

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

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

**ITA No. 316/MUM/2024
(Assessment Year : 2018-19)**

Thrill Park Limited 9 th Floor, Lotus Business Park, New Link Road, Andheri West, Mumbai 400053.	Vs.	Income Tax Department, National E-Assessment Centre, 11(3)1 Aayakar Bhavan, M.K.Road, Mumbai 400020.
PAN/GIR No. AACCT7914M		
(Appellant)	..	(Respondent)

Assessee by	Shri. Mahesh O. Rajora
Revenue by	Shri. P.D. Chougule (Addl. CIT) SR
Date of Hearing	21/05/2024
Date of Pronouncement	27/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 30/11/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2018-19.

2. The assessee is aggrieved by disallowance of Rs.2,79,04,958/- made u/s.14A r.w.r. 8D despite assessee claimed only exempt income of Rs.21,477/-.

3. The brief facts are that assessee has earned dividend income of Rs.21,477/- from investments into mutual funds which was claimed as exempt u/s.10(35). AO noted that assessee has claimed finance cost of Rs. 8,79,22,861/- and has disallowed Rs.8,71,31,981/- being expenses not related to the business out of the total finance cost, however, no disallowance u/s.14A was offered, because it was stated that no expenses has been incurred for making the investment. Ld. AO though agreed the contention of the assessee, however, he held that since assessee had made investments in listed and unlisted equities, he worked out disallowance u/r 8D by taking 1% of average value of four investments. The average value of the investments as on 31/03/2017 and 31/03/2018 were as under:-

Sl no.	Particulars	As on 31.03.2017 (in INR)	As on 31.03.2018 (in INR)
1.	Listed equities	276,01,19,690/-	280,26,19,690/-
2.	Unlisted equities	1,00,000/-	1,00,000/-
3.	Mutual funds	1,80,52,258/-	0/-
	Total investments	277,82,71,948/-	280,27,19,690/-

4. Accordingly, disallowance was worked out at Rs.2,79,04,958/-. The ld. CIT(A) has confirmed the said addition following the CBDT Circular No.5 of 2014 after observing and holding as under:-

“3.3 I have gone through the Assessment order, submissions of appellant and the case laws submitted by the Appellant. I also

perused B/s & P/L account of the Appellant and found that AO has computed disallowable expense u/s 14A as per IT Rules & CBDT circular. The explanation of the Appellant is not correct that only those Investment to be considered for disallowance u/s 14A, which has generated exempted income during the concerned A.Yr. It is not the intention of the legislation. I have gone through the provisions of section 14A and Rule 8D and found that all those investments to be considered for disallowances which have potential to generate exempt income - whether exempt income was generated during the A.Yr. or not, is not relevant. There is direct nexus between the investment of the Appellant and the potential exempt income. The case laws cited by the Appellant are under different facts and circumstances. I don't find any irregularity in the disallowances made by the AO u/s 14A of the IT Act. Accordingly, the disallowance made by the AO u/s 14A is hereby confirmed. Thus, the ground No. 2 of the appeal is dismissed.”

5. After considering the submissions and on perusal of the impugned order, we find that the exempt income is Rs.21,477/- only and as against this disallowance has been made of Rs.2.79 Crores. It is a very well settled law that disallowance u/s.14A cannot exceed the exempt income. For the sake of ready reference the decision of the Hon'ble Jurisdictional High Court in the case of **Nirved Traders Pvt. Ltd vs. DCIT reported in 421 ITR 142** wherein the Hon'ble Bombay High Court has followed various decisions of the Hon'ble Delhi High Court, Hon'ble Gujarat High Court and Hon'ble Bombay High Court in the case of **PCIT vs. HSBC Invest Direct (India) Ltd. in Income Tax Appeal No.1672 of 2016 dated 04/02/2019.**

6. 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.

7. Thus, the disallowance u/s.14A is restricted to exempt income of Rs.21,477/-.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced on 27th May, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 27/05/2024
Karuna, Sr. Ps.

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