

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "D" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Sandeep Singh Karhail (JM)

I.T.A. No. 1682/Mum/2023 (A.Y. 2013-14)

R.R. Paints Pvt. Ltd. B-24,25,38, Minerva Industrial Estate Off P.K. Road, Mulund-W Mumbai-400 078.  PAN : AAACR3490E (Appellant)	Vs.	DCIT, Circle 15(3)(1) Aayakara Bhavan M.K. Road Mumbai-400 020.  (Respondent)
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Assessee by	Shri Satish Mody
Department by	Smt. Mahita Nair
Date of Hearing	01.08.2023
Date of Pronouncement	01.08.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 20.3.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2013-14. The assessee is aggrieved by the decision of the learned CIT(A) in dismissing the appeal of the assessee on the ground that the assessee has not complied with the notices issued by him.

2. Learned counsel appearing for the assessee submitted that the only issue contested by the assessee before the learned CIT(A) as well as before the Tribunal is related to the disallowance made under section 14A of the I.T. Act. He submitted that the assessee had earned exempt income of Rs.2,327/- only during the year under consideration and hence, it did not make any disallowance under section 14A of the Act. However, the Assessing Officer computed the disallowance at Rs. 28,22,691/- by applying provisions of rule 8D of the I.T. Rules. He submitted that the assessee challenged the above

said addition by filing the appeal before the learned CIT(A) and the first appellate authority fixed the case for hearing physically in 2019 and at that time the assessee filed written submissions before him contesting the above said addition made by the Assessing Officer. However, subsequently hearing was converted into e-mode and the learned CIT(A) issued several notices to the assessee. Since the assessee had already filed written submissions, it was under the bonafide impression that the same will be considered and the issue shall be decided on merits. However, the learned CIT(A) dismissed the appeal for non-prosecution.

3. The Learned AR contended that it is not a case of non-prosecution as observed by Ld CIT(A). On the contrary, the Ld CIT(A) has overlooked the written submissions filed by the assessee in physical hearing before him. Accordingly, the Ld A.R contended that the Ld CIT(A) was not justified in dismissing the appeal in limine. He submitted that the assessee has also filed rectification petition under section 154 of the Act before Ld CIT(A) pointing out that the physical hearing was concluded in the year 2019 and the submissions given at that point of time was not considered by him. However, the learned CIT(A) has not disposed of the said rectification petition till date. The Learned AR further submitted that it is well settled law that the disallowance under section 14A cannot exceed exempt income. Accordingly he submitted that the disallowance under section 14A in the instant case cannot exceed the amount of Rs. 2,327/- being exempt income earned by the assessee. Accordingly, he prayed that the appeal may be decided on merits by the Tribunal, since the Ld CIT(A) has not considered the written submissions given to him.

4. The Learned DR, on the contrary, supported the order passed by the learned CIT(A).

5. We have heard the rival contentions and perused the record. It is the submission of the assessee that the physical hearing has taken place before the learned CIT(A) in the year 2019 and written submission was also filed before him. We have noticed that the learned CIT(A) has not considered the written submission filed by the assessee in his order. It is submitted that the assessee was under bonafide belief that the said written submissions shall be considered by Ld CIT(A). Accordingly, we are of the view that the assessee cannot be found fault with for not responding the notices issued by the learned CIT(A) during e-proceedings.

6. Since the Ld CIT(A) did not consider the written submissions and since the issue contested by the assessee in this appeal is squarely covered by various decisions rendered by various High Courts, we proceed to dispose of this appeal on merits. The Hon'ble High Courts has held that the disallowance under section 14A cannot exceed the amount of exempt income. In this regard we take support of the decision rendered by Hon'ble Jurisdictional High Court in the case of M/s. Nilved Traders Pvt. Ltd. Vs. DCIT (ITA No. 149/2017 dated 23.4.2019), wherein it was held as under :-

"4. Having heard learned Counsel for the parties and perused documents on record, we notice that in Cheminvest Ltd. (supra) Delhi High Court had referred to and relied upon its earlier decision in the case of CIT Vs. Holcim India (P) Ltd. (I.T.A. No.486 of 2014, decided on 5th September 2014). we further notice that this Court in Income Tax Appeal No.693 of 2015 by an order dated 21st November, 2017 while dismissing the Revenue's appeal on similar issue had noted that the decision of Delhi High Court in case of Holcim India )P) Ltd. (supra) had adopted the same principles. In the present case, Counsel for the Revenue however, points out that this is not a case where the assessee had earned no income which was exempt from tax. However, in our opinion, the ratio of the above noted decisions in the cases of Cheminvest Ltd. and Holcim India (P) Ltd. (supra) would include a facet where the assessee's income exempt from tax is not NIL but has earned exempt income which is larger than the expenditure incurred by the assessee in order to earn such income. In such a situation that disallowance cannot exceed the exempt income so earned by the assessee during the year under consideration. We do not find any error in the view of the Tribunal. We record that the assessee had offered voluntary disallowance of expenditure of Rs.1.30 crores, which is not been disturbed by the Tribunal.

5. The tax appeal is dismissed."
7. Accordingly, we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to restrict the disallowance under section 14A of the Act to the extent of exempt income earned by the assessee.
8. In the result, appeal filed by the assessee is allowed.

Pronounced in the open court on 01.08.2023.

Sd/-  
(Saneep Singh Karhail)  
Judicial Member

Sd/-  
(B.R. Baskaran)  
Accountant Member

Mumbai.; Dated : 01/08/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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