

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.395/Bang/2023
Assessment Year : 2014-15

M/s. Bharat Electronics Limited, Registered Office, Outer Ring Road Nagawara, Bangalore – 560 045. PAN : AAACB 5985 C	Vs.	The ACIT, LTU, Circle – 1, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Richa B, CA
Revenue by	:	Shri. Aseem Sharma, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	30.08.2023
Date of Pronouncement	:	30.08.2023

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 21.03.2023 passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2014-15.

2. The solitary issue raised is whether CIT(A) is justified in confirming the addition made by the AO amounting to Rs.4,69,055/- under section 14A of the Act.

3. Brief facts of the case are as follows:

Assessee is a public sector undertaking, engaged in the manufacture of professional grade electronic equipment, components and power generation through wind mill. For the Assessment Year 2014-15, the return of income was filed on 22.09.2014 admitting total income of Rs.8,44,17,38,820/-. Subsequently, assessee filed revised return of income on 01.03.2016 by declaring income of Rs.8,43,74,17,120/-. Assessment was selected for scrutiny and notice under section 143(2) was issued on 01.09.2015. The assessment under section 143(3) was completed vide order dated 16.12.2016. In the assessment completed under section 143(3), the AO had worked out additional disallowance of Rs.4,69,055/- under section 14A r.w.r. 8D of the Income Tax Rules, 1962 (hereinafter called 'the Rules') after adjusting voluntary disallowance of Rs.1,30,000/- made by the assessee. The AO considered the average investment value under Rule 8D(2)(iii) of the Rules, to be Rs.11,98,11,000/- instead of Rs.2,60,00,000/-.

4. Aggrieved by the Assessment Order, assessee filed appeal before the First Appellate Authority. On the issue of disallowance under section 14A of the Act, the CIT(A) upheld the disallowance made by the AO.

5. Aggrieved by the Order of the CIT(A), assessee has filed the present appeal before the Tribunal. Assessee has filed a Paper Book enclosing therein the case laws relied on. The learned AR submitted that the assessee had made an investment totaling to Rs.2,60,00,000/- in a joint venture company, GE BE Pvt. Ltd. During the year under consideration, assessee had received exempt income viz., dividend income of Rs.2,60,00,000/- from GE BE Pvt. Ltd. The assessee had made disallowance of Rs.1,30,000/- considering the investment made of Rs.2,60,00,000/- under Rule 8D(2)(iii) of the Rules. It was submitted that the action of the AO and the CIT(A) in considering the average investment value under Rule 8D(2)(iii) of the Rules to be at Rs.11,98,11,000/- (being total

investments) is against the dictum laid down by the judgment of the Hon'ble Delhi High Court in the case of ACB India Ltd., Vs. ACIT reported in 374 ITR 108. It was submitted that only dividend earning investments should be considered in arriving at the average investment value under Rule 8D(2)(iii) of the Rules.

6. The learned DR strongly supported the order of the AO and the CIT(A).

7. We have heard the rival submissions and perused the material on record. We are of the view that only investment yielding non-taxable income has to be considered and not all the investments. This proposition has been held correct by the Hon'ble Delhi High Court in the case of ACB India Ltd., Vs. ACIT (supra). The Hon'ble Delhi High Court had held that for the purpose of section 14A, instead of taking into account total investment, the investment attributable to dividend (exempt income) was only required to be adopted and thereafter the disallowance was to be arrived. The relevant finding of the Hon'ble Delhi High Court in the case of ACB India Ltd., Vs. ACIT (supra) reads as follows:

“8. The Assessing Officer, instead of adopting the average value of investment of which income is not part of the total income, i.e., the value of tax exempt investment, chose to factor in the total investment itself. Even though the Commissioner of Income-tax (Appeals) noticed the exact value of the investment which yielded taxable income he did not correct the error but chose to apply his own equity. Given the record that had to be done so to substitute the figure of Rs. 38,61,09,287 with the figure of Rs. 3,53,26,800 and, thereafter, arrive at the exact disallowance of .05 per cent.”

8. A similar view was taken by the Hon'ble Delhi High Court in the case of PCIT Vs. Indiabulls Capital Services Ltd., in ITA No.181/2019 (judgment dated 26.02.2019). The SLP filed by the Revenue against Hon'ble Delhi High Court's judgment in the case of PCIT Vs. Indiabulls Capital Services Ltd., (supra) was

dismissed by the Hon'ble Apex Court [reported in (2020)] 114 taxmann.com 647. In view of the aforesaid judicial pronouncement, we hold that while calculating disallowance under section 14A of the Act, only investment that have generated exempt income should be taken into consideration.

9. Before concluding, it is also to be mentioned that explanation inserted by Finance Act, 2022, has been held to be prospective by the judgment of the Hon'ble Delhi High Court in the case of PCIT Vs. Era Infrastructure (India) Ltd., (2022) 141 taxmann.com 289. In light of the aforesaid reasoning and judicial pronouncements, we delete the disallowance made under section 14A of the Act, amounting to Rs.4,69,055/-. It is ordered accordingly.

10. In the result, appeal filed by the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 30.08.2023.

/NS/*

Copy to:

1. Appellants
2. Respondent
3. DRP
4. CIT
5. CIT(A)
6. DR, ITAT, Bangalore.
7. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.