

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.383/Bang/2024
Assessment Years : 2017-18

Prestige Alta Vista Holdings, No.1 The Falcon House, Main Grand Cross Road Off Infantry Road, Bengaluru-560 001.	Vs.	The Dy. Commissioner of Income Tax, Circle-1(1)(1), Bengaluru.
PAN – AAQFP 6987 K		
APPELLANT		RESPONDENT

Assessee by	:	Shri Sandeep Chalapathy, Advocate
Revenue by	:	Shri Subramanian S, CIT (DR)

Date of hearing	:	16.05.2024
Date of Pronouncement	:	04.06.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi dated 10/01/2024 in DIN No. ITBA/ NFAC/S/ 250/ 2023-24/1059565669(1) for the assessment year 2017-18.

2. The only issue raised by the assessee is that the Id. CIT(A) erred in confirming the disallowance of Rs. 56,87,550/- under the provisions of sec. 14A r.w. Rule 8D of the Income-Tax Rules.

3. The necessary facts are that the assessee in the present case, a partnership firm, is engaged in the business of real estate development. The assessee in the year under consideration has shown share of profit

of Rs. 31,38,88,050/-, which was claimed as exempted u/s 10(2A) of the Act. It was submitted by the assessee that the investment was made to the tune of Rs. 56,87,55,249/- out of the net fund available with it. According to the assessee, it has not incurred any expenses for the earnings of share of profit from the partnership firm amounting to Rs. 31,38,88,050/- only. Therefore, there is no reason for making any disallowance of the expenses under the provisions of sec. 14A of the Act against such exempted income.

4. The assessee has also given the details of total expenses shown in the profit and loss account and demonstrated that only a sum of Rs. 1,78,646/- was incurred towards the administrative expenses. Therefore, the assessee, without admitting any disallowance to be made u/s 14A r.w. Rule 8D, submitted that if any disallowance is required to be made then it should be restricted to the administrative expenses of Rs. 1,78,646/- only.

5. However, the AO was not satisfied with the contention of the assessee by observing that the decision for making investment is complex in nature, which is generally decided in the Board meetings. Further, it involves considerable time and the support of administrative staff thus, the AO was of the view that the disallowance is to be made as per the provisions of sec. 14A r.w. Rule 8D of Income-tax Rules. The AO finally worked out the amount of disallowance at Rs. 56,87,550/- and added the total income of the assessee.

6. Aggrieved, assessee preferred an appeal to the Id. CIT(A), who upheld the order of the AO for making the disallowance of Rs. 56,87,550/- u/s 14A r.w. Rule 8D of Income-tax Rules.

7. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

8. The Id. AR before us filed a paper book running from pages 1 to 87 and contended that the provisions of sec. 14A r.w. Rule 8D can only be invoked once the AO after having regard to the books of account is satisfied that the claim of the assessee is incorrect. As per the Id. AR the AO has not referred the books of account while recording the satisfaction as required under the provisions of sec. 14A r.w. Rule 8D of Income-tax Rules. It was pointed out by the Id. AR that total administrative expenses claimed by the assessee in the P & L account are Rs. 1,78,646/- whereas the disallowance has been made for Rs. 56,87,550/- only which proves non- application of mind by the AO.

9. The Id. AR further submitted that there is no question of making any disallowance of interest expenses, as there was no borrowing, which was invested in the partnership firm. As per the Id. AR, the interest claimed under the profit and loss account represents the interest on delayed payment of Income-tax, which cannot be linked to any borrowings from the bank. Thus, it was prayed by the Id. AR that no addition under the provisions of sec. 14A r.w. Rule 8D is warranted.

10. On the other hand, the Id. DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. The provisions of sec. 14A of the Act mandate that no deduction of the expenditure incurred by the assessee in relation to income, which does not form part of the total income, will be allowed. The controversy arises when the assessee is having taxable and exempt income which is recorded in the single set of

books of account. As such, when separate books of accounts are not maintained by the assessee for taxable and exempt income then the question arises how to determine the expenses in relation to exempt income. For this purpose, the provision of sub sec. (2) of section 14A of the Act mandates to the revenue authorities to refer the books of account and record a satisfaction with respect to claim of the assessee whether any expenditure was incurred in relation to the exempt income. **It is mandatory for the AO to record satisfaction as required u/s 14A(2) of the Act which reads as under-**

14(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

11.1 From the above, it is clear that if satisfaction is not recorded after taking note of the books of accounts of the assessee, then no disallowance by invoking rule 8D can be made. Indeed, such satisfaction of the AO should not be merely an expression in a casual manner. In other words, the dissatisfaction with respect to the claim of disallowance of expenses under section 14A r.w.r. 8D of Income Tax Rules should be derived by the AO after examining the books of accounts of the assessee, otherwise, the rule 8D cannot be invoked. A casual kind of compliance about dissatisfaction is not envisaged in section 14A(2) of the Act. Merely writing in the assessment order that he is not satisfied with the claim of the assessee is not sufficient, but he has also to give reasons after examining the accounts of the assessee that the claim of disallowance made by the assessee is not enough or is not adequately

related to exempted income. The compliance of dissatisfaction has to be substantive and not merely a pretense.

11.2 Now the controversy arises how to comply with **the concept of "having regard to the accounts of the assessee"**: It requires examination of the books of accounts of the assessee so as to find out that whether the expenditure incurred against exempt income is shifted to taxable income. Likewise, it should also be pointed out by the AO whether the expenditures incurred by the assessee in relation to taxable income and exempted income were mixed/ blended and their separation was not possible on rational basis. In sum and substance, the examination of the accounts is necessary before recording satisfaction u/s 14A(2) of the Act. As such, the satisfaction required to be recorded should be in an objective manner without using a casual approach.

11.3 In the present case, on perusal of the financial statements of the assessee placed on page numbers 10 to 29 of the paper book, we note that the administrative expenditure claimed by the assessee stands at Rs. 1,78,646/- whereas the expenditure has been disallowed to the tune of Rs. 56,87,550/- which is more than the expenses claimed in the financial statements.

11.4 There were no borrowings as evident from the financial statement and, therefore, the question of making the disallowance of interest expense against the exempt income does not arise. Accordingly, it is safe to conclude that the revenue has not recorded satisfaction objectively for invoking the provisions of sec. 14A r.w. Rule 8D of the Income-tax Rules for making the disallowance against the exempt income. It is for the reason that in any case, the disallowance cannot exceed the actual expenses claimed by the assessee in the financial

statement. Thus, we hold that the revenue in the present case has resorted to the provision of sec.14A Rule 8D of Income-tax Rules without recording the satisfaction, as mandated under the provisions of sec. 14A(2) of the Act. Thus, in the absence of proper satisfaction being recorded by the Revenue authorities, we set aside the findings of the Id. CIT(A) and direct the AO to delete the addition made by him. Hence, ground of appeal raised by the assessee is allowed.

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

Order pronounced in court on 4th day of June, 2024

Sd/-

Sd/-

(GEORGE GEORGE K)

(WASEEM AHMED)

Vice President

Accountant Member

Bangalore,

Dated, 4th June, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore