

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "C" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 3291/Mum/2023 (A.Y. 2016-17)

M/s. Prime Property Development Corporation Ltd. 501, Soni House, Plot No. 34 Gulmohar Road No. 1, JVPD Scheme, Vile Parle (W) Mumbai-400 049.  PAN : AAEC8014P (Appellant)	Vs.	ACIT/JCIT/DCIT/ ITO-NFAC 552, Aayakar Bhavan M.K. Road Mumbai-400 020.  (Respondent)
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Assessee by	Ms. Dinkle Hariya & Shri Rashmi Vyas
Department by	Shri H.M. Bhatt
Date of Hearing	03.01.2024
Date of Pronouncement	03.01.2024

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 17.7.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2016-17. The issues urged in this appeal relate to the

- (a) disallowance made under section 14A of the Act while computing total income under normal provisions of the Act and
- (b) addition of the amount of disallowance u/s 14A of the Act while computing book profit under section 115JB of the Act.

2. We heard the parties and perused the record. The fact is that the assessee did not earn any exempt income during the year under consideration. Hence the assessee did not make any disallowance u/s 14A of the Act. The Assessing Officer noticed that the assessee has held investment in shares to the tune of Rs. 30.75 crores. Accordingly, he took the view that

the disallowance u/s 14A should be made. Accordingly, he computed the disallowance under section 14A read with rule 8D of the I.T. Rules at Rs.15,38,295/- and added the same to the total income. The Assessing Officer also added the very same amount to the net profit for the purpose of computing book profit under section 115JB of the Act. The learned CIT(A) confirmed both the additions and hence the assessee has filed this appeal before the Tribunal.

3. The Learned AR placed reliance on the decision rendered by Hon'ble Madras High Court in the case of CIT Vs. Chettinad Logistic Pvt. Ltd. (2017) (80 taxman.com 221) and contended that no disallowance under section 14A is warranted when the assessee has not earned any exempt income. On the very same reasoning, the learned AR submitted that the addition under clause (f) of Explanation to section 115JB is not required to be made, since the assessee has not earned any exempt income.

4. The Learned DR on the contrary supported the order passed by the learned CIT(A).

5. The undisputed fact is that the assessee has not earned any exempt income during the year under consideration. Hon'ble Madras High Court in the case of Chettinad Logistic Pvt. Ltd. (supra) has held that no disallowance under section 14A of the Act is required when the assessee has not earned any exempt income. For the sake of convenience, we extract below the decision rendered by Hon'ble Madras High Court in the above said case:-

“9. In our opinion [Section 14 A](#) of the Act, can only be triggered, if, the Assessee seeks to square off expenditure against income which does not form part of the total income under the Act.

9.1. The legislature, in order to do away with the pernicious practice adopted by the Assessee's, to claim expenditure, against income exempt from tax, introduced the said provision.

10. In the instant case, there is no dispute that no income i.e., dividend, which did not form part of total income of the Assessee was earned in the relevant assessment year.

10.1. Therefore, to our minds, the addition made by the Assessing Officer by relying upon [Section 14 A](#) of the Act, was completely contrary to the provisions of the said Section.

10.2. Mr. Senthil Kumar, who appears for the Revenue, submitted that the Revenue could disallow the expenditure even in such a circumstance by taking recourse to Rule 8D.

10.3. According to us, Rule 8D, only provides for a method to determine the amount of expenditure incurred in relation to income, which does not form part of the total income of the Assessee.

10.4. Rule 8 D, in our view, cannot go beyond what is provided in [Section 14 A](#) of the Act.

11. Furthermore, we may note that a similar argument was sought to be advanced by the Revenue in the matter concerning, M/s. Redington (India) Limited Vs. The Additional Commissioner of Income Tax, which was, subject matter of T.C.A.No.520 of 2016.

11.1. A Co-ordinate Bench of this Court, vide judgment dated 23.12.2016, rejected the plea of the Revenue advanced in that behalf.

11.2. As a matter of fact, a perusal of the judgment would show that the Revenue had sought to argue that because exempt income could be earned in future years, therefore, recourse could be taken to the provisions of [Section 14A](#) of the Act, to disallow expenditure. In other words the stand taken by the Revenue was irrespective of the fact whether or not income was earned in the concerned assessment year expenditure under [Section 14A](#) could be disallowed against anticipated income.

11.3. Pertinently, the Division Bench in M/s. Redington (India) Limited case has repelled this precise argument.

12. The Division Bench, in our view, quiet correctly held that, the computation of total income, in terms of [Section 5](#) of the Act, is made qua real income and not, vis-a-vis, notional income.

12.1. The Division Bench went on to hold that [Section 4](#) of the Act brings to tax, that income, which is relatable to the assessment year in issue. The Division Bench, thus, held that where no exempt income is earned in the previous year, relevant to the assessment year in issue, provisions of [Section 14 A](#) of the Act, read with Rule 8 D could not be invoked.

12.2. While coming to this conclusion, the Division Bench also took note of the aforementioned Circular, issued by the Board.

12.3 .The reasoning of the Division Bench is contained in the following part of the judgment:

!! 4.The admitted position is that no exempt income has been earned by the assessee in the financial year relevant to the assessment year in issue. The order of assessment records a finding of fact to that effect. The issue to be decided thus lies within the short compass of whether a disallowance in terms of s.14A [of the Act](#) read with Rule 8D of the Rules can be contemplated even in a situation where no exempt income has admittedly been earned by the assessee in the relevant financial year.

7.Per contra, Sri.T.Ravikumar appearing on behalf of the revenue drew our attention to the marginal notes of s.14 A pointing out that the provision would apply not only where exempt income is 'included' in the total income, but also where exempt income is 'includable' in total income.

8.He relied upon a Circular issued by the Central Board of Direct taxes in Circular No.5 of 2014 dated 11.2.2014 to the effect that s.14A was intended to cover even those situations whether there is a possibility of exempt income being earned in future. The Circular, at paragraph 4, states that it is not necessary for exempt income to have been included in the income of a particular year for the disallowance to be triggered. According to the Learned Standing Counsel, the provisions of s.14A are made applicable, in terms of sub section (1) thereof to income 'under the act' and not 'of the year' and a disallowance under s.14A r.w.Rule 8D can thus be effected even in a situation where a tax payer has not earned any taxable income in a particular year.

9.We are unable to subscribe to the aforesaid view. The provisions of [section 14A](#) were inserted as a response to the judgments of the Supreme Court in Commissioner of Income Tax Vs. Maharashtra Sugar Mills Limited (1971) (82 ITR 452) and Rajasthan State Ware Housing Corporation Vs. Commissioner of Income Tax ((2002) 242 ITR 450) in terms of which, expenditure incurred by an assessee carrying on a composite business giving rise to both taxable as well as non-taxable income, was allowable in entirety without apportionment. It was thus that s.14A was inserted providing that no deduction shall be allowable in respect of expenditure incurred in relation to the earning of income exempt from taxation. As observed by the Supreme Court in the judgment in the case of [Commissioner of Income Tax vs. Walfort Share and Stock Brokers \(P\) Ltd](#) (2010) 326 ITR 1 '.... The mandate of s.14A is clear. It desires to curb the practice to claim deduction of expenses

incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of an exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income.'

10.The provision this is clearly relatable to the earning of actual income and not notional or anticipated income. The submission of the Department to the effect that s.14A would be attracted even to exempt income 'includable' in total income would entail the assessment of notional income, assumed to be exempt in the future, in the present assessment year. The computation of total income in terms of s.5 of the Act is on real income and there is no sanction in law for the assessment of admittedly notional income, particularly in the context of effecting a disallowance in connection therewith.

11.The computation of disallowance in terms of Rule 8D is by way of a determination involving direct as well as indirect attribution. Thus, accepting the submission of the Revenue would result in the imposition of an artificial method of computation on notional and assumed income. We believe this would be carrying the artifice too far.

13.Mr.Senthil Kumar, seeks to distinguish the judgment in M/s. Redington (India) Limited case based on the fact that Rule 8D had not kicked-in by AY 2007-08, which was the AY being considered in the said case.

14.According to us, this was not the argument, put forth, before the Division Bench. As a matter of fact, the Revenue relied heavily on Rule 8D.

14.1.Mr.Ravikumar, who appeared for the Revenue, in that matter and who is present in this Court, informs us that he had in fact argued that the Rule was clarificatory in nature and would apply retrospectively, and that, the Division Bench, therefore, discussed the impact of Rule 8D of the Rules.

15.However, it is, our view, as indicated above, independent of the reasoning given in M/s. Redington (India) Limited case that Rule 8D cannot be read in a manner, which takes it beyond the scope and content of the main provision, which is, [Section 14 A](#) of the Act.

15.1.Therefore, as adverted to above, Rule 8D, cannot come to the rescue of the Revenue.

15.2.In any event, the Tribunal, via, the impugned judgment has remitted the matter to the Assessing Officer.

15.3. Therefore, for the foregoing reasons, we are of the view, that no interference is called for qua the impugned judgment.

16. To our minds, questions of law, which could have arisen are already covered by the judgment of a Co-ordinate Bench of this Court rendered in *M/s. Redington (India) Limited case.*”

Following the above said decision, we agree with the contentions of the assessee that no disallowance is called for u/s 14A of the Act during the year under consideration, since the assessee has not earned exempt income during this year. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to delete the disallowance made under section 14A of the Act.

6. In the case of *Vireet Investments P Ltd (165 ITD 27)*, the Delhi Special bench has held that the disallowance made u/s 14A of the Act cannot be imported in sec.115JB of the Act. Hence the addition of Rs.15,38,295/- to the net profit for the purpose of computing book profit u/s 115JB of the Act should be deleted. Then the question that arises is whether any addition is called for under clause (f) of Explanation to sec.115JB of the Act, when the assessee has not earned any exempt income. A perusal of the Explanation 1 to sec.115JB would show that the addition under clause (f) is required to be made only if any expenditure relatable to exempt income is debited to the Profit and Loss account. When the assessee has not earned any exempt income, then the question of incurring any expenditure does not arise. Accordingly, there is merit in the contentions of Ld A.R that addition under clause (f) of Explanation 1 to section 115JB does not arise in the facts of the present case. Accordingly, we direct the Assessing Officer to delete the addition of Rs. 15,38,295/- made to the net profit under section 115JB of the Act.

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

Order pronounced on 03.01.2024.

Sd/-  
(Pavan Kumar Gadale)  
Judicial Member

Sd/-  
(B.R. Baskaran)  
Accountant Member

Mumbai.; Dated : 03/01/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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