

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्रीसंदीपगोसाई, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 79/JP/2023
निर्धारणवर्ष/AssessmentYear : 2014-15

M/s.Truworth Infotech (P) Ltd. 10-B, Truworth House, Dhuleshwar Garden C-Scheme, Jaipur – 302 001	बनाम Vs.	The ITO Ward -2 (2) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AABCT 0949 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma, CA &
Shri R.K. Bhatra, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 19/04/2023
उदघोषणा की तारीख / Date of Pronouncement: 04/07/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A), National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] dated 25-01-2023 for the assessment year 2015-15 wherein the assessee has raised the following grounds of appeal.

“1. That on the facts and in the circumstances of the case the Id CIT (A) is wrong, unjust and has erred in law in upholding the application of provision of sec. 14A of the IT Act. 1961 r/w rule 8B of I.T. Rule. 1962 in the case of the appellant company with respect to investment in shares made by it.

2 The Id CIT(A) is further wrong and has erred in law in upholding disallowance made by the AO u/s 14A r/w Rule 8D with respect to investment of Rs. 50,00,000/- made by the appellant company during the year even though no borrowings were used in acquisition of these shares as interest free funds (its share capital and free reserves) were available for said investment and further there was no exempt income earned by the appellant company during the year.

2.1 Apropos Ground No. 1 & 2 of the assessee brief facts of the case are that the assessee company filed its e-return of income on 28-11-2014 declaring total income of Nil and current year loss of Rs.1,475/- and tax was paid u/s 115JB of the Act. It is noted from the assessment order that the case of assessee was selected for scrutiny by issue of notice u/s 143(2)/142(1) which assessee complied from time to time. The A.O. completed assessment u/s 143(3) at an income of Rs. 10,52,209/- by making disallowance u/s 14A of I.T. Act. 1961 amounting to Rs. 10,53,684/- by holding that assessee company has made investment in shares of unlisted companies of Rs. 1,49,29,900/- from which either exempt income is generated or no income is generated and so provision of section 14A are applicable.

2.2 In first appeal, Ld. CIT(A) partly allowed the appeal restricting the disallowance made u/s 14A read with rule 8D on the fresh investment of Rs. 50,00,000/- made during the year. The said action of the Ld. CIT (A) was on presumption/conclusion that the opening balance of capital and reserves was already locked in the form of Fixed Assets, Loans and Advances etc. Further there

was no fresh capital introduced during the year which could be considered as the source for this new investment during the year. It is seen that there is substantial increase in the loan funds also during the year, which prima facie has gone into the investment of Rs. 50,00,000/- during the year. The last concluding relevant para 5.4 of the ld. CIT(A) is reproduced as under:-

“5.4 In view of the above, the disallowance made u/s 14A read with Rule 8D by the AO is upheld as far as new investment of Rs.50,00,000/- made during the previous year. The AO is directed to recompute the disallowance accordingly. Appellant gets part relief on the issue.”

2.3 During the course of hearing, the ld. AR of the assessee opposed the order of the ld. CIT(A) with following written submissions.

“Ground No. 1 & 2: These grounds relate to same issue hence clubbed and are delt together. These ground relates to objecting the action of Ld. A.O. in applying provisions of sec. 14A of the 1. T. Act, 1961 in respect to investment of Rs. 50,00,000 made by the appellant company during the previous year relevant to assessment year under appeal in shares and further in making disallowance out of expenses claimed by the appellant u/s 14A of the 1. T. Act, 1961 by applying provisions of Rule 8D of the I. T. Rules, 1962 and the consequentially amount disallowed u/s 14A by the ld. AO.

The Ld. A.O. in course of assessment proceedings noticed that the assessee has made investment in shares of companies from where no taxable income is earned. Vide show- cause letter dated 24-05-2016 the assessee was asked that you have made investment in asset from which either exempt income is generated or no income is generated, show cause why the provision of section 14A may not be applied in your case. The Ld. A/R of the assessee has filed written reply on 20-06-2016 stating there as under:

“The provision of section 14A of 1. T. Act, 1961 are not applicable in case of assessee company because of no exempt income is generated from investment made in shares.”

The Ld. A.O. considered the reply of assessee company and found not fully acceptable. The Ld. A.O. relying on circular No. 5 dated 11-02-2014 issued by CBDT and taking into account of provisions of section 14A r/w rule 8D worked out disallowance of Rs. 10,53,684/- and added the same in total income computed.

The assessee made investment in shares of group companies amounting to Rs. 1,49,29,900(L.Y. Rs. 99,29,900) which are partly old investment carried forward from earlier years The paid up capital of assessee company is Rs. 30,00,000/- in this year as well as in last year and its reserves and surplus in this year are Rs. 2,05,28,084/- (Last year Rs. 1,83,88,612/-) Thus its interest free funds apart from borrowings are much more than its investment in shares and there is no nexus in between the fresh investment with the interest bearing borrowed funds. Further the Ld. AO has also not denied the said facts. There being no income for shares hence obviously there are no administrative and other expenses incurred therefor. In such facts of the case no disallowance u/s 14A r.w. rule 8D is warranted as no borrowings were used in acquisition of these shares nor any administrative expenses etc. were incurred. The assessee also not earned exempt income and hence section 14A is inapplicable.

The judicial pronouncement supports the case of assessee. The Supreme Court in South Indian Bank Ltd. Vs. CIT (2021) 438 ITR 1(SC)/283 Taxmann 178 held that where the assessee has mixed fund made up partly of interest free funds and partly of interest- bearing funds and payment is made out of that mixed fund, the investment must be considered to have been made out of the interest free fund. To put in another way, in respect of payment made out of mixed fund, it is the assessee who has such right of appropriation and also the right to assert from what part of the fund a particular investment is made and it may not be permissible for the revenue to make an estimation of a proportionate figure. The disallowance would be legally impermissible for the investment made by the assessee in bonds/shares using interest free funds, under section 14A. In other

words, if investments in securities in made out of common funds and the assessee has available, own non-interest bearing funds larger than the investments made in tax-free securities, then in such cases, disallowance under section 14A cannot be made. The Supreme Court against in case of CIT-1 VS. UTI Bank Ltd. (2022) 447 ITR 662/289 Taxmann 238 held that the legal issue relating to disallowance under section 14A was squarely covered by order of Supreme Court in South Indian Bank Ltd. V. CIT [2021] 130 taxmann.com 178/283 Taxman 178/438 ITR 1/10 SCC 153 wherein it was held that since interest free own funds available with the assessee exceeded their investments in tax-free securities, investments would be presumed to be made out of the assessee's own funds and proportionate disallowance was not warranted under section 14A.

The Bombay High Court in case Pr. CIT Vs. Shapoorji Pallonji & Co. Ltd. (2020) 423 ITR 220/273 Taxmann 167 held that where both interest-free and interest bearing funds were available with assessee, it was to be presumed that investment in shares/securities were made out of interest-free fund. The Bombay High Court in case of CIT Vs. HDFC Bank Ltd. (2014) 366 ITR 505 and in the same case (2016) 383 ITR 256 held that where an assessee has own funds and other non-interest bearing funds more than investment in tax free securities then no disallowance u/s 14A could be made. In CIT Vs. Gujrat Power Corporation Ltd. (2013) 352 ITR 583 (GUJ.) the Hon'ble High Court held that assessee using its own funds for investments and using borrowed funds entirely for business purposes and in absence of any finding that any expenditure by way of interest was incurred in respect of investments disallowance u/s 14A of I.T. Act.61 is not justified. In case of CIT Vs. Sazlon Energy Ltd. (2013) 354 ITR 630 (Guj). The court held that dividend income which was tax free but such dividends were earned from investments made out of interest free funds so that there could be no disallowance u/s 14A of I. T. Act, 1961. In view of these judicial pronouncements it is submitted that as the investment made by assessee company from its own interest free funds so there can be no disallowance u/s 14A of I.T. Act, 1961.

Further as submitted supra that the assessee earned no exempt income during the year and therefore no disallowance can be made u/s

14A of the I.T. Act, 1961. In case of Principal CIT Vs. Novell Software Development India P. Ltd. (2021) 434 ITR 154/278 Taxmann 390 The Hon'ble Karnataka High Court held that where there is no exempt income earned by the assessee during the year no disallowance u/s 14A was to be made similar legal view was upheld in Bicom Ltd. Vs. Dy. CIT (2021) 431 ITR 326(Kar) and in case of Pr. CIT Vs. Sterling Developers P. Ltd. (2021) 129 taxmann.com 116 (Kar). The Madras High Court in case of CIT Vs. Tamilnadu Rood Development Co. Ltd. (2021) 436 ITR 323/279 Taxman 125 held that provisions of section 14A read with rule 8D would not be applicable if there was no exempt income earned by the assessee during the year. The Delhi ITAT in case of Dy. CIT Vs. Futurz Next Services Ltd. (2022) 139 taxmann.com 199 held that where assessee had not received any exempt/dividend income during the year disallowance u/s 14A was not permissible. There are plethora of High Court and ITATS decisions holding the same view. In the case of Pr. CIT Vs. Envestor Ventures Ltd. (2021) 431 ITR 221/278 Taxmann 377 (Mad.) it was held that disallowance u/s 14A can not exceed exempted income earned by assessee during particular assessment year and similar view were held in Pr. CIT Vs. Ajit Ramakant Phatarpekar (2020) 429 ITR 319/277 Taxmann 543 (Bom) that disallowance u/s 14A could not be more than exempt income earned by assessee The Tribunal has held that disallowance under section 14A cannot exceed the tax free income earned by assessee during the relevant previous year [West Bengal Infrastructure Development Finance Corpn. V. Asst. CIT [2016] 45 ITR (Trib.) 285 (Kol).] Disallowance under section 14A read with rule 8D should not exceed exempt income [Dy. CIT v. Accel Frontline Ltd. [2016] 46 ITR (Trib.) 138 (Chennai)]. Addition under section 14A cannot be more than exempt income [K. Ratanchand and Co. v. I.T.O [2016] 45 ITR (Trib.) 608 (Ahd.)]. No disallowance can be made under section 14A where no exempt income has been earned by assessee during year it was held by the Punjab and Haryana High Court in the case of CIT v. Lakhani Marketing Income. [2014] 49 taxmann.com 257/226 Taxman 45 is squarely applicable to the facts of the present case, as no exempt income has been earned by the assessee during the year. In view of this, the disallowance deserves to be deleted. [Asstt. CIT v. Pardeep Kumar Aggarwal [2016] 70 taxmann.com 154/159 ITD 54 (Chd.)]. The Circular No. 5 of 2014 dated 11-02-2014 being inconsistent with

plethora of decisions of High Courts and ITATS cannot be applied by A.O. and is of no avail.

It is also submitted that an explanation has been inserted by Finance Act, 2022 to section 14A with effect from 01-04-2022 providing that provisions shall apply whether or not exempt income has accrued, arisen or received but the provision was prospective in nature as is clear from the memo explaining the provisions appended to the Finance Bill. The Mum-Tribunal in case of ACIT Vs. Bajaj Capital Ventures (P.) Ltd. 140 taxmann.com 1/196 ITD 24 held that Explanation to section 14A which came into effect from 01-04-2022 clarified that disallowance was to be made even if no exempt income was earned in relevant year. Since said Explanation was prospective in nature and assessee did not earn any exempt income in relevant assessment years, no disallowance could be made under section 14A. The Delhi High Court in case of Pr. CIT(Central) Vs. Era Infrastructure (India) Ltd. (2022) 448 ITR 674/(2022) 284 taxmann 384 has also held the same view.

In view of the above facts of the case and position of law, no disallowance by invoking the provisions of Section 14A deserves to be made.”

2.4 On the other hand, the ld. DR supported the order of the ld. CIT(A).

2.5 We have heard both the parties and perused the materials available on record including the judgement cited by the respective parties. Brief facts of the case are that the AO while making assessment in the case of the Company made disallowance of Rs.10,53,684/- by holding that the assessee company had investment in share of unlisted companies of Rs.1,49,29,900/- from which either exempt income is generated or no income is generated and so provision of Section 14A are applicable. In first appeal, the ld. CIT(A) partly allowed the appeal

restricting the disallowance made u/s 14A read with rule 8D on the fresh investment of Rs.50.00 lacs made during the year. It is noted from the available record that the assessee made investment in shares of group companies amounting to Rs. 1,49,29,900(Last year Rs. 99,29,900) which are partly old investment carried forward from earlier years. The paid up capital of assessee company is Rs. 30,00,000/- in this year as well as in last year and its reserves and surplus in this year are Rs. 2,05,28,084/-(Last year Rs. 1,83,88,612/-). Thus its interest free funds apart from borrowings are much more than its investment in shares and there is no nexus in between the fresh investment with the interest bearing borrowed funds. The AO has also not denied the said facts. There being no income for shares hence obviously there are no administrative and other expenses incurred. In such facts of the case, no disallowance u/s 14A r.w. rule 8D is warranted as no borrowings were used in acquisition of these shares nor any administrative expenses etc. were incurred. The assessee also not earned exempt income and hence section 14A is inapplicable. To this effect, we rely on the decision of Hon'ble Supreme in the case of South Indian Bank Ltd. vs CIT, 438 ITR 1 wherein the Hon'ble Supreme Court held as under:-

''Where interest free own funds available with assessee-banks exceeded their investments in tax free securities; investments would be presumed to be made out of assessee's own funds and proportionate disallowance was not warranted u/s 14A on the ground that separate

accounts were not maintained by assessee for investments and other expenditure incurred for earning tax free income.’’

It is worthwhile to mention that the assessee made the investments from its interest free funds/ income and it does not come under the purview of Section 14A to make disallowance by the lower authorities. In view of the above deliberation, we do not concur with the findings of the Id. CIT(A). Thus the appeal of the assessee is allowed taking into consideration the ground no. 1 and 2 raised by the assessee (supra).

3.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 04 /07/2023.

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 04 /07/2023

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. Truworth Infotech Private Ltd. , Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2(2), Jaipur
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 79/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar