

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.1741/Del/2019
Assessment Year: 2014-15

ACIT Special Range-7 New Delhi	Vs.	Prudent – Agri Commodities India Private Limited RNM Centre 68/2, Janpath, New Delhi PAN No.AAGCP9228E
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Vivek Vardhan, Sr DR
Respondent by	Sh. Salil Kapoor, Advocate Sh. Sumit Lalchandani, Advocate Sh. Tarun Chanana, Advocate

Date of hearing:	11/12/2023
Date of Pronouncement:	14/12/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-25, New Delhi dated 21.12.2018 pertaining to A.Y.2014-15.

2. The grievance of the revenue is that the CIT(A) erred in deleting the disallowance u/s.14A r.w.r 8D amounting to Rs.26169440/-. The revenue is also aggrieved by the deletion of Rs.4960/- being the sum deposited on account of EPF not paid on or before the prescribed due date.

3. Representatives of both the sides were heard at length. Case records carefully perused.

4. Briefly stated the facts of the case are that the assessee is engaged in the business of trading in agricultural commodities i.e. cotton. The return for the year was electronically filed on 26.11.2014 declaring income of Rs.4009500/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

5. During the course of the scrutiny assessment proceedings the AO noticed that the assessee has shown income under the following heads :-

- | | |
|----------------------------------------|----------------|
| 1. Profit under the head business | Rs.14002984/- |
| 2. Income under the head capital gains | Rs.39,37,003/- |

6. The assessee has also shown dividend income of Rs.5067645/- which was claimed as exempt u/s.10(35) of the Act.

7. During the proceedings the assessee was asked why no disallowance has been made u/s. 14A r.w.r. 8D despite there being exempt dividend income.

8. In its reply the assessee has stated that it has not paid any interest, therefore, disallowance u/s. 14A is not warranted.

9. The AO found that the investment in mutual funds unit is made from the surplus working capital lying with the company as is evident from the bank statement and was convinced that the assessee did not incur any interest cost funds invested in the

mutual funds. However, the AO noticed that the investment in purchase of mutual funds units is out of the advance received against exports from holding company and the Forex Loss incurred by the assessee is on such borrowings and has a direct nexus with the investment in the mutual funds units. The AO observed that Forex Loss of Rs.7.54 crores has been debited in the P & L account. The proportionate Forex Loss is on account of advance from customers which has been utilized for investment in mutual fund, therefore, proportionate Forex loss is directly relating to income which does not form part of total income and invoking the provisions of section 14A. The AO computed the disallowance at Rs.26169440/-.

10. The assessee strongly agitated the disallowance before the CIT(A) and explained that the assessee had entered into an export contract with Louis Dreyfus Commodities Asia Private Limited for export of cotton in foreign currency but due to some Government policies the assessee could not make any export and had to liquidate cotton stock into the domestic cotton market and the proceeds earned from domestic sales was invested into units of mutual funds on which it earned capital gains on redemption which was offered to tax under the head income from capital gains and the dividend earned was claimed exempt u/s. 10 (35) of the Act.

11. It was explained that the Forex Loss was on account of repayment of advances and has nothing to do with the earning of exempt income.

12. After considering the facts and the submissions and referring to few judicial decisions the CIT(A) deleted the impugned addition.

13. Before us the DR supported the findings of the AO and stated that the assessee has utilized investment from foreign sources. It is the say of the DR that if the assessee had not received any advance from its holding company it could not have purchased the mutual fund units, therefore, there is a direct nexus of earning exempt income from the foreign borrowings and the AO has rightly made the impugned disallowance.

14. Per contra the Counsel reiterated what has been stated before the CIT(A) and placed strong reliance on the decision of the coordinate Bench in the case of Theolia Wind Power Private Limited 109 taxmann.com 3.

15. We have given a thoughtful consideration to the orders of the authorities below. On understanding of the facts we are of the considered view that when the assessee received the impugned advance the assessee was well aware with the policies of the Government and on that very date the assessee knew that it cannot deliver the goods demanded by Louis Dreyfus Commodities Asia Private Limited.

16. Having received the advance and knowing that the goods could not have been delivered the assessee could have refunded the advance and saved the Forex Loss. Though the Counsel has stated that the assessee had sufficient funds to purchase the

mutual fund units dehors the foreign advance but then no evidences has been brought on record to prove the same.

17. Considering the facts of the case in totality we are of the considered view that there is a direct nexus between the foreign advance and the purchase of mutual fund units, therefore, disallowance u/s. 14A cannot be ruled out. However, since the exempt income is Rs.5067645/-, therefore, the disallowance u/s.14A cannot exceed the exempt income as held by Hon'ble Jurisdictional High Court of Delhi in the case of Caraf Builders and Construction 414 ITR 122. The AO is directed to restrict the disallowance to the extent of exempt income of the revenue.

18. Next issue is deletion of late deposit of EPF. This issue has been settled by the Hon'ble Supreme Court in favour of the Revenue in the case of Check Mate Services Pvt. Ltd. 448 ITR 518 hence the finding of the CIT(A) are reversed and the ground is allowed.

19. In the result, the appeal filed by the revenue is partly allowed.

Order pronounced in the open court on 14.12.2023.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

NEHA

Date:- .12.2023

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	11.12.2023
Date on which the typed draft is placed before the dictating Member	12.12.2023
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	