

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

Before Justice (Rtd.) C.V. Bhadang (President) & Shri B.R. Baskaran (AM)

I.T.A. No. 1925/Mum/2020 (A.Y. 2017-18)

DCIT, CC-6(4) Room No. 1925 19 <sup>th</sup> Floor Air India Building Nariman Point Mumbai-400 021.	Vs.	Arshiya Limited 302, Level-3, C.J. House Shiv Sagar Estate F-Block, Worli Dr. Annie Besant Road Mumbai-400 018.  PAN : AAACI2679A
(Appellant)		(Respondent)

Assessee by	Shri Piyush Chhajer
Department by	Shri Manoj Kumar Sinha
Date of Hearing	25.01.2024
Date of Pronouncement	06.03.2024

ORDER

Per B.R.Baskaran (AM) :-

The Revenue has filed this appeal challenging the order dated 7.8.2020 passed by the learned CIT(A), 54, Mumbai and it relates to A.Y. 2017-18.

2. This appeal was originally disposed of by the Coordinate Bench, vide its order dated 28.11.2022. Subsequently, the Revenue moved a Miscellaneous Application submitting that the Tribunal did not adjudicate the ground no.5 relating to the disallowance made under section 14A of the Act. The above said miscellaneous application was numbered as M.A. No. 452/Mum/2022. Accordingly the Tribunal, vide order dated 24.11.2023 passed in the above said Miscellaneous Application, recalled the above said order for limited purpose of adjudicating the ground relating to the disallowance made under section 14A of the I.T. Act.

3. The facts relating to the above said issue are stated in brief. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has invested in equity shares, but did not make any disallowance as required under section 14A of the Act. When questioned about the same, the assessee submitted that it has not earned any exempt income and hence disallowance under section 14A is not warranted. The Assessing Officer, however, did not agree with the above said submission of the assessee. He took the view the disallowance under section 14A of the Act is required to be made even if the assessee has not earned any exempt income. Accordingly, he computed the disallowance at Rs. 8.54 crores by applying the provisions of Rule 8D and added the same to the total income of the assessee.

4. The learned CIT(A), however, deleted the disallowance by placing reliance on the following case laws :

- a) Chem invest Ltd. Vs. CIT (378 ITR 33)(Del Trib)
- b) DCIT Vs. JSW Ltd. (116 taxman.com 565) (Mum Trib)
- c) CIT Vs. Corretech Energy (P) Ltd. (2015) 372 ITR 97 (Guj)

Aggrieved by the decision rendered by the learned CIT(A) on this issue, the Revenue has filed this appeal.

5. We heard the parties and perused the record. The undisputed fact remains that the assessee has not earned any exempt income. We notice that the Ld CIT(A) has followed the decision rendered by Hon'ble Delhi High Court in the case of Chem invest Ltd. (supra) and other case laws to hold that no disallowance u/s 14A is warranted, when the assessee has not earned any exempt income. We notice that the Hon'ble jurisdictional Bombay High Court has also held in the case of **M/s. Nirved Traders Pvt. Ltd. Vs. DCIT (ITA. No.149 of 2017)** that the disallowance u/s 14A of the Act is to be restricted to the extent of exempt income earned by assessee. In holding so, the Hon'ble Bombay High Court has followed the decisions

rendered by Hon'ble Delhi High Court and Hon'ble Gujarat High Court, referred supra. The following question of law was framed before Hon'ble Bombay High Court in the case of Nirved Traders P Ltd (supra)

"Whether ITAT was right in law in confirming the disallowance under Section 14A of the Income Tax Act, 1961 in excess of exempt income earned by the Assessee during the assessment year in question?"

The Hon'ble Bombay High Court held as under:-

*"5. Having heard the learned Counsel for the parties and having perused the documents on record, consistently different High Courts in the country have taken a view that the disallowance under Section 14A of the Act read with Rule 8D of the Rules cannot exceed the Assessee's exempt income. The Delhi High Court, in the case of Cheminvest Ltd. Vs. Commissioner of Income Tax 1, has held that when the Assessee has not earned any income which was exempt from tax, disallowance of the expenditure under Section 14A read with 8D of the Rules would not be permissible.*

*6. Karnataka High Court, in the case of Pragati Krishna Gramin Bank Vs. Joint Commissioner of Income-tax<sup>2</sup>, has held that expenditure in relation to income not includable in the total income cannot exceed such income. It was observed as under.*

"14. We make it clear that the expenditure for earning exempted income has to have a reasonable proportion to the income, so earned, going by the common financial prudence. Therefore, even if the Assessing Authority has to make an estimate of such an expenditure incurred to earn exempted income, it has to have a rational nexus with the amount of income earned itself. Disallowance under Section 14A of Rs.2,48,85,000/- as expenses to earn exempted Dividend income of Rs.1,80,30,965/- is per se absurd and 1 378 ITR 33 2 [2018] 256 Taxman 349 (Karnatama) URS 3 of 7 4 3-ITXA 149-17.odt hypothetical. The disallowance under Section 8D cannot exceed the expenses claimed by assessee under the Proviso to Rule 8D. Therefore, where the assessee claimed that assessee did not incur any such expenditure during the year in question to earn Dividends of Rs.1,80,30,965/-, the burden was upon the assessing authority to compute the interest on such borrowed funds which were dedicatedly used for

investment in securities to earn such exempted Dividend income. The disallowance under Section 14A cannot be wild guesswork bereft of ground realities. It has to have a reasonable and close nexus with the factually incurred expenses. It is not deemed disallowance under Section 14A of the act but an enabling provision for assessing authority to compute the same on the given facts and figures in the regularly maintained Books of Accounts. The assessing authority also could not have called upon the Assessee himself to undertake the exercise of computing the disallowance under Section 8D of the Rules. Such abdication of duty is not permissible in law. Since no such exercise has been undertaken by the assessing authority, the case calls for a remand."

7. *Gujarat High Court, in the case of Commissioner of Income-tax-I Vs. Corrttech Energy (P.) Ltd.*<sup>3</sup>, has held and observed as under :

"4. Counsel for the Revenue submitted that the Assessing Officer as well as CIT (Appeals) had applied formula of rule 8D of the Income Tax Rules, since this case arose after the assessment year 2009-2010. Since in the present case, we are concerned with the assessment year 2009-2010, such formula was correctly applied by the Revenue. We however, notice that sub-section (1) of section 14A provides that for the purpose of computing total income under chapter IV of 3 [2015] 372 ITR 97 URS 4 of 7 5 3-ITXA 149-17.odt the Act, 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 the Act. In the present case, the tribunal has recorded the finding of fact that the assessee did not make any claim for exemption of any income from payment of tax. It was on this basis that the tribunal held that disallowance under section 14A of the Act could not be made. In the process tribunal relied on the decision of Division Bench of Punjab and Haryana High Court in case of CIT v Winsome Textile Industries Ltd. [2009] 319 ITR 204 in which also the Court had observed as under :

"7. We do not find any merit in this submission. The judgement of this court in *Abhishek Industries Ltd.* (2006) 286 ITR 1 was on the issue of allowability of interest paid on loans given to sister concerns, without interest. It was held that deduction for interest was permissible when loan was taken for business purpose and not for diverting the same to sister concern without having nexus with the business. The observations made therein have to be read in that context. In the present case, admittedly the assessee did not make any claim for exemption. In such a situation section 14A could have no application."

5. We do not find any question of law arising. Appeal is therefore dismissed."

8. *Recently, this Court, in a decision dated 4<sup>th</sup> February, 2019, in the case of The Pr. Commissioner of Income Tax-10 Vs. HSBC Invest Direct (India) Ltd. Had observed as under.*

"4. Having heard learned Counsel for the parties and perused documents on record, we notice that in Cheminvest Ltd. (supra) Delhi High Court had referred to and relied upon its earlier decision in the case of CIT Vs. Holcim India (P) Ltd. (I.T.A. No.486 of 2014, decided on 5<sup>th</sup> September 2014). We further notice that this Court in Income Tax Appeal No.693 of 2015 by an order dated 21<sup>st</sup> November, 2017 while dismissing the Revenue's appeal on similar issue had noted that the decision of Delhi High Court in case of Holcim India (P) Ltd. (supra) had adopted the same principles. In the present case, Counsel for the Revenue however, points out that this is not a case where the assessee had earned no income which was exempt from tax. However, in our opinion, the ratio of the above noted decisions in the cases of Cheminvest Ltd. And Holcim India (P) Ltd. (supra) would include a facet where the assessee's income exempt from tax is not NIL but has earned exempt income which is larger than the expenditure incurred by the assessee in order to earn such income. In such a situation that disallowance cannot exceed the exempt income so earned by the assessee during the year under consideration. We do not find any error in the view of the Tribunal. We record that the assessee had offered voluntary disallowance of expenditure of Rs.1.30 crores, which is not been disturbed by the Tribunal.

5. The tax appeal is dismissed."

9. *In view of such consistent trend of the High Courts, we answer the question in favour of the Assessee. We reverse the decision of the Tribunal to the extent of limiting the disallowance under Section 14A of the Act to a sum of Rs.1,13,72,545/-."*

6. In the above said decision, the Hon'ble Bombay High Court has held that the disallowance u/s 14A cannot exceed exempt income and hence if there is no exempt income, then no disallowance u/s 14A is called for. Accordingly, we do not find any infirmity in the decision rendered by Ld CIT(A) on this issue.

7. In the result, the Ground no.5 raised by the revenue is dismissed.

Order pronounced on 06.03.2024.

Sd/-  
[Justice (Rtd). C.V. Bhadang]  
President

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

Mumbai.; Dated : 06/03/2024

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.

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai