

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोडपिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं./ITA No.156/RPR/2022

(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Avinash Developers Pvt. Ltd. Avinash House, Maruti Business Park, G.E. Road, Raipur (C.G.)-492 001 PAN No. : AADCA4060E	Vs	The Deputy/Assistant Commissioner of Income Tax, Circle-2(1), Raipur (C.G.)
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(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से / Assessee by	:	Shri Amit M. Jain, Advocate
राजस्व की ओर से / Revenue by	:	Shri Satya Prakash Sharma, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	19.07.2023
घोषणा की तारीख/ Date of Pronouncement	:	16.08.2023

आदेश / ORDER

PER ARUN KHODPIA, AM:

The captioned appeal filed by the assessee is directed against the order of the Ld. CIT (Appeals)-3, Bhopal vide order dated 25.07.2022 for A.Y.2013-14. The appeal was filed by the assessee on a single issue, for which, following grounds were raised by it:

“1. On the facts and in the circumstances of the case, the learned CIT(A) has erred in sustaining the order of the A.O wherein the A.O has erred in making disallowance of Rs.59,13,532/-u/s.14A r.w.r.8D of the Income Tax Act, 1961. The disallowance made by the A.O and confirmed by the CIT(A) is unjustified, unwarranted, and uncalled for.

2. The appellant reserves the right to add, amend or alter any grounds of appeal at any time of hearing.”

2. Briefly stated, the facts of the case are that the assessee is a private limited company and has filed its return of income for A.Y.2013-14 showing nil income on 28.09.2013. However, tax has been paid on the book profit of Rs.5,00,67,067/- under MAT u/s. 115JB of the Income Tax Act, 1961 (for short ‘the Act’). The case of the assessee was specifically selected for scrutiny under CASS. Notices u/s.143(2) and 142(1) of the Act followed by a questionnaire were issued upon the assessee. Due to change of incumbent a fresh notice u/s.142(1) was also issued. In response to the aforesaid notice and questionnaire, the Ld. AR of the assessee attended and filed financial statements a/w. tax audit report in Form 3CA and 3CD. He has also filed written submissions a/w. details as and when asked for. Books of accounts a/w. bills, vouchers and bank statements have also been filed for verification which were checked by the A.O on random basis. The case of the assessee was discussed with the Ld. AR and after deliberations, one addition was made u/s.14A r.w.r. 8D of Rs.59,13,532/-.

3. Aggrieved by the said addition made by the A.O, the assessee preferred an appeal before the CIT(Appeals) but without any success and the appeal of the assessee was dismissed by the Ld. CIT(Appeals).

4. To challenge the decision of the Ld. CIT(Appeals), now the assessee is appeal before us assailing the issue pertaining to the disallowance of Rs.59,13,532/- u/s.14A r.w.r. 8D.

5. At the very outset of hearing of the appeal, it was submitted by the Ld. AR that as per the settled position of law on this issue, the addition made by the Ld. AO was bad in law which was sustained by the Ld. CIT(Appeals) without considering the present position of the direction of the Hon'ble Apex Court and various High Courts on the issue. The Ld. AR has placed reliance on the various decisions, out of which, decisions of the Hon'ble Apex Court are as under:

(i) CIT Vs. Chettinad Logistic Pvt. Ltd. (2017) 98 CCH 151 (SC)/SLP dismissed by the Hon'ble Apex Court (2019) 105 CCH 226 ISCC.

(ii) Pr. Commissioner of Income Tax Vs. Oil Industrial Development Board (2018) 101 CCH 452 (Del. HC) and SLP dismissed by the Hon'ble Apex Court (2019) 104 CCH 156 ISCC

(iii) Redington India Limited Vs. Additional Commissioner of Income Tax (2016) 97 CCH 219 Chen HC.

The Ld. AR further submitted that the assessee's exempt income which is evident from computation of total income furnished before us at Page No.14 of paper book of the assessee where share of profit from partnership

firm was for Rs.3,82,401/- was only exempt income which the assessee has claimed as exempt in its return of income. Accordingly, the Ld. AR has submitted that even if it is proposed that exempt income claimed by the assessee to the extent of share in partnership firm, the disallowance made by the A.O should be restricted to that amount only i.e. 3,82,401/-.

5.1 With respect to the amendment in Section 14A of the Act, inserted vide the Finance Act, 2022 w.e.f. 01.04.2022, the Ld. AR for the assessee submitted that amendment made vide the Finance Act, 2022 in Section 14A of the Act by inserting a non-obstante clause and explanation after the proviso has no retrospective effect and therefore, the said amendment could not be applied in the present case before us. Reliance was placed by the Ld. AR on the judgment of the Hon'ble High Court of Delhi in the case of Pr. Commissioner of Income Tax Vs. Era Infrastructure (India) Ltd. (2022) 114 CCH 219 (Del.HC) wherein the Hon'ble High Court has held that amendment made vide the Finance Act, 2022 in Section 14A by inserting a non-obstante clause and explanation after the proviso has taken effect from 01.04.2022, could not be permitted to have retrospective effect and therefore, in A.Y.2013-14, no disallowance could be made u/s.14A if no exempt income was earned by the assessee. To understand the amendment in Section 14A, the amendment part of the said section is extracted as under:

“Amendment of section 14A.

In section 14A of the Income-tax Act, -

(a) in sub-section (1), for the words "For the purposes of", the words "Notwithstanding anything to the contrary contained in this Act, for the purposes of" shall be substituted;

(b) after the proviso, the following Explanation shall be inserted, namely:-

"[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.]"

6. On the contrary, the Ld. DR has relied on the orders of the revenue authorities on the issue in hand.

7. We have heard the rival contentions and perused the material available on record as well as judicial pronouncements in support of the contentions as relied upon by the Ld. AR placed before us. With respect to the amendment in Section 14A of the Act, since the issue has already been discussed and provision was interpreted by the Hon'ble High Court of Delhi and decided that effective change in provision could not be presumed to have retrospective effect, therefore, same will be applicable prospectively w.e.f. 01.04.2022 only. Thus, we in our considered view, in the present case before us which pertains to A.Y.2013-14, are of the opinion that change in provision of Section 14A will have no retrospective binding effect.

8. As regards the contention of the Ld. AR that now when the assessee company had not received any exempt income during the year under

consideration, therefore, no disallowance u/s.14A of the Act was called for in its hand, we find substance in the same, since the aforesaid contention of the Ld. AR is duly 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 in the case of Pr. CIT Vs. Oil Industries Dev. Board, 104 CCH 156 (SC). However, on perusal of the computation of the total income of the assessee company (Page 14 of APB), it is apparent that the assessee company had earned exempt income on account of share of profit from partnership firm for an amount of Rs.3,82,401/-. We, thus, in terms of our aforesaid observations, are of the considered view that the addition should be restricted to the extent of exempt income i.e. Rs.3,82,401/-. The Hon'ble Delhi High Court in the judgment Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del) has held that if there is no exempt income, there cannot be any disallowance u/s 14A. Similar view has been taken by the Hon'ble Delhi High Court in CIT vs. Holcim India P. Ltd. (2014) 90CCH 081-Del-HC. The net effect of these decisions is that the disallowance u/s 14A gets restricted to the extent of exempt income, even if the provisions of the section are attracted. In view of the above precedents, which are squarely applicable to the facts of the instant case, we limit the disallowance to the extent of exempt income. Our view is further fortified by the order of Hon'ble Supreme Court of India, in the case of Principal Commissioner of

Income Tax, Patiala vs. State Bank of Patiala reported in [2018] 99 taxmann.com 286 (SC), that:

Section 14A, read with section 263, of the Income-tax Act, 1961 – Expenditure incurred in relation to income not includible in total income (Computation of) – Assessment year 2010-11 – In course of assessment, Assessing Officer made addition on account of apportionment of expenses against exempted income under section 14A – Commissioner passed a revisional order directing Assessing Officer to enhance amount of addition under section 14A – Tribunal set aside revisional order as well as consequent assessment order passed by Assessing Officer enhancing addition made under section 14A – High Court upheld order of Tribunal holding that amount of disallowance under section 14A could be restricted to amount of exempt income only and not a higher figure – Whether on facts, SLP filed against decision of High Court was to be dismissed – Held, yes [Para 1][In favour of assessee]

9. Respectfully following the above judicial pronouncements, we hold that the addition u/s 14A should be restricted to the extent of exempt income i.e., Rs.3,82,401/-, accordingly we set aside the order of Ld CIT(A) and restore the issue back to file of direct the Ld AO for the limited purpose to verify the details of exempt income and restrict the addition as per our observations in this order. In the result, appeal of the assessee is partly allowed for statical purposes, in terms of our aforesaid observations.

Order pronounced in open court on 16th day of August, 2023.

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 16th August, 2023
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-3, Bhopal
4. The Pr. CIT (Central), Bhopal
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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