

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'K' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.406/Mum/2024  
(Assessment Year :2015-16)**

Asst. Commissioner of Income Tax Circle-6(1)(1)Mumbai Range-6(10)	Vs.	M/s. Essar Ports Ltd. 11 <sup>th</sup> Floor, Essar House 11, K.K. Marg Mahalaxmi Mumbai - 400 034
<b>PAN/GIR No.AACE8391D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Vijay Mehta
Revenue by	Shri Heera Ram Choudhary
<b>Date of Hearing</b>	<b>07/05/2024</b>
<b>Date of Pronouncement</b>	<b>09/05/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the Revenue against order dated 07/12/2023 passed by CIT(A)-56, Mumbai for the quantum of assessment passed u/s.143(3) r.w.s. 144C for the A.Y.2015-16.

2. In the grounds of appeal Revenue has raised the following grounds:-

1. "Whether on the fact and in the circumstance of the case Land in law, the Ld. CIT(A) erred in directing the AO to restrict the disallowance u/s. 14A of the I.T. Act, 1961 at Rs. 22,08,04,470/-, when the assessee company while computing its taxable income suo-moto disallowance u/s. 14A at Rs. 38,00,65,574/- as against the exempt income of Rs. 22,08,04,470/-?"

2 "Whether on the facts and in the circumstances of the case p and in law, the Ld. CIT(A) erred in directing the AO to delete the disallowance u/s. 14A of the I.T. Act, 1961, of Rs. 38,00,65,574/- which the assessee company suo-moto made while computing income as per the provisions of section 115JB of the I.T. Act, 1961 and there by upholding that provisions of section 14A cannot be extended and read into section 115JB, falling under Chapter XII-B of the Act?"

3 The Appellant revenue prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

4 The appellant craves leave to amend, or amend, or alter any grounds or add a new ground, which may be necessary.

3. Brief facts are that assessee had declared dividend income of Rs. 22.08 Crores which has been claimed as exempt. The assessee vide letter dated 23/12/2018 had made suo-motto made disallowance of Rs.38,00,65,574/- as against exempt income claimed to the extent of Rs.22,08,04,740/-. However, the ld. AO computed the disallowance as per working provided in Rule 8D at Rs.33,47,01,107/- and since suo-motto disallowance u/s.14A offered by the assessee was more than formula provided under Rule 8D, AO did not made any disallowance. But, before the ld. CIT(A), assessee contended that now it is well settled law that disallowance u/s.14A cannot exceed exempt income declared by the assessee and therefore, disallowance should be restricted to

dividend income declared by the assessee. The ld. CIT(A) following the ITAT order in assessee's own case for A.Y.2010-11 in ITA No.1831/Mum/2020 vide order dated 06/01/2020 had restricted the disallowance to the extent of exempt income. The relevant observation and the finding of the ld. CIT(A) is reproduced as under:-

*7.2. Decision: I have considered the assessment order of the A.O and the submissions along with case laws made by the Appellant. It is observed that the A.O initially in the draft assessment order passed u/s. 144C(1) rws 143(3) of the Act dated 15.02.2019, had worked out the disallowance u/s 14A r wr 8D at Rs.33.47,01,107/- However, the assessee itself has disallowed amount of Rs.38,00,65,574/- u/s.14A in its return of income, the A.O has not done any further disallowance u/s 14A of the Act.*

*7.3. During the course of assessment proceedings the assessee had submitted before A.O that the disallowance u/s 14A of the Act was liable to be restricted to the extent of the exempt dividend income of Rs 22.08.04 470/ that was earned by it during the year under consideration but the AO not done accepted the same and kept the disallowance amount same as offered by assessee in its return of income. To sum up, the assessee by raising the aforesaid claim had sought the scaling down of the disallowance u/s 4A of the Act upto the amount of the exempt dividend income that was earned during the year despite the fact that a higher amount was voluntarily offered as a disallowance under the aforesaid statutory provision in its return of income for the year under consideration*

*7.4. It is noted that disallowance u/s 14A of the Act has been restricted to the extent of dividend income earned during the financial year in appellant's own case for the A.Y.2010-11 in ITA No. 1831/Mum/2015 vide order dated 06.01.2020, the notings of the Hon'ble ITAT in this regard is reproduced hereunder -*

*"8. We find that the assessee has assailed the disallowance made by the A.O under Sec. 14A on the ground that the same*

as per the mandate of law could not have exceeded the exempt income that was earned by the assessee during the year. Accordingly, it was the claim of the Id. A.R that the disallowance under Sec. 14A was liable to be restricted to the extent of the exempt dividend income of Rs.53,04,157/- earned by the assessee during the year under consideration. In the backdrop of the aforesaid facts, we find, that our indulgence has been sought by the assessee for adjudication of two issues viz (i) that, as to whether the disallowance under Sec. 14A is liable to be restricted to the extent of the exempt dividend income earned by the assessee during the year, and (ii) that, is it permissible for the assessee to seek restriction of the disallowance under Sec. 14A at an amount lower than that which was suo moto offered in its return of income. Insofar, the first issue is concerned as to whether the disallowance under Sec. 14A cannot exceed the amount of exempt income earned by the assessee during the year, we find, that the said issue is squarely covered by the judgment of the Hon'ble High Court of Delhi in the case of Jeint Investments Vs. CIT (372 ITR 694) (Del). Also, a similar view had been taken by the Hon'ble High Court of Punjab & Haryana in Pr. CIT Vs. State Bank of Patiala (2017) 393 ITR 476 (P & H). The 'Special Leave Petition (for short 'SLP) filed by the revenue against the aforesaid the order of the Hon'ble High Court of Punjab and Haryana had been dismissed by the Hon'ble Supreme Court in Principal CIT, Patiala Vs. State Bank of Patiala (2018) 259 Taxman 314 (SC). Further, the coordinate benches of the Tribunal had also concluded that the disallowance under Sec. 14A cannot exceed the amount of exempt income earned by the assessee during the year in the following cases

"M/s Slyvex Cable Co. Pvt. Ltd. Vs. Dy. CIT [ITA No.8581/Mum/2011 for A.Y 2008-09, dated 24.02.2016)

(i) Indus Valley Investments Vs DCIT (ITA No 3763/Del/2013 for A.Y 2009-10, dated 29.04.2015)

(i) M's Daga Global Chemicals Vs. Asst. CIT (ITA No 5592/Mum/2012 dated 01.01.2015]

(iv) Mis Global Capital Ltd. VS ACIT (ITA No. 6586/Del/2013 for A.Y. 2009-10, dated 27 11 2015).

*(v) DCIT VS DCM Ltd. (ITA NO 4467/Del/2012 for AY 2009-10, dated 01.09.2015]*

*Accordingly, in terms of our aforesaid observations, we are of the considered view that the disallowance under Sec 14A in the case of the present assessee was liable to be restricted to the extent of the amount of the exempt dividend income of Rs 53,04,157/- that was earned by the assessee during the year under consideration.*

*9. On answering the aforesaid issue in affirmative, we shall now traverse to the second aspect i.e. whether is it permissible for the assessee to seek restriction of the disallowance under Sec. 14A at an amount lower than that which was offered on a suo motto basis in its return of income for the year under consideration. As observed by us hereinabove, the assessee had in its 'Original' return of income voluntarily offered a disallowance under Sec.14A of Rs.9,63,30,238/-, On the basis of a 'revised return of income the assessee had reworked out the disallowance under Sec. 14A at Rs.5,29,95,132/- However, the A.O. being of the view that the 'revised' return of income filed by the assessee was neither voluntary nor on account of discovery of any omission on its part, had thus declined to admit the same. Resultantly, the restriction of the disallowance under Sec. 14A at Rs.5,29,95,132/- in the 'revised return of income of the assessee was not considered by the A.O. As observed hereinabove, the A.O. initially in his draft assessment order passed under Sec. 144C(1) r.w.s. 143(3), dated 18.03.2014, had worked out the disallowance under Sec. 14A r.w.r BD at Rs. 130,98,64,725/ However pursuant to the directions of the DRP that the disallowance under Sec. 14A rw Rule 8D was to computed after considering only those investments which had yielded exempt income during the year, the A.O. had scaled down the said disallowance to an amount of Rs.9,63,30,238/- i.e. upto the extent the assessee had voluntarily offered the same in its "Original return of income. Now, the assessee had for the first time claimed before us that the disallowance under Sec. 14A was liable to be restricted to the extent of the exempt dividend income of Rs.53,04, 157/- that was earned by it during the year under consideration. To sum up, the assessee by raising the aforesaid claim had sought the scaling down of the disallowance under Sec. 14A upto the amount of the exempt dividend income that was earned during the year, despite*

the fact that a higher amount was voluntarily offered as a disallowance under the aforesaid statutory provision in its return of income for the year under consideration. In our considered view, as there can be no estoppel in law, therefore, no infirmity can be related to the aforesaid claim of the assessee. As such, we hold a strong conviction that the assessed income can be lower than the returned income, if what the assessee had offered for tax was found as not taxable under the law. To sum up, the claim of the assessee that the disallowance under Sec. 14A be restricted upto the extent of the exempt dividend income of Rs.53,04, 157/- cannot be jeopardised, for the reason, that the same would lead to an assessed income lower than the assessee's returned income. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Gujarat in the case of CIT Vs. Milton Laminates Ltd. (2013) 37 taxmann.com 249 (Guj) In the aforesaid case, the issue before the Hon'ble High Court was as to whether the Tribunal was justified in law and on facts in directing the A.O to give effect to the order of the CIT(A) without restricting the income to the returned income. On a perusal of the facts as were involved in the aforesaid case before the Hon'ble High Court, we find that the A O was of the view that by virtue of the decision of the Hon'ble Supreme Court in the case of CIT Vs, Shelly Products (2003) 261 ITR 367 (SC) and CBDT Circular No. 549, dated 31.10.1989, while giving effect to the order of the CIT(A) the assessed income of the assessee could not be brought below the returned income. On appeal, the CIT(A) upheld the aforesaid view of the A O However the Tribunal by relying on the judgement of the Hon'ble High Court Gujarat in the case of Gujarat Gas Company Ltd. Vs. JCIT (2000) 245 ITR 84 (Guj) allowed the appeal of the assessee. On further appeal by the revenue, it was observed by the High Court that while giving the effect to the CIT(A) order in favour of the assessee, the resultant assessed income can go below the returned income. It was observed by the Hon'ble High Court that the CBDT Circular No. 549, dated 31 10.1989 which contemplated that the assessed income of an assessee cannot go below the returned income was invalid. The Hon'ble High Court while concluding as hereinabove, had observed, that the judgment of the Hon'ble Apex Court in the case of CIT Vs. Shelly Products (2003) 261 ITR 367 (SC) relied upon by the revenue was distinguishable on facts. Also, we find that a similar view had been taken by a coordinate bench of the Tribunal in the case of Tejaskiran Pharamachem Industries Pvt.

*Ltd. Vs. Dy. CIT [ITA 3307/Mum/2014, dated 13.12.2017] (Mum). In the said case, the Tribunal relying on the judgment of the Hon'ble High Court of Bombay in the case of Ahmedabad Electricity Company Ltd. Vs. CIT, & Godavari Sugar Mills Ltd. Vs. CIT (1993) 199 ITR 351 (Bom), had observed, that the purpose of an appeal in an income tax matter is to ascertain the correct tax liability of the assessee in accordance with law. On the basis of its aforesaid observation, the tribunal had observed that as there is no estoppel against law, therefore, income wrongly declared under a wrong notion or under mistaken notion can be deleted."*

*7.5. In the backdrop of aforesaid deliberations, I am of the considered view that as the disallowance u/s. 14A of the Act on the basis of the settled position of law cannot exceed the amount of the exempt income, therefore, without prejudice to the fact that the assessee had voluntarily offered the disallowance under the aforesaid statutory provision at a higher amount in its return of income, the consequential relief to the assessee by restricting the disallowance u/s. 14A of the Act upto the extent of its exempt income of Rs.22,08,04,470/- as the issue is covered in appellant's own case for A.Y.2010-11 vide order in ITA No. 1831/Mum/2015 dated 06.01.2020. Accordingly, I direct the A.O to restrict the disallowance u/s.14A of the Act upto the extent of the exempt dividend income of the assessee of Rs.22.08,04,470/- Ground No. 1 of the appeal is hereby treated as allowed."*

4. Since this issue had already been considered by the Tribunal wherein the Tribunal has restricted the disallowance to the extent of exempt income following the various decisions of the Hon'ble High Court, therefore, we do not find any infirmity in the order of the ld. CIT(A) and the same is confirmed.

**5. In the result, appeal of the Revenue is dismissed.**

Order pronounced on 9<sup>th</sup> May, 2024.

**Sd/-**

**(RENU JAUHRI)**

**ACCOUNTANT MEMBER**

Mumbai; Dated 09/05/2024

KARUNA, sr.ps

**Sd/-**

**(AMIT SHUKLA)**

**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**