

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 2964/Mum/2023 (A.Y.2014-15)

Elara Capital (India) Pvt. Ltd.,
Tower-3, 21st floor, One
International Centre, Senapati
Bapat Marg, Elphinstone Road (W)
Mumbai- 400013,
PAN: AABCE6487B

..... Appellant

Vs.

ITO-6(2)(3),
Room No. 513, 5th floor,
Aayakar Bhavan, Mahrishi
Karve Road,
Mumbai- 400020

..... Respondent

Appellant by : Shri Runit Tanna, Ld. AR
Respondent by : Shri P. D. Chougule, Ld. DR

Date of hearing : 27/12/2023
Date of pronouncement : 18/01/2024

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 27.06.2023 u/s. 250 of the Income Tax Act,

1961 (in short 'the Act') for A.Y. 2014-15. The assessee has raised the following grounds of appeal:-

- 1. The learned Commissioner of Income Tax (Appeals)/NFAC erred in confirming the disallowance of Rs. 9, 15,528/- made by the Assessing Officer under Section 14A.*
- 2. The learned Commissioner (Appeals)/NFAC failed to appreciate that no disallowance can be made under Section 14A when no exempt income is earned during the year.*
- 3. The learned Commissioner (Appeals)/NFAC failed to consider the fact that CBDT circulars are not binding in nature on the assessee or the appellate authorities.*
- 4. The learned Commissioner (Appeals)/NFAC was wrong in holding that the insertion of the Explanation to Section 14A by the Finance Act 2022 was retrospective in nature.*
- 5. The learned Commissioner (Appeals)/NFAC was not justified in not following the ratio of the appellate orders of the earlier years in the case of the appellant itself.*
- 6. The learned Commissioner (Appeals)/NFAC failed to appreciate the fact that the appellant has no unsecured loans and has paid no interest during the year.*
- 7. The learned Commissioner (Appeals)/NFAC failed to appreciate that the Assessing Officer was wrong in stating that the appellant has suo moto disallowed an amount of Rs 100 under section 14A.*

The appellant craves leave to add to, amend or delete any of the above grounds, on or before the final date of hearing.

2. Brief facts of the case are that assessee company filed its return of income on 29.11.2014 declaring total income at Rs. NIL. Case of the assessee was selected for scrutiny under CASS. Assessee company is engaged in the business of merchant banking. During the assessment proceedings, a disallowance of Rs. 9, 15,528/- as per para 7 of the assessment order was made. Assessee being aggrieved with this order of AO preferred and appeal before the Ld. CIT (A), who in turn confirmed the order of AO. Assessee being further aggrieved with this order of Ld. CIT (A) preferred an appeal before us.

3. We have gone through the order of AO, order of Ld. CIT (A) and submissions of the assessee alongwith grounds raised before us. It is pertinent to mention here that similar issue in assessee's own case was passed by Coordinate Bench in ITA No. 1569/Mum/2023 for AY 2017-18. The relevant findings of the Coordinate Bench on the issue are as under:-

5. We have heard rival submission of parties on the issue in dispute and perused the relevant material on record. Before the Ld. CIT (A), it was submitted that no exempt income had been earned during the year under consideration and all expenses incurred and claimed by the company were related to earning of income which was chargeable to income-tax. Hence no disallowance was required to be made u/s 14A r.w. Rule 8D. The assessee also relied on the finding of the Ld. CIT (A) for assessment year 2011-12 to 2013-14. But the Ld. CIT(A) in instant year referred to the Circular No. 5/2014 dated 11.04.2014 and observed that for the purposes of section 14A of the Act, the expenditure relatable to earning of exempt income have to be considered for disallowance irrespective of whether any such income had been earned during the financial year or not. The Ld. CIT(A) further referred to amendment brought in section 14A of the Act by way of Finance Act 2022 and observed that said amendment was in the nature of the clarification on the issue of disallowance in absence of any exempt income during the assessment year u/s 14A of the Act. The Ld. CIT (A) relying on various decisions mentioned in the impugned order observed that clarification got in by way of amendment of 2022 shall apply retrospectively. The relevant finding of the Ld. CIT (A) is reproduced as under:

"6.10 In view of the above discussion, the contentions of the appellant that no exempt income has been earned and therefore, provisions of section 14A of the Act cannot be invoked, is hereby, rejected. The appellant company is engaged in the business of providing professional services to client of any issue. The claim of the appellant that appellant is holding investment as the investment having potential to attract LTCG, did not maintain of any record are also not tenable in view of discussion made in aforesaid para and as per IT(14th amendment) Rule, 2016 applicable w.e.f. 02.06.2016, the expenditure in relation to income which does not form part of the total income shall be aggregate of the following amounts, namely, provided such expenditure should not be exceeded the total expenditure claimed by the assessee..... During the AY 2017-18 the disallowance under section 14A r.w.r. 8D was worked out with new methodology prescribed for working of expenses attributable to exempt income as per Rule 8D of the IT Act. Further, the appellant has not maintained books of account separately for trading and investments, therefore, it is not possible to bifurcate expenses over taxable and non exempt income. On the other hand, the disallowance made is strictly as per the parameters of Section 14A r.w.r. 8D.

6.11 I would like to mention that in the case of appellant for the AY 2011-12 to 2013-14, CIT (A) decision in favour of the appellant mainly on the ground that the appellant had not earned any exempt income in that year. The above aspects have not been brought on record at that time. Therefore, I am changing my stand on this issue. Further, in the judgments relied upon by the appellant above aspects have also not been considered, therefore, with due respect to the judgments, I follow the above analysis made in this order. In view of the above discussion, the contentions of the appellant that no exempt income has been earned and therefore, provisions of section 14A of the Act cannot be invoked, is hereby, rejected.

6.12 In view of the above discussion, the Id. AO was justified in disallowing expenses by invoking provisions of section 14A r.w.r 8D of the Act. Thus, addition made by the AO amounting to Rs. 32, 90,000/- is confirmed. Therefore, appeal on this ground is dismissed."

51. It is further noted the Notes of Clauses of Finance Act, 2022, is explicitly clear that the new Explanation will take effect from 1st April, 2022 and therefore will accordingly apply to the Assessment Year 2022-23 and subsequent years. The relevant Notes to Clauses are as under.

"Clause 9 seeks to amend section 14A of the Income-tax Act relating to expenditure incurred in relation to income not includible in total income. The said section, inter- alia, provides that no deduction shall be allowed in relation to income which does not form part of the total income under the Income-tax Act. It is proposed to amend sub-section (1) of the said section to provide that notwithstanding anything to the contrary contained in this Act, for the purpose of computing the total income, no deduction shall be allowable in respect of expenditure incurred in relation to income which does not form part of the total income.

This amendment will take effect from 1st April, 2022 and will, accordingly, apply in relation to the assessment year assessment years. 2022-2023 and subsequent

It is also proposed to insert an Explanation to the said section to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of the said section shall apply and shall be deemed to have been always applied in a case where the income, not forming part of the total income, 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 form part of the total income.

This amendment will take effect from 1st April, 2022."

52. From the above, the legislative intent is clear, the amendment brought in by the Finance Act, 2022 on this issue as discussed, will take effect from First April 2022 and not before as contended by the Ld DR. In our considered view, therefore, the new Explanation inserted in Section 14A of the Act with effect from 01-04-2022 cannot be applied in the assessment years under consideration for the present case as it is for AYs 2016-17 to 2018-19, and therefore according to us, the decisions cited in Paras 33 to 37 above continue to hold good and are binding upon us."

5.3 Further, the Co-ordinate Bench of the Tribunal in the case of Dy. CIT v. Lodha Developers Ltd. [2022] 143 taxmann.com 442 (Mumbai-Trib.) has also held that amendment made by the Finance Act, 2022 to section 14A is to take effect from 01.10.2022 and it would be prospective in nature. Since the assessment year under consideration is AY 2017-18, which is much prior to introduction amendment to section 14A though Finance Act, 2022 therefore, respectively following the finding in judicial precedents referred above, we set aside the finding of the Ld. CIT(A) on the issue in dispute and delete the disallowance made by the Assessing Officer. The grounds of appeal of the assessee are accordingly allowed.

4. As the issue involved in this appeal is identical to what have been discussed and adjudicated by the Coordinate Bench in ITA No. 1569/Mum/2023, we do not find any change in the facts of the case and law applicable. Hence, respectfully following the decision of Coordinate Bench (supra), grounds raised by the assessee are allowed.

5. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 18th of January 2024.

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 18/01/2024

Sr. PS (Dhananjay)

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai