

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.2553/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2018-19)

DCIT-3(2)(1) Room No. 608, 6 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	बनाम / Vs.	M/s. Palchin Real Estate Pvt. Ltd. 41/44, Shapoorji Pallonji Centre, Minood Desai Marg Colaba, Mumbai- 400005.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCP4365P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri K. Shivram & Rahul Hakani	
Revenue by:	Shri Solgy Jose t. Kottaram (CIT, DR)	

सुनवाई की तारीख / Date of Hearing: 26/02/2024

घोषणा की तारीख /Date of Pronouncement: 29/02/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax/NFAC, [hereinafter referred to as the "CIT"], Delhi dated 23.05.2023 for assessment year 2018-19.

2. The main grievance of the revenue is against the action of the Ld. CIT(A) deleting the addition/disallowance of Rs.43,29,89,844/- u/s 14A of the Income Tax Act, 1961 (hereinafter "the Act") r.w. Rule 8D of the Income Tax Rules, 1962 (hereinafter "the Rules") ignoring the CBDT Circular No. 05/2014 as well as the amendment inserted by the Finance Act, 2022.

3. Brief facts the AO noted on this issue are that the assessee has filed its return of income on 01.10.2018 declaring total loss of



ITA N. 2553/Mum/2023

A.Y. 2018-19

M/s. Palchin Real Estate Pvt. Ltd.

Rs.46,50,30,928/-. Later, the return was selected for complete scrutiny. And the AO noted that the assessee has debited less expenditure in its P & L Account for earning exempt income (*when compared to the investment made to earn exempt income*). The AO called for details regarding the investment made for earning exempt income. Pursuant thereto, the assessee informed the AO that during the year under consideration (AY. 2018-19), the assessee has not earned any exempt income and therefore, pleaded that no disallowance may be made u/s 14A of the Act. But the AO did not accept the plea of assessee and citing the CBDT Circular No. 43/2016 dated 2nd April 2016, the AO held as under: -

“In the present case, the assessee maintains not to have incurred any expense in relation to exempt income, since; no exempt income is earned during the year which is not acceptable in view of the above discussion. Hence, I am satisfied that in this case provisions of section 14A read with rule 8D are applicable and contention of the assessee that no disallowance is to made u/s. 14A is not acceptable and correct amount of disallowance is to be computed u/s. 14A r.w Rule 8D. The same is worked out as under:

Working of direct expenses (Interest)

Amount of loan	Rs.500,00,00,000/-
Amount invested in shares of Mrunmal Properties Ltd.	Rs. 457,57,97,377/-
Expenses for obtaining loan	Rs.47,16,84,932/- (41,41,84,932+5,75,00,000)
Proportionate Expenses related to investment in shares	Rs.43,16,66,935/-



ITA N. 2553/Mum/2023
A.Y. 2018-19
M/s. Palchin Real Estate Pvt. Ltd.

Para of Rule 8D	Particular	Values (in Rs.)	Disallowable (in Rs.)	
2(i)	Expenditure directly related to exempt income	43,16,66,935/- *		43,16,66,935/-
2(ii)	(B) Annual average of the monthly average of the opening and closing balances of the value of investment (B)	4,57,57,97,377/-	1% of B 4,57,57,973/-	13,22,909 (limited to expenses claimed)
Total 2(I + II)				43,29,89,844

4.5. Amount of Rs.43,29,89,844/- is, therefore, disallowed u/s 14A read with rule 8D and added to the total income of the assessee company. I am satisfied that the assessee has underreported its income and therefore, penalty proceeding u/s. 270A of the Act is initiated for under reporting in consequence to misreporting.

4.6. A show cause notice, proposing various additions, was send to the assessee on 24.09.2021, requiring the Assessee why the additions, as proposed, should not be made in the final assessment order. The Assessee has, vide letters dated 24.09.2021 and 25.09.2021 replied to the above show cause notice. In both its replies the assessee has relied on various case laws of different court in support of its claim that no deduction u/s. 14A is warranted. The submissions made by the Assessee have been perused and the case laws cited are analyzed. It is seen that the facts of the Assessee's case are materially different from those of the case laws cited and relied upon by the Assessee and hence the ratios proposed in these case laws are not applicable to the Assessee's case, further the rulings of the courts in the following cases are applicable to the Assessee's case

1. LLOYDS Steel Industries Limited v/s. ACIT (ITAT-Mumbai) 20 SOT 40.
2. CIT v/s. Leena Ramachandran (Ker) 339 ITR 296.
3. Cheminvest Limited v/s. ITO (ITAT, SB-DEL) 121 ITD 318.
4. Pradeep Kar v/s. ACIT (Kar) 319 ITR 416.

Thus, after duly considering all the submissions made on behalf of the Assessee as also the case laws relied upon, the contention of the Assessee that the deductions under 14-A are not applicable in its case,



ITA N. 2553/Mum/2023
A.Y. 2018-19
M/s. Palchin Real Estate Pvt. Ltd.

is not acceptable and hence the disallowance u/s. 14A is worked out at Rs.43,29,89,844/- (para 4.4.).

4.7. In view of the above, amount of Rs.43,29,89,844/- is, therefore, disallowed u/s 14A read with rule 8D and added to the total income of the assessee company. I am satisfied that the assessee has underreported its income and therefore, penalty proceeding u/s. 270A of the Act is initiated for under reporting in consequence to misreporting.

4. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the addition by taking note that the assessee did not earn any exempt income during the year under consideration, by relying on several case laws wherein the CBDT Circular No. 05/2014 dated 11th Feb, 2014 had also been considered, and therefore, the Ld. CIT(A) held that no disallowance can be made when no tax free income has been earned by the assessee.

5. Aggrieved by the aforesaid action of the Ld. CIT(A), the revenue is before us.

6. We have heard both the parties and perused the material placed before us. We note that the AO has noted that the assessee had obtained loan from HDFC Limited amounting to Rs.500 cr. And on the said loan, interest expenditure of Rs.41,41,84,932/- and loan processing charges of Rs.5,75,00,000/- has been claimed during the year. The AO further noted that loan from HDFC was raised for the purpose of acquiring the shares of M/s. Mrunmal Properties Ltd (hereinafter "Mrunmal") which action of assessee according to the



ITA N. 2553/Mum/2023
A.Y. 2018-19
M/s. Palchin Real Estate Pvt. Ltd.

AO, would yield income in the nature of exempt income. And thereafter, he referred to the CBDT Circular (supra) and noted that even though assessee did not earn any exempt income, Rule 8D of the Rules needs to be applied and by applying the Rule, disallowed Rs.43,29,89,844/-. On appeal, the Ld. CIT(A) took note of the fact that in the relevant assessment year, assessee did not earn any exempt income and therefore, he deleted the addition. Before us, the Ld. CIT-DR contended that amendment has been inserted by Finance Act, 2022 which is clarificatory in nature and therefore relying on the Hon'ble Supreme Court decision in the case of Allied Motors Pvt. Ltd. (91 Taxman 205) (SC) as well as the Hon'ble Bombay High Court decision in the case of Godrej & Boyce Mfg. Co. Ltd. v. Deputy Commissioner of Income-tax, Range 10(2), Mumbai [2010] (194 Taxman 203) (Bom.), according to the Ld. CIT-DR, the amendment made by Finance Act, 2022 is retrospective and therefore, the action of the Ld. CIT(A) need to be reversed and the disallowance made by AO to be upheld.

7. Having heard both the parties, we note that the issue before us is whether the disallowance u/s 14A of the Act is warranted when assessee did not earn any exempt income. We note that this issue is no longer res-integra and we are of the opinion that the no disallowance u/s 14A of the Act r.w. Rule 8D of the Rules was warranted. The Hon'ble Bombay High Court in the case of PCIT Vs. Kohinoor Project Pvt. Ltd (2020) (420 ITR 700) upheld the action of the Tribunal holding that no disallowance could have been made by AO by



ITA N. 2553/Mum/2023
A.Y. 2018-19
M/s. Palchin Real Estate Pvt. Ltd.

invoking section 14A of the Act r.w. Rule 8D of the Rules. And while doing so, the Hon'ble High Court took note of the decisions of the Hon'ble Delhi High Court in the case of *Cheminvest Ltd. v. CIT* (378 ITR 33) (Delhi), and Hon'ble P & H High Court in the case of *CIT Vs. Lakhani Marketing Incl.* (2015) (4 ITR-OL 246) (P&H) and the decision of the Hon'ble Allahabad High Court in the case of *CIT Vs. Shivam Motors Pvt. Ltd.* (2015) 55 taxmann.com 262) (All), and thereafter the Hon'ble Bombay High Court held as under: -

“8. Section 14A of the Act deals with expenditure incurred in relation to income not includible in total income. As per sub-section (1) of section 14A, for the purpose of computing the total income, 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. In *Cheminvest Ltd. (supra)* Delhi High Court examined the expression "does not form part of the total income" as appearing in sub-section (1) of section 14A of the Act. Delhi High Court held that the said expression envisages that there should be an actual receipt of income which is not includible in the total income during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. It was clarified that section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

9. This view has been followed in several decisions by this Court. In fact in *Pr. CIT v. Man Infraprojects Ltd.* [IT Appeal No. 259 of 2017, dated 9-4-2019], this Court followed the decision of the Delhi High Court in *Cheminvest Ltd. (supra)*. It



ITA N. 2553/Mum/2023
A.Y. 2018-19
M/s. Palchin Real Estate Pvt. Ltd.

was further noted in MAN Infraprojects Ltd. that the decision of the Delhi High Court was challenged by the revenue before the Supreme Court by filing SLP but the SLP was dismissed.

10. In the light of the above, we hold that no substantial question of law arises from the order of the Tribunal. The appeal is devoid of merit and is accordingly, dismissed.”

8. Coming to the submission of the Ld. DR that the amendment brought in section 14A of the Act by Finance Act, 2022 was clarificatory in nature, and therefore, retrospective in operation, we find that such a contention came up before the Hon'ble Delhi High Court in the case of PCIT Vs. Man Infraprojects Ltd wherein the Hon'ble High Court held that the amendment brought in by Finance Act, 2022 in section 14A of the Act will take effect from 01.04.2022 and cannot be presumed to be retrospective. Therefore, this contention of the revenue is rejected. In the light of the discussion (supra), we do not find any infirmity in the order of the Ld. CIT(A) and therefore, we dismiss the appeal of the revenue.

9. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open court on this 29/02/2024.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29/02/2024.
Vijay Pal Singh, (Sr. PS)



ITA N. 2553/Mum/2023
A.Y. 2018-19
M/s. Palchin Real Estate Pvt. Ltd.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai