

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.4669/Mum/2023
(Assessment Year : 2014-15)**

Pradipta Kumar Parida DCIT 321 Room No.608, 6 th Floor Aayakar Bhavan M.K. Road, Maharashtra-400 020	Vs.	Kail Limited 17 th Floor, C Wing Mittal Court Nariman Point Mumbai – 400 021
PAN/GIR No.AAACK7417L		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Biswanath Das
Date of Hearing	14/05/2024
Date of Pronouncement	17/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against order dated 17/11/2023 passed by CIT(A)-56, Mumbai for the quantum of assessment passed u/s.143(3) r.w.s.92CA for the A.Y.2014-15.

2. The effective ground which has been raised by the Revenue is with regard to disallowance u/s.14A which reads as under:-

“1 Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) is justified in deleting the addition made u/s 14A on the ground that the assessee has not earned any exempt income by overlooking the clarification of legislative intent provided the CBDT vide Circular No. 5/2014 dated 11.02.2014 and to this effect an amendment was also made by Finance Act, 2022 by way of insertion of Explanation to Section 14A?

2. Whether the amendment made by the Finance Act, 2022 by way of insertion of Explanation u/s 14A will have effect only from A.Y. 2022-23 and subsequent assessment years or it will have effect even in respect of earlier assessment years pending on or after 01.04.2022?”

3. The brief facts are that Assessee Company is engaged in the business of selling various kitchen appliances. The assessee has made certain strategic investment in A.Y.2014-15 and no dividend income has been earned and no exempt income has been claimed by the assessee. However, assessee had suomoto disallowed Rs.10,40,112/- in the return of income. The ld. AO following the CBDT Circular No.5/2014 dated 11/02/2014 held that even if there is no borrowed funds and even if there is no exempt income there would be still disallowance on part of interest paid on the formula laid down in Rule 8D and he worked out the disallowance of Rs.10,68,25,648/-.

4. The ld. CIT(A) following the decision of Jurisdictional High Court in the case of PCIT vs. Ballarpur Industries Ltd in ITA No.51 of 2016 held that in the absence of any exempt income, no disallowance u/s.14A can be made. He has also referred to amendment brought by the Finance Act 2022 and held that it is clarificatory in nature in view of the judgment of the Hon'ble

Delhi High Court in the case of M/s. Era Infrastructure Ltd. in ITA No. 204 of 2022. For the sake of ready reference, relevant portion of his order reads as under:-

“12. Ground No. 2 is related to disallowance u/s 14A of the Act. I have considered the submissions and contentions of the appellant. The Hon'ble Jurisdictional High Court in the case of PCIT vs. Ballarpur Industries Ltd. in ITA No. 51 of 2016 held that in the absence of any exempt income, disallowance u/s. 14A of the Act could not be made.

12.1. Although the explanation of section 14A inserted by the Finance Act. 2022 can be treated to be clarificatory in nature, the Hon'ble Delhi High Court in the case of M/s. Era Infrastructure (India) Ltd. in ITA No. 204/2022 & CM APPL. 31445/2022 dated 20.07.2022 has held that the provisions cannot be treated to be retrospective. Hence, the claim of the appellant that disallowance u/s. 14A cannot exceed the exempt income is backed by judicial precedence and binding in nature.

12.2. However, it is observed that the assessee had suo-moto disallowed a sum of Rs.10,04,112/- as per Section 14A of the Act in Return of Income filed by the assessee. The assessee is the best judge of his business and accounting treatment given to a transaction. He had a bonafide believe that some expenses has incurred for managing the investment which do not yield taxable income Unless the expenses are shown to be related to earning activities, they cannot be allowed Hence, suo-moto, disallowance of a sum of 10,04,112/- Rs. is not being disturbed Additional disallowance of Rs 10,68. 15,648/ by the A.O stands deleted. Accordingly this Ground of Appeal is partly allowed.”

5. Before us ld. DR referred and relied upon the decision of ITAT Gauwahati Bench in the case of **ACIT vs. Williamson Financial Services Ltd.**, wherein he held that Explanation inserted by the Finance Act, 2022 u/s.14A shall apply whether or not exempt income has accrued or arisen or received is clarificatory in nature and thus, applicable retrospectively.

6. We have considered the impugned order as well as the judgment referred to before us. Here in this case it is not in dispute that assessee has not earned any exempt income and yet it has offered suo moto disallowance of Rs.10,04,112/-. However, the ld. AO has made additional disallowance of Rs.10,68,15,648/- mostly on account of interest despite assessee stating that no borrowed funds have been utilized for the purpose of strategic investments. The core contention which has been raised that now in light of amendment by the Finance Act 2022 to Section 14A in the statute w.e.f. 01/04/2022, will the newly inserted Explanation will apply prospectively or retrospectively. We find that this precise issue has been considered by **Hon'ble Delhi High Court in the case of M/s. Era Infrastructure Ltd** wherein, the Hon'ble High Court after analyzing the amendment brought by the Finance Act 2022, in Section 14A by inserting a non-obstante clause and Explanation was inserted with effect from 01/04/2022 and after discussing the various jurisprudents held as under:-

“8. Consequently, this Court is of the view that the amendment of section 14A, which is "for removal of doubts cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood”.

7. In so far as reliance placed by the ld. AO and ld. CIT(A) of CBDT Circular No.5 of 2014, the same has again been discussed and dealt by the Hon'ble Delhi High Court in PCIT vs. IL & FS Energy Development Company Ltd. (2017) 99 CCH 0190 Del HC, (2017) 297 CTR 0452 (Del) decided on 16th August, 2017, after

considering a catena of decisions, held the issue in favour of the assessee and observed that,-

9. Mr. Zoheb Hossain, learned Senior Standing Counsel for the Revenue, submitted that, in *Cheminvest Ltd. (supra)*, this Court had no occasion to consider the CBDT Circular No. 5/2014 dated 11th February 2014 which clarified that Section 14A would apply even when exempt income was not earned in a particular AY. According to him, the other decisions of this Court in *CIT-IV v. Taikisha Engineering India Pvt. Ltd.*[2015] 370 ITR 338 (Del) and *CIT-IV v. Holcim India Pvt. Ltd. (2014) 272 CTR (Del) 282* did not actually discuss the above Circular of the CBDT and, therefore, would be distinguishable.

10. Mr. Hossain further submitted that there was nothing in Section 14A of the Act which suggested that exempt income had to necessarily be earned in the AY in question for the applicability of the said provision. He submitted that if the interpretation placed on Section 14 A of the Act by the above CBDT Circular was not accepted, the very purpose of Section 14A would be defeated. He referred to the decisions of the ITAT in *ACIT v. Ratan Housing Development Ltd. (order dated 23rd May 2008 of ITAT Lucknow)* *Relaxo Footwear Ltd. v. Addl. CIT [2012] 50 SOT 102 (Del)*.

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19. In the considered view of the Court, this will be a truncated reading of Section 14 A and Rule 8D particularly when Rule 8D (1) uses the expression 'such previous year'. Further, it does not account for the concept of 'real income'. It does not note that under Section 5 of the Act, the question of taxation of 'notional income' does not arise. As explained in *Commissioner of Income Tax v. Walfort Share and Stock Brokers Pvt. Ltd [2010] 326 ITR 1 (SC)*, the mandate of Section 14A of the Act is to curb the practice of claiming deduction of expenses incurred in relation to exempt income being taxable income and at the same time avail of the tax incentives by way of exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income. Consequently, the Court

is not persuaded that in view of the Circular of the CBDT dated 11th May 2014, the decision of this Court in *Cheminvest Ltd.* (supra) requires reconsideration.

20. In *M/s. Redington (India) Ltd. v. The Additional Commissioner of Income Tax, Company Range – V, Chennai* (order dated 23rd December, 2016 of the High Court of Madras in TCA No. 520 of 2016), a similar contention of the Revenue was negated. The Court there declined to apply the CBDT Circular by explaining that Section 14A is “clearly relatable to the earning of the actual income and not notional income or anticipated income.” It was further explained that, “The computation of total income in terms of Rule 8D is by way of a determination involving direct as well as indirect attribution. Thus, accepting the submission of the Revenue would result in the imposition of an artificial method of computation on notional and assumed income. We believe thus would be carrying the artifice too far.”

21. The decisions in *CIT v. M/s Lakhani Marketing Inc.* 2014 SCC Online P&H 20357, *CIT v. Winsome Textile Industries Limited* [2009] 319 ITR 204 (P&H), *CIT v. Shivam Motors (P) Ltd.* (2014) 272 CTR (All) 277 have all taken a similar view. The decision in *Taikisha Engineering India Pvt. Ltd.* (supra) does not specifically deal with this issue.

22. It was suggested by Mr. Hossain that, in the context of Section 57(iii), the Supreme Court in *Commissioner Of Income Tax, West v. Rajendra Prasad Moody* [1978] 115 ITR 519 (SC) explained that deduction is allowable even where income was not actually earned in the AY in question. This aspect of the matter was dealt with by this Court in *M/s Cheminvest Ltd.* (supra) where it reversed the decision of the Special Bench of the ITAT by observing as under:

“20. Since the Special Bench has relied upon the decision of the Supreme Court in *Rajendra Prasad Moody* (supra), it is considered necessary to discuss the true purport of the said decision. It is noticed to begin with that the issue before the Supreme Court in the said case was whether the expenditure under Section 57 (iii) of the Act could be allowed

as a deduction against dividend income assessable under the head "income from other sources". Under Section 57 (iii) of the Act deduction is allowed in respect of any expenditure laid out or expended wholly or exclusively for the purpose of making or earning such income. The Supreme Court explained that the expression "incurred for making or earning such income", did not mean that any income should in fact have been earned as a condition precedent for claiming the expenditure. The Court explained:

"What s. 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that is relevant in determining the applicability of s. 57(iii) and that purpose must be making or earning of income. s. 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of s. 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain natural construction of the language of s. 57(iii) irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure."

21. There is merit in the contention of Mr. Vohra that the decision of the Supreme Court in Rajendra Prasad Moody (supra) was rendered in the context of allowability of deduction under Section 57(iii) of the Act, where the expression used is "for the purpose of making or earning such income." Section 14A of the Act on the other hand contains the expression "in relation to income which does not form part of the total income." The decision in Rajendra Prasad Moody (supra) cannot be used in the reverse to contend that even if no income has been received, the expenditure incurred can be disallowed under Section 14A of the Act."

23. The decisions of the ITAT in *ACIT v. Ratan Housing Development Ltd. (supra)* and *Relaxo Footwear Ltd. v. Addl. CIT (supra)*, to the extent that they are inconsistent with what has been held hereinbefore do not merit acceptance. Further, the mere fact that in the audit report for the AY in question, the auditors may have suggested that there should be a disallowance cannot be determinative of the legal position. That would not preclude the Assessee from taking a stand that no disallowance under Section 14 A of the Act was called for in the AY in question because no exempt income was earned.

8. In view of the above position of law, we are of the considered opinion that where there is no dispute of fact that no dividend income was earned by the assessee during the year, no disallowance is called for under section 14 A of the Act. For these reasons, we uphold the findings of the Ld. CIT(A) and dismiss the grounds of appeal of the Revenue.

8. Once there is subsequent judgment of High Court holding that insertion of Explanation w.e.f. 01/04/2022 will not apply retrospective therefore, the decision of the Tribunal saying it retrospective cannot be followed. Accordingly, the order of the ld. CIT (A) is deleted and Revenue's appeal is dismissed.

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

Order pronounced on 17th May, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai; Dated 17/05/2024
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