

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
Ms. MADHUMITA ROY, JUDICIAL MEMBER

ITA Nos.489 & 534/Bang/2023
Assessment year : 2014-15

The Deputy Commissioner of Income Tax, Central Circle 1(1), Bengaluru.	Vs.	M/s. Khoday India Ltd., Brewery House, 7 th Mile, Kanakapura Road, Doddakallasandra, Bengaluru – 560 062. PAN: AAACK 6734C
APPELLANT		RESPONDENT

Appellant by	:	Shri Subramanian S., Addl.CIT(DR)(ITAT), Bengaluru.
Respondent by	:	Shri Gopalkrishna, AR

Date of hearing	:	05.09.2023
Date of Pronouncement	:	06.09.2023

ORDER

Per Laxmi Prasad Sahu, Accountant Member

These two appeals by the revenue are against the DIN & Order No.ITBA/APL/M/250/2023-24/1052877036(1) dated 16.05.2023 of the CIT(Appeals)11, Bangalore for the AY 2014-15 on the following grounds:-

- “i) Whether on the facts and circumstances of the case and in Law, the CIT(A) was correct in holding that the AO has not recorded the satisfaction for disallowance u/s 14A r w Rule 8D?
- ii) Whether on the facts and circumstances of the case, the CIT(A) was correct in directing the Assessing Officer to restrict the

disallowance to the amount of income claimed as exempt contrary to the provisions of Law?

- iii) Whether on the facts and circumstances of the case and in law, the CIT(A) was right in not appreciating the contents of the CBDT Circular No 5/2014 dated 11.02.2014?
- iv) For the above grounds and any additional grounds that may be agitated during the course of hearing.”

2. At the outset, it is noticed that ITA No.489/Bang/2023 was filed by the revenue on 06.07.2023 in physical form. The Registry noted that another appeal was filed against the same order of the CIT(Appeals) through e-filing on 10.07.2023 and the department was intimated of the same. The DCIT, Circle 1(1) by letter dated 26.07.2023 stated that the appeal filed in physical form filed on 06.07.2023 may be treated as withdrawn. Accordingly, ITA No.489/Bang/2023 is dismissed as withdrawn. The appeal filed on 10.07.2023 through e-filing in ITA No.534/Bang/2023 is taken up for consideration.

3. The solitary issue involved in ITA No.534/Bang/2023 is challenging the order of the CIT(Appeals) in restricting the disallowance u/s. 14A r.w. Rule 8D.

4. The brief facts of the case are that the assessee filed return of income on 30.09.2014. The case was selected for scrutiny and statutory notices were issued. The assessee filed the details. The AO observed from the financial statements that assessee has tax exempt investments at Rs.61,47,00,385 and indirect interest expenditure at Rs.19,08,91,726. The assessee was asked to explain as to why disallowance should not be made of the interest/indirect expenses

within the meaning of section 14A of the Act r.w. Rule 8D. In response, the assessee vide letter dated 26.12.2016 submitted a note objecting to the proposed disallowance u/s. 14A which is quoted by the AO in his order. The AO after examining the details filed by the assessee and relying on some case laws calculated disallowance of Rs.4,00,07,180 under Rule 8D(2)(ii) and Rs.30,74,959 under Rule 8D(2)(iii) with a total disallowance of Rs.4,30,82,139 and other additions were also made by the AO. The assessee filed appeal before the CIT(Appeals).

5. The CIT(Appeals) after considering the detailed written submissions of the assessee restricted the disallowance to the extent of exempt income received by the assessee of Rs.31,231 as dividend income. Aggrieved, the revenue is in appeal before the Tribunal.

6. The ld. DR relied on the order of the AO and submitted that the disallowance made by the AO is correct and he has recorded satisfaction that the assessee has incurred interest/indirect expenditure, therefore it cannot be said that the loan funds have not been utilized by the assessee. He also submitted that there is amendment by the Finance Act, 2022 which is clarificatory in nature. Therefore, the CIT(Appeals) is not justified in restricting the disallowance to the extent of exempt income received by the assessee.

7. The ld. AR relied on the order of the CIT(Appeals).

8. Considering the rival submissions, we note that the AO has disallowed Rs.4,30,82,139 u/s 14A r.w. Rule 8D(2). The assessee has incurred interest expenditure and made investments towards earning exempt income. The assessee itself disallowed a sum of Rs.16,346 as expenses attributable to investments which has yielded exempt income during the year. The investments were made long back to the firm, M/s. Laxmi Estate amounting to Rs.61.27 crores and investment of Rs.14.62 Lakhs were made in other companies. We note from the submissions made before the CIT(Appeals) as well as AO that the assessee has not utilized borrowed funds during the impugned assessment year. The assessee has received exempt income of Rs.31,231 from the partnership firm. The CIT(Appeals) has observed as under:-

“7.4 The observation of the AO and the appellant's detailed submissions have been duly perused. The issue of disallowance u/s. 14A has been the subject matter of adjudication by the higher judicial authorities in the appellant's own case in the past. The Hon'ble High Court of Karnataka in its order in ITA No.391/2012 dated: 16.08.2021 has held that the recording of satisfaction is mandatory. Further, as per the ITAT's order in appellant's own case in ITA No.2488 and 2489/Bang/2017 dated: 26.2.2020, the disallowance has to be restricted to the extent of the income earned. As regards the nexus between the borrowed funds and making investment in M/s. Lakshmi Estates, the AO in her order dated 29.03.2019 for the assessment years 2009-10, 2010-11, 2011-12 and 2012-13, copies of which have been placed on record, has given a categorical finding that no borrowed funds were utilized for the purpose of making investment in the firm of M/s. Lakshmi Estate.

7.5 As observed by the Hon'ble High Court, the AO has not recorded satisfaction even for this year, with regard to claim of the appellant that it has not incurred any expenditure in order to earn exempt income. Admittedly, there is no nexus between the investment in the firm of M/s Lakshmi Estates and the borrowed funds. The AO in the order of the earlier years has also given a categorical finding that the investment in M/s Lakshmi Estates has been made out of assessee's own interest free funds. Therefore, the interest paid on borrowed funds is not attributable to the investment the firm. Considering the fact that a sum of Rs.31,231/- alone has been earned as dividend income, the disallowance has to be restricted to the extent of Rs.31,231/- only as per ITAT's order in appellant's own case, as against the disallowance made by the AO of Rs. 4,30,82,139/- in the order of assessment. As such, ground nos. 3 to 8 as raised by the appellant are partly allowed.”

9. We do not find any infirmity in the order of the CIT(Appeals), he has passed a good and reasoned order. We also note that in assessee's own case for AY 2013-14 in ITA No.2488 & 2489(Bang)/2017 dated 26.02.2020 similar issue has been decided in favour of the assessee by the coordinate Bench of the Tribunal. We note that the amendment made to section 14A by Finance Act, 2022 has prospective effect which is settled by the Hon'ble Delhi High Court in the case of *PCIT v. Era Infrastructure (India) Ltd. [2022] 141 taxmann.com 289 (Del)*. Therefore we dismiss the appeal of the revenue.

10. In the result, ITA 489/Bang/2023 is dismissed as withdrawn and ITA No.534/Bang/2023 is dismissed in the above terms. The common order passed shall be kept in respective case files.

Pronounced in the open court on this 06th day of September, 2023.

Sd/-

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,

Dated, the 06th September, 2023.

/Desai S Murthy /

Copy to:

1. Appellant
 2. Respondent
 3. CIT
 4. CIT(A)
 5. DR, ITAT, Bangalore.
- By Order

Assistant Registrar
ITAT, Bangalore.