous in so far it was prejudicial to the interest of the revenue u/s.263 of the Act. Accordingly, the Pr. CIT set aside the assessment order with a direction to the A.O to pass a fresh assessment order after affording a reasonable opportunity of being heard to the assessee.

6. Aggrieved the assessee has assailed the order passed by the Pr. CIT u/s.263 of the Act dated 08.03.2022 before us.

7. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

8. On a perusal of the records, it transpires that the A.O while framing the assessment had vide his notice issued under sub section (1) of Section 142 of the Act dated 19.09.2019, vide query No.7, Page 20 of APB specifically queried upon the various facets of disallowance u/s.14A of the Act, viz. (i) details of exempt income earned along with documentary evidence; (ii) details of expenses incurred in earning the exempt income along with documentary evidence; and (iii) details of disallowance made

u/s.14A a/w. calculation. Also, the A.O had called upon the assessee vide his aforesaid query No.7(c) to show cause as to why disallowance u/s.14A of the Act may not be made in its case. In reply, the assessee vide its letter dated 08.12.2019 had furnished the requisite details as were called for by the A.O on the issue of disallowance u/s.14A of the Act. Apart from that, it was categorically submitted by the assessee that as it had not claimed any exempt income during the year under consideration, therefore, no disallowance u/s.14A r.w.r. 8D of the Act was called for in its hands. For the sake of clarity, the aforesaid reply of the assessee (relevant extract) is culled out as under:

“a. During the year under consideration assessee has not claimed any exempt income.

b. Since during the year assessee company has not earned any exempt income hence furnishing of expenses, incurred for earning such income, is not applicable.

c. During the year under consideration assessee has not claimed any exempt income hence provisions of Section 14 r/w. Rule 8D of the Income Tax Act is not applicable to company hence no disallowance has been made.”

9. On the basis of the aforesaid facts, as stated by the Ld. AR and, rightly so, it is a matter of fact borne from record that the issue as to why disallowance of expenses u/s.14A may not be made in the case of the assessee was duly queried by the A.O and replied by the assessee in the course of the assessment proceedings. Ostensibly, as the A.O after considering the claim of the assessee that it had not earned any exempt

income during the year under consideration, had not made any disallowance u/s.14A r.w.r.8D of the Income Tax Rules, 1961. The aforesaid view taken by the A.O in our considered view cannot be held to be fallacious. In fact, the view taken by the A.O that no disallowance u/s.14A was called for in the hands of the assessee in absence of any exempt income is supported by the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Chettinad Logistics Pvt. Ltd. (2018) 257 Taxmann 2 (SC) and also that of the Hon'ble High Court of Delhi in the case of Cheminvest Limited Vs. CIT, (2015) 378 ITR 33 (Delhi). Backed by the aforesaid judicial pronouncements, as submitted by the Ld. AR and, rightly so, as per the settled position of law no disallowance u/s.14A in absence of any exempt income could have been made in the hands of the assessee. In the backdrop of the facts involved in the case before us r/w. the aforesaid settled position of law, we find substance in the claim of the Ld. AR that now when the assessee company had not received any exempt dividend income during the year under consideration, therefore, the A.O had rightly observed that no disallowance u/s.14A of the Act was warranted in its case.

10. Considering the facts involved in the case before us, we hold a strong conviction, that now when the A.O while framing the assessment, had after duly considering the explanation of the assessee arrived at a conscious view that no disallowance u/s.14A r.w.r.8D was called for in the hands of

the assessee for the year under consideration, therefore, the same could have by no means be dislodged by the Pr. CIT in exercise of the jurisdiction vested with him u/s.263 of the Act. As a matter of fact, we may herein observe that in light of the Judgment of the Hon'ble Supreme Court in the case of CIT Vs. Chettinad Logistics Pvt. Ltd. (2018) 257 Taxmann 2 (SC), the view taken by the A.O is the only possible view, i.e. no disallowance u/s.14A r.w.r.8D was called for in the hands of the assessee in absence of any exempt income. We, thus, in terms of our aforesaid observations not being able to persuade ourselves to subscribe to the exercise of jurisdiction by the Pr. CIT u/s.263 of the Act, set-aside his order and restore the order passed by the A.O u/s.143(3) dated 10.12.2019.

11. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in open court on 29th day of May, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 29th May, 2023
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Raipur-1 (C.G)

4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.