

आयकर अपीलीय अधिकरण  
कोलकाता 'ए' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य  
एवं  
श्री संजय अवस्थी, लेखा सदस्य  
के समक्ष  
Before

**SRI SANJAY GARG, JUDICIAL MEMBER  
&  
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 252/KOL/2024  
Assessment Year: 2015-16**

***Emerald Company Pvt. Ltd.....Appellant  
[PAN: AADCE 2623 D]***

**Vs.**

***DCIT, Cir.-8(1), Kolkata.....Respondent***

**Appearances:**

***Assessee represented by: Saurav Gupta, AR.***

***Department represented by: Divakar Chakraborty, Addl. CIT.***

Date of concluding the hearing : May 16<sup>th</sup>, 2024

Date of pronouncing the order : June 3<sup>rd</sup>, 2024

**ORDER**

**Per Sanjay Awasthi, Accountant Member:**

The present appeal arises from the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') dated 13.12.2023 by the Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short ld. 'CIT(A)'], pertaining to AY 2015-16.

2. In this case the assessee is seen to have filed his return of income for AY 2015-16 on 29.09.2015 at a total income of Rs. 2,59,96,700/-. Thereafter, u/s 143(3) of the Act the Assessing Officer (in short ld. 'AO') assessed total income at Rs. 3,19,78,280/- by making an addition of Rs. 46,83,643/- by

invoking the provisions of Section 14A of the Act read with Rule 8D(2)(iii) of the Income Tax Rules, 1962. It is seen that there is a further disallowance of long-term capital loss of Rs. 12,97,937/-, which is incidentally not in appeal before us. Ld. AO found that the assessee had earned total exempt dividend income of Rs. 40,50,03,907/-. Ld. AO also found that the gross business receipts as per the income tax return were shown as "NIL" along with income from house property at Rs. 3,60,000/- and interest on bank deposits at Rs. 58,298/-. Thereafter, he proceeded to draw the conclusion that the entire gamut of expenses claimed by the assessee were relatable to exempted income and were thus, required to be assessed u/s 14A of the Act. Incidentally, considering the specific directive in Section 14A(2) of the Act, the AO has recorded his satisfaction about the correctness of the claim of the assessee as under:

*"2.5 The assessee did not maintain any separate books of accounts for accounting for expenses incurred in relation to income not includible In Its total income. The planning, monitoring and maintaining of such investments utilizes resources of the business for which expenses are Incurred by the assessee. Hence, the amount of expenses actually incurred could not be ascertained from the assessee's books of account and the account of the assessee with regard to the correctness of its claim is found to be not satisfactory."*

2.1. Aggrieved with this action of ld. AO the assessee approached ld. CIT(A) where his contention that he had already disallowed Rs. 8,42,213/- (being retainers fees of Rs. 6 Lakh and demat charges of Rs. 2,42,213/-) on his own as expense related to the exempt income. The ld. CIT(A), after discussing the legal position, through reliance on several authorities arrived at the conclusion as under:

*"4.1.4. Now coming to the facts of the case. Briefly, the appellant didn't have any business receipts for the present financial year and only sources of income are from rent, interest, dividend and profit on investment. Further, the main source of income is dividend and profit on investment. This shows that the appellant company doesn't engaged in any business activities and earing its income from investment in quoted & unquoted equity shares, preference shares, debentures, mutual funds, etc only. Further, the profit & loss account shows that the appellant didn't claimed only normal expenditure for running a company but also claimed expenses for*

*amalgamation by which the appellant acquired investment in shares from the amalgamating company and therefore directly related to the expenditure relating to the exempt income. Also, the appellant maintained office as well staff for planning, monitoring, supervising and investing in shares, mutual funds, debentures, etc being the main activities of the appellant. (From the computation sheet, it is clear that after making several adjustments in the net profit as per profit & loss account, the appellant arrived at a negative figure of income from business or profession at Rs. 46,83,643/- and claimed the same loss against the other heads of income on a/c of current years' loss in the return of income. On verification of the ITR of 2015-16(Schedule Part A-P & L, Sr. No. 38 (i) & (xii), it reveals that the appellant has shown under the head expenditure related to exempt income at Rs. 8,42,213/- on account of Retainer fees at Rs 6,00,000/- and Depository service charges at Rs. 2,42,213/- and the same amount was suo- motto disallowed while computing the total income. So far as the appellant's claim that it had debited expenditure of Rs. 2,10,63,545/- in the profit & loss account and suo motto disallowed at Rs. 1,75,24,222/-, is concerned, it is not found to be correct. Perusal of computation of total income and para 2.2. of submission reveals that the depreciation of Rs. 5,42,363/- and amalgamation expenses u/s 35DD of Rs. 5,39,409/- have been reduced/claimed in the computation sheet whereas entire expenditure of depreciation and amalgamation has been shown as suo-motto disallowed in the submission. Further, the appellant has shown Rs. 46,83,643/- as loss of current year to be set-off against total income at clause 6 of Part B-IT of the ITR. Therefore, the appellant's contention that it had only claimed expenditure to the tune of Rs. 35,39,323/- in the ITR of A.Y. 2015-16 is incorrect and without any basis."*

2.2. Aggrieved with the action of ld. CIT(A), the appellant has ventilated his grievance through the following grounds of appeal:

*"1. That the Ld. CIT (Appeals) erred in law and on facts in confirming the action of the A.O. in making disallowance of Rs. 46,83,643/- u/s 14A r.w.r. 8D(2)(iii) without appreciating the fact that appellant has suo moto made disallowance of Rs. 8,42,213/- u/s 14A.*

*2. Without prejudice to the above, that the Ld. CIT(A) erred in law and on facts in confirming the action of A.O. in making disallowance of Rs. 46,83,643/- u/s 14A instead of restricting the same to Rs. 35,39,323/- being total expenses debited to the P&L account and claimed by the appellant resulting in excess disallowance of Rs. 11,44,320/-.*

*3. That the appellant craves leave, to add, to amend, modify, rescind, supplement, or alter any of the grounds stated here-in-above, either before or at the time of hearing of this appeal."*

2.3. It is important to mention that while the first ground of appeal is regarding the disallowance of Rs. 46,83,643/- u/s 14A of the Act, the second ground is an alternative plea whereby it has been stated that actually the disallowance could be restricted to Rs. 35,39,323/- instead of Rs. 46,83,643/- .

3. The ld. A/R has filed a copy of computation of income tax, as filed with the return of income and submissions on ground nos. 1 & 2. The sum and substance of the averments of the ld. A/R may be briefly mentioned as under:

- i) That the assessee has already disallowed an appropriate amount of Rs. 8,42,213/- (being retainers fees of Rs. 6 Lakh and demat charges of Rs. 2,42,213/-). Thus, no further disallowance was warranted.
- ii) Only that disallowance can be made u/s 14A of the Act which is directly relatable to the earning of exempt income.
- iii) A detailed chart has been prepared depicting six items of expenditure totalling to Rs. 2,10,63,545/- out of which Rs. 1,75,24,222/- is claimed to have already been disallowed in the return of income.
- iv) It has been averred that the ld. AO had to record a satisfaction indicating that the claim regarding the non-applicability/quantum of disallowance u/s 14A of the Act done by the assessee, was not acceptable. It has been stated that in case such satisfaction has not been recorded then it would amount to an incurable defect following the case of *Maxopp Investment Ltd. vs. CIT (2018) 402 ITR 640 (SC)*.
- v) It has been contended that u/s 14A of the Act "Expenditure" incurred in relation to exempt income is required to be disallowed and not the "Business loss". For this proposition, he has relied on the case of *Navin Bharat Industries Ltd. vs. DCIT (ITA No. 2201/MUM/1994 dated 10.03.2004)*.
- vi) Lastly, it has been averred that under no circumstances can the disallowance exceed Rs. 35,39,323/- [Rs. 2,10,63,545 (-) Rs. 1,75,24,222/-].

4. Ld. D/R supported the orders of the authorities below and stated that both were speaking orders and were legally and factually correct.

5. The rival contentions have been carefully considered. In this case it is not in doubt that substantial portion of income is exempt from taxation and the remaining items of income pertain to house property (Rs. 3.60 Lakh), interest of bank deposits (Rs. 58,298/-) and income from business and profession showing a loss of Rs. 46,83,643/-. At this stage it needs to be mentioned that the contention of the ld. A/R that no satisfaction has been recorded is also not justified considering that the ld. AO has clearly recorded that he is not satisfied with the way income has been computed (*supra*).

5.1. However, it needs to be mentioned that during the course of presentation before us, the ld. A/R has relied on the case of *Hoshang D. Nanavati vs. ACIT* reported in [2012] 25 taxmann.com 141 (Mumbai - Trib.) to canvas the point that depreciation cannot be the subject matter of disallowance u/s 14A of the Act. A reading of this order of Hon'ble ITAT, Mumbai reveals that the conclusion regarding depreciation have been arrived at by relying on a number of authorities and thus, has to be respected and followed in the present case also.

5.2. It is seen from the order of ld. CIT(A) that he has doubted the contention of ld. A/R in as much as only Rs. 1,75,24,222/- has been *suo-moto* disallowed by the assessee himself as in the portion of ld. CIT(A)'s order extracted (*supra*) it has been mentioned that depreciation of Rs. 5,42,363/- and amalgamation expenses of Rs. 5,39,409/- have been claimed in the computation sheet. However, it is evident that the authorities below have not taken into consideration the fact that claim of depreciation cannot be a subject matter of Section 14A of the Act read with Rule 8D of the Rules on the basis of case of *Hoshang D. Nanavati (supra)*. Further, expenses on items like audit, legal and professional charges, travelling etc. totalling to Rs. 37,91,843/- would be outside the purview of Rule 8D(2)(iii) of the Rules.

5.3. Considering the totality of the facts and circumstances of this case it is seen that once the claim under "other administrative expenses" of Rs.

37,91,843/- (out of which Rs. 2,52,250/- has already been added back by the assessee) and claim of depreciation have been settled in favour of the assessee on the basis of the cases of *Hoshang D. Nanavati (supra)* and *M/s. Agarwal Galvanising (P.) Ltd. (supra)*, then there would not survive any quantum of disallowable expenses out of Rs. 35,39,323/- which is the resultant of total expenses claimed (Rs. 2,10,63,545/-) [minus] expenses added back by the assessee himself (Rs. 1,75,24,222/-).

6. In light of the discussion above, this matter is decided in favour of the assessee and it is directed that the disallowance made by the assessee to the tune of Rs. 8,42,213/- will be sufficient for the purposes of Section 14A of the Act read with Rule 8D of the Rules.

7. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open Court on 3<sup>rd</sup> June, 2024.**

Sd/-

**[Sanjay Garg]**

Judicial Member

Dated: 03.06.2024

*Bidhan (P.S.)*

Sd/-

**[Sanjay Awasthi]**

Accountant Member

*Copy of the order forwarded to:*

1. **Emerald Company Pvt. Ltd., 31, Graphite India Office Premises, Chowringhee Road, Park Street, Kolkata, West Bengal, 700016.**
2. **DCIT, Cir.-8(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata