

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष

Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A Nos.739&740/Kol/2022
Assessment years: 2014-15 & 2016-17

Narnolia & Associates LLPAppellant
9, India Exchange Place,
Room No.6/7A, Kolkata-1.
[PAN: AAIFN4113F]

vs.

ITO, Ward-35(2), Kolkata.....Respondent

Appearances by:

None appeared on behalf of the appellant.

Shri Rakesh Kumar Das, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 21, 2023

Date of pronouncing the order : December 12, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the assessee against the separate orders dated 19.10.2022 & 27.10.2022 of the National Faceless Appeal Centre (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') respectively. Since, the facts and issues involved in both the appeals are common and the same have been heard together, therefore, these are being adjudicated by this common order. ITA No.739/Kol/2022 is taken as the lead case.

2. No one has put in appearance on behalf of the assessee despite notice, therefore, we proceed to adjudicate the present appeal after going through the record and after hearing the ld. DR.

3. ITA No.739/Kol/2022 – The assessee in this appeal has taken the following grounds of appeal:

“1. That in the facts and circumstances of the case, the Learned Assessing Officer has erred applying section 14A on all inventories of shares by applying Rule 8D as applicable in the instant year, with respect to investment in shares. The Ld. CIT(A), NFAC has justified the action of Assessing Officer by referring to amendment in section 14A by Finance Act, 2022. While doing so, the Ld. CIT(A), NFAC has not concurrently referred to amended Rule 8D. Thus, the action of the Ld. CIT(A), NFAC is unjustified, and arbitrary in so much as either the decided case laws as applicable for instant year should have been applied, wherein it has been held that disallowance u/s 14A of the Act cannot exceed exempt income, or if he applied amended by Finance Act, 2022, then he should directed disallowance u/s 14A with respect to revised Rule 8D, wherein the disallowance has to be made @1% of average investment in exempt assets.

2. Without prejudice, in the fact and circumstances of the case, the Learned Assessing Officer has erred in making disallowance under section 14A of the Act of Rs.1,31,83,103/- instead of restricting addition to the extent of dividend income of Rs.26,70,445/-. The Ld. CIT(A), NFAC has erred in confirming the action of the Assessing Officer.

3. Without prejudice, in the fact and circumstances of the case, the Learned Assessing Officer has erred in making disallowance under section 14A of the Act of Rs.1,31,83,103/- with respect to such investments / inventories which are not capable of generating exempt income. The Ld. CIT(A), NFAC has erred in confirming the action of the Assessing Officer.

4. That the appellant humbly craves leave to add, alter, withdraw grounds of appeal at the time of hearing.

4. A perusal of the above grounds of appeal would reveal that the sole issue taken by the assessee in this appeal is relating to the disallowance of expenditure made by the Assessing Officer and further confirmed by the CIT(A) u/s 14A of the Act in respect of expenditure incurred for earning of tax exempt income.

5. The relevant facts that emerge from the grounds of appeal, are that the assessee during the year had earned dividend income of Rs.26,70,445/-. However, the Assessing Officer has made the

disallowance u/s 14A of Rs.1,31,83,103/-. The contention raised by the assessee through grounds of appeal is that as per various case laws of the Hon'ble High Courts, the disallowance u/s 14A of the Act cannot exceed the tax exempt income earned by the assessee. It has been further pleaded that even otherwise the Assessing Officer while calculating the disallowance u/s 14A r.w.r. 8D of the Income Tax Rules has also taken those investments into consideration which were not capable of generating exempt income.

6. We find that the issue is squarely covered by the various decisions of the Hon'ble High Courts. Reliance in this regard can be placed on the following case laws:

Cheminvest Ltd. vs. CIT 378 ITR 33 (Del).

CIT vs. M/s. Holcim India Pvt. Ltd. in ITA no. 486/2014 and ITA no. 299/2014; Judgment dt. 5-9-2014

CIT v. Shivam Motors (P.) Ltd. [2015] 230 Taxman 63

CIT vs. Ashika Global Securities Ltd. (G.A. No. 2122 of 2014) dt. 11/06/2018

In these case laws, Hon'ble High Courts have been unanimous to hold that the disallowance u/s 14A cannot exceed the tax exempt income earned by the assessee and further that if the assessee has not derived any tax exempt income from investments, then no disallowance is attracted u/s 14A of the Act.

7. The ld. D/R, however, has relied upon the newly inserted explanations to Section 14A of the Act, which is extracted, hereunder, for the sake of ready reference:-

“14A. [(1)] [Notwithstanding anything to the contrary contained in this Act, for the purposes of] computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the

assessee in relation to income which does not form part of the total income under this Act.]

[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.]”

The ld. D/R has further relied on the decision of the Co-ordinate Bench of ITAT Guwahati in the case of *ACIT vs. Williamson Financial Services Ltd.* reported in [2022] 140 taxmann.com 164 (Guwahati - Trib.). (Judicial Member herein being party to the said decision), to submit that the said explanation to Section 14A of the Act is retrospectively applicable.

8. However, in a recent decision of the Hon’ble Delhi High Court in the case of *PCIT Vs. Era Infrastructure (India) Ltd. (ITA 204/2022)* judgment dt. 20/07/2022, it has been held that the aforesaid explanation inserted to Section 14A of the Act is applicable prospectively.

9. Respectfully abiding by the principle of judicial hierarchy, the Hon’ble Delhi High Court being a Higher Court, and as no decision of the Hon’ble Jurisdictional High Court or Hon’ble Supreme Court is available on this issue as yet, hence applying the said decision of the Hon’ble Delhi High Court, we allow the appeal of the assessee and direct the Assessing Officer to restrict the disallowance u/s 14A of the Act to the extent of the tax exempt income earned by the assessee.

10. Since the facts and issues involved are identical in both the appeals, therefore, our findings given above, will mutatis mutandis apply to ITA No.740/Kol/2022 also.

11. In the result, both the appeals of the assessee stand allowed in the terms as indicated above.

Kolkata, the 12th December, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 12.12.2023.

RS

Copy of the order forwarded to:

- 1 Narnolia & Associates LLP
2. ITO, Ward-35(2), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches