

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1032/Mum/2023
(Assessment Year: 2017-18)**

The DCIT, CC-6(4) Room No. 1925, 19 th Floor Air India Bldg, Nariman Point, Mumbai-400021.	बनाम/ Vs.	Archana Ajay Mittal 302, Level-3, Ceejay House, Anne Besant Road, Worli, Mumbai-400018
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGPM6545C		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

Appellant by :	Ms.Kavita Kaushik.DR
Respondent by :	None.

सुनवाई की तारीख / Date of Hearing	15/06/2023
घोषणा की तारीख / Date of Pronouncement	22/06/2023

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The appeal is filed by the revenue against the order of the National Faceless Appeal Centre (NFAC)/CIT(A), Delhi passed u/s 250 of the Act. The revenue has raised the following grounds of appeal:

. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made u/s 14A by holding that the disallowance u/s 14A cannot exceed the exempt income by ignoring the CBDT circular no 5/2014 which is clarificatory in nature."

ii. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the explanation to the section 14A introduced w.e.f 01.04.2022 which clearly states that the provisions of the section 14A shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income."

"On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of interest expenses u/s 57 of the Act without appreciating the facts of the case that the assessee has received borrowed funds at higher rate of interest against too low interest income shown during the year under consideration."

iv. "The appellant craves to leave, to add, to amend and / or to alter any of the ground of appeal if need be."

2. The brief facts of the case are that, the assessee is a partner in the partnership firm and derives income from other sources and claimed exemption of share of profit from partnership firm u/s 10(2A) of the Act. The assessee has filed the return of income for the A.Y 2017-18 on 01.08.2017 disclosing a total income of Rs.Nil. Subsequently the case was selected for the scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act are issued. In compliance to the notices, the assessee has filed reply on income tax e-portal on various dates. The Assessing Officer (A.O) on perusal of financial statements found that the assessee is holding huge investments having the potential of earning exempt income. Since the assessee has

not made the disallowance u/s 14A r.w.r 8D of IT Rules, the AO has issued notice u/s 142(1) of the Act for invoking the provisions. The assessee vide letter dated 13-11-2019 submitted details of investments and mentioned that no exempt income is earned and there are no fresh investments.

3. Whereas, the A.O was not satisfied with the explanations and dealt on the provisions and computed disallowance u/s 14A r.w.r. 8D(2)(iii) of the I T rules of Rs.2,75,24,638/- and on the second disputed issue, the A.O found that the assessee has set off the interest on loans against the interest income under income from other sources and claimed the loss. The A.O has issued notice U/sec142(1) to submit the details and explanations. The assessee has furnished the details of loans and advances obtained and provided during the F.Y.2016-17 and interest earned and paid. Whereas the A.O was not satisfied with the explanations and dealt on the facts of average rate of barrowing of funds and restricted the allow ability of the interest on borrowed funds and determined the total income of Rs.43,81,420/- and passed the order u/sec143(3) of the Act dated 6-12-2019.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee, finding of the A.O, dealt on the facts and provisions of the Act and

directed the A.O to delete the addition U/sec14A of the Act as the assessee has not earned any exempt income during the year and on the second disputed issue the CIT(A) has directed the deletion as there is no basis adopted by the A,O for making the disallowance and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the revenue has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in granting relief to the assessee irrespective of the facts that the disallowance u/s 14A r.w.r 8D has to be computed though exempt income is not earned and further the CIT(A) has erred in deleting disallowance of interest expenses without appreciating that the assessee has received borrowed funds at higher rate as against lower rate of interest received and relied on the order of the A.O.

6. We heard the Ld. DR submissions and perused the material available on record. The grievance of the revenue that the CIT(A) has erred in granting relief to the assessee by deleting disallowance u/s 14A r.w.r 8D of the I T Rules without considering the facts that the assessee must have incurred the expenditure for making investments and CIT(A) overlooked the presumptions and the findings of the AO. At this juncture, we consider it appropriate to refer to the findings of the CIT(A) in granting relief to the assessee at Page 9 Para 5.6 to 5.11 of the order read as under;

5.6 In view of the above, it is clear that the aforesaid decision of Hon'ble Madras High Court in the case of Chettinad Logistics P Ltd (supra) and the decision of the Hon'ble Bombay High Court in the case of Nirved Traders favor the assessee and the disallowance made by the AO u/s 14A is not tenable and has to be restricted to the extent of the exempt income earned.

5.7 It is also, however, pertinent to point out that vide the Finance Act 2022 the following Explanation was inserted in section 14A w.e.f 01.04.2022:

"Explanation. For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income."

5.8 The legislative intent behind insertion of the aforesaid Explanation to section 14A of the Act was to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.

5.9 However, the Hon'ble ITAT Mumbai vide its order dated 29.06.2022 in the case of Bajaj Capital Ventures (P) Ltd. (2022)

141 taxmann.com 1 (Mumbai-Trib) has held that the amendment by way of insertion of the aforesaid explanation was prospective in nature and that prior to 1-4-2022, no disallowance could be made under section 14A with respect to expenditure incurred by assessee to earn exempt income, when no exempt income was earned during relevant assessment year. The relevant extract of the said decision is reproduced as under:

"7. We find that there is no dispute about the fact that the assessee did not have any tax exempt income during the relevant previous year and that the period before us pertains to the period prior to insertion of explanation to section 14A. In this view of the matter, and in the light of consistent stand by co-ordinate benches, following Hon'ble Delhi High Court's judgment in the case of Cheminvest Ltd v CIT [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33, we uphold the plea of the assessee that no disallowance under section 14A was and in the circumstances of the case. The plea of the Assessing Officer is thus rejected".

5.10 The same view that the insertion of the explanation in section 14A is prospective in nature has also been held by the Hon'ble Delhi High Court in the case of Era Infrastructure (India) Ltd (2022) 141 taxmann.com 289 (Delhi). The relevant extract is reproduced as under:

"8. Consequently, this Court is of the view that the amendment of section 14A which is "for removal of doubts" cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood.

9. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date. Consequently, in view of the judgments passed by the Supreme Court in Kunhayammed v.

State of Kerala [2000] 113 Taxman 470/245 ITR 360 and Shree Chamundi Mopeds Ltd. v Church of South India Trust Association [1992] 3 SCC 1, the present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench in IL&FS Energy Development Co. Ltd. (supra) and Cheminvest Ltd. v. CIT [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 (Delhi).

10. Accordingly, the appeal and application are dismissed. However, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the SLP filed in the case of IL & FS Energy Development Co. Ltd. (supra)."

5.11 In light of the decision of the Hon'ble Delhi High Court being in favour of the appellant and also the decision in favour of the appellant by the jurisdictional ITAT, I am bound by the decision of the jurisdictional ITAT which has been discussed above. In light of the above decisions, it is held that the AO is not correct in making the disallowance u/s 14A when during the year the assessee has not earned any exempt income. As regards Dividend income of Rs. 300/-, the appellant has submitted that the said amount was earned from shares of Co-operative Bank and was inadvertently claimed as exempt while filing income tax return. Since this dividend income from Co-operative Bank is not exempt the AO is directed to tax Rs.300/- as Income from other sources'. The disallowance made by the AO is thus deleted. In view of the above, this ground of appeal of the appellant is partly allowed.

7. The second disputed issue is with respect to deletion of disallowance of interest by the CIT(A). Whereas, the CIT(A) has considered the facts that the assessee has claimed the interest payment to parties against the interest income earned which is not disputed and observed at Page 14 Para 6.3 to 6.10 of the order read as under:

6.3 *The findings of the AO in the assessment order and the submissions of the appellant have been considered.*

6.4 *The facts of the case of the appellant are that the appellant has shown interest income of Rs.1,25,94,660/- as 'Income from other sources' and claimed interest expenses of Rs. 14,80,54,025/- against such interest income. The appellant has paid interest of Rs.14,80,54,025/- on loan of Rs. 90,25,54,229/- taken. The appellant has earned interest of Rs.1,25,54,834/- from loans of Rs. 1,37,83,46,482/- given to various parties. The case of the AO is that the appellant has paid interest at higher rate and earned interest at lower rate. Therefore, the AO has disallowed the interest to the extent of the rate of interest paid by the appellant. The AO has not doubted that the interest was not incurred exclusively for the purpose of earning interest income. Therefore, the allowability of interest u/s 57 of the Act is not in doubt. The only objection of the AO is that the appellant has paid interest at higher rate and earned the interest at lower rate. Therefore, the AO has restricted the interest expense allowable u/s 57 of the Act.*

6.5 *On the other hand the appellant has submitted that the interest has been incurred for the purpose of earning interest income. Further, interest free funds have been utilized to make advances/loan from which the interest has been earned.*

6.6 *It is seen that during the year, the appellant had own capital of Rs.391,67,49,889/- and interest Free Loan Taken amounting to Rs.79,15,14,383/-. Thus, total interest free fund available with the appellant is Rs.470,82,64,272/-. During the year, the appellant has given interest free loan amounting to Rs.84,76,61,304/- and interest bearing loan amounting to Rs.137,79,54,705/.It is seen that appellant has used her own capital and interest free loan for giving loan to various parties from which she has earned interest income and the appellant has proved that she had sufficient amount of interest free own funds to extend the impugned loans.*

6.7 *The Hon'ble Supreme Court in the case of CIT v. Rajendra Prasad Moody [1978] 115 ITR 519 held that "the plain natural construction of the language of section 57(iii) of the Act irresistibly*

leads to the conclusion that to bring a case within that section it is not necessary that any income should in fact have been earned as a result of the expenditure. What section 57(iii) of the Act requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. The section does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction: it does not say that the expenditure shall be deductible only if any income is made or earned."

6.8 The Hon'ble Bombay High Court in the case of CIT v. Darashaw & Co. (P.) Ltd. [2014] 49 taxmann.com 143/226 Taxman 193 (Mag.) held that "section 57(iii) of the Act does not require that purpose of earning income must be fulfilled so as to claim expenditure as a deduction meaning that expenditure shall be debited only if any income is made or earned".

6.9 The Hon'ble Gujarat High Court in the case of Atir Textile Industries (P.) Ltd. v. Dy. CIT [2015] 55 taxmann.com 380/230 Taxman 104 held that "while considering the assessee's case under section 57(iii) of the Act, competent authority cannot split transaction in more than one part and select any particular part so as to say that such part is illegal or illegitimate or impermissible and deny to extend benefit in respect of same." The assessee, in this case, borrowed Rs. 3 crores from 'A' Ltd. at rate of 18.5 per cent per annum and invested the said amount in Optionally Convertible Debentures (OCDs) of four companies, at rate of 12 per cent per annum till said OCDs were converted into shares and in its return of income, the assessee claimed deduction of excess interest paid over interest received during assessment year in question. However, the Assessing Officer held that since the assessee failed to establish that excessive interest was paid for earning income, such claim raised could not be allowed under section 57 (iii) of the Act. The Tribunal upheld the order of the Assessing Officer. The High Court noted that as the investment made by the assessee in four companies were not loss-making concerns at the relevant time, the decision of the assessee to borrow money at a higher rate of interest and to invest the same in said four companies at rate of 12 per cent with a hope to get shares in future was made to earn income could not be faulted and considered to be done for other reasons. The High Court also

held that even otherwise, once primary transaction of lending, borrowing and payment of interest was found to be genuine, merely because it resulted into less or equal amount of income, such transaction could not be considered to be a colourable device resulting in earning any disqualification.

6.10 In view of the above discussion and the facts and circumstances of the case, it is held that there is no basis for the disallowance made by the AO and the disallowance made us 57 is deleted. Accordingly, this ground of appeal is allowed

8. We find that the CIT(A) has relied on the facts, judicial decisions, provisions of the Act in respect of disallowance u/s 14A r.w.r 8D. Prima facie, the assessee has not earned any exempt income and therefore the provisions of Sec. 14A r.w.s 8D cannot be invoked. In respect of disallowance of interest expenditure u/sec57 of the Act, the grievance of the revenue that the assessee has paid higher rate of interest to the Lenders and has received lower rate of interest. Whereas the proposition of interest earned or paid depends upon the circumstances, urgency of funds and can also differ from one entity to other as per market conditions. The fact remains that the AO has not doubted the genuineness of the funds and has only considered the parameters of transactions that the interest payable is more than the interest received. Whereas the CIT(A) has considered these facts and the submissions on the disputed issue and the interest has been incurred for the purpose of earning interest income and the assessee has interest free funds/surplus funds which have been utilized for the purpose of advances and relied on the financial statements, which supports the

availability of interest free own funds utilized for Lending the loans. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent material or evidence to take a different view Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismissed the grounds of appeal of the revenue.

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

Order pronounced in the open court on 22.06.2023.

Sd/-

Sd/-

(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 22/06/2023

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai