

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.2100/Mum/2023
(A.Y. 2017-18)**

Teamlease Digital Private Limited, 6 th Floor, BMTC Commercial Complex, 80FT Road, Bangalore South, Bangalore, Karnataka 560095	Vs.	Assistant Commissioner of Income Tax, Circle 4(3)(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAFCT8257N		
Appellant	..	Respondent

Appellant by :	Dinkle Hariya
Respondent by :	P.D. Chougule

Date of Hearing	15.04.2024
Date of Pronouncement	18.04.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

The solitary ground of appeal of the assessee is related to the issue that no disallowance u/s 14A is called for since the assessee has not earned any exempt income.

2. The fact in brief is that return of income declaring total loss at Rs.167,92,184/- was filed on 17.10.2017. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 11.08.2018. During the course of assessment the assessing officer noticed that assessee has made huge investment which may generate exempt income. Therefore, the assessing officer has issued show cause notice to the assessee to explain why disallowance u/s 14A should not be made in its case. The assessee explained that it has not earned any

exempt income during the year under consideration, therefore provision of Sec.14A are not applicable to its case. However, the AO has not agreed with the submission of the assessee and after referring CBDT Circular No. 5/2014 dated 11.02.2014 he opined that even where there is no receipt of exempt income the provision of Sec. 14A are applicable. Therefore, the assessing officer has computed disallowance u/s 14A as per Rule 8D to the amount of Rs.8,22,050/- and added to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee holding that there has been an amendment to Sec. 14A by insertion of an explanation which allows for such disallowance even if no exempt income has accrued or arisen.

4. During the course of appellate proceeding before us the ld. Counsel submitted that since assessee has not earned any exempt income during the financial year relevant to the previous year under consideration, therefore, no disallowance u/s 14A should be made. The ld. Counsel has placed reliance in the decision of ITAT in the case of Teamlease Digital Pvt. Ltd. Vs. National E-assessment Centre, vide No. 2101/Mum/2023 dated 07.02.2024.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. It is undisputed fact that assessee has not earned any exempt income during the year under consideration. We consider that Hon'ble Delhi High Court in the case of Chem Investment Limited Vs. CIT vide ITA No. 749 of 2014 held that Sec. 14A will not apply if no exempt income is received or receivable during the relevant previous year. On the similar proposition the Hon'ble Bombay High Court in the case of ACIT Vs. Ballarpur Industry Ltd. vide ITA No. 51 of 2016 also held that no

disallowance u/s 14A is to be made if the assessee has not earned any exempt income during the relevant previous year. We have also considered the decision of Hon'ble High Court of Delhi in the case of Pr.CIT(Central) Vs. Era Infrastructure (I) Ltd. (2022) 141 taxmann.com 289 (Delhi) wherein it is held that amendment made by Finance Act 2022 to Sec. 14A by inserting a non-obstante clause and explanation will take effect from 01.04.2022 and same cannot be presumed to have retrospective effect. On this proposition the ITAT, Mumbai in the various decision after following the decision of Hon'ble Delhi High Court also held that the amendment made by Finance Act 2022 to Sec. 14A will take effect from 01.04.2022 and cannot be presumed to have retrospective effect.

6. In the light of the above facts and findings we consider that decision of Id. CIT(A) in sustaining the disallowance of Rs.8,22,050/- made u/s 14A of the Act is not justified, therefore, we direct the assessing officer to delete the impugned disallowance, accordingly, the appeal of the assessee is allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 18.04.2024

Sd/-
(Sandeep Singh Karhail)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 18.04.2024

Rohit: PS

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 DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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