

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Shri Siddhartha Nautiyal, Judicial Member
And Shri Makarand V. Mahadeokar, Accountant Member**

**ITA No. 313/Ahd/2022
Assessment Year : 2017-18**

N.K. Proteins Ltd., 7 th Floor, Popular House, Ashram Road, Ahmedabad PAN: AAACN9377N (Appellant)	Vs	The ACIT, Circle-3(1)(1), Ahmedabad (Respondent)
--	----	---

**Assessee by: Shri Vartik Choksi, A.R.
Revenue by: Shri Ketan Gajjar, CIT-D.R.**

Date of hearing : 03-06-2024
Date of pronouncement : 12-06-2024

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax, CIT(A)-11, Ahmedabad, in proceeding u/s. 250 vide order dated 13/07/2022 passed for the assessment year 2016-17.

2. The assessee has taken the following grounds of appeal:-

“1. In law facts and circumstances of the Appellant's case, the learned CIT(Appeals) has erred by not appreciating the fact of the case and hence the order passed is void and bad in law.

2. In law facts and circumstances of the Appellant's case, the learned CIT(Appeals) erred in confirming the addition made by the Assessing Officer of Rs 9,60,100 u/s 14A under the provisions of book profits and normal profits when no such addition is called for.

3. The appellant craves leave to add alter amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.”

3. The brief facts of the case are that during the course of the course of assessment proceedings, Ld. Assessing Officer observed that the assessee has made average investment of Rs 9,60,10,037/- and claimed interest expenses of Rs.45,69,620/- The AO observed that appellant has not made any disallowance of expenses u/s 14A of the Act hence he applied Rule 8D and made disallowance u/s. 14A of the Act at Rs 9,60,100/-. On the other hand, the assessee claimed that as against interest expenses of Rs.45,69,620/-, it has offered interest income of Rs 99.41 lacs which means that net interest income is earned. The appellant has also contended that it has sufficient interest free funds in form of Share Capital and Reserves & Surplus which is in excess of such investments hence disallowance of interest is not justified. The appellant has also contended that exempt income earned during the year is Rs 2,088/- only hence in any case, disallowance should be restricted to such amount for which reliance was placed on various judicial precedents. However, the assessing officer disallowed a sum of Rs 9,60,100/- by applying section 14A of read with Rule 8D. Further,

disallowance made u/s 14A of the Act was also used for re-computing the book profits u/s 115JB of the Act.

4. The assessee filed appeal against the order before Ld. CIT(A). However, Ld. CIT(A) dismissed the appeal of the assessee by observing that the amendment in section 14A of the Act, introduced with effect from 1 April 2022, is clarificatory in nature since the amendment clearly contains the words “for the removal of the doubts” and therefore, amendment has been introduced only to explain the existing provisions, as they have always stood. While dismissing the appeal of the assessee, the Ld. CIT(A) made the following observations:

“8.16 From the above judicial decisions and also the unambiguous wording of the now amended provisions of Section 14A, it is clear that disallowance u/s.14A can be made even if no exempt income is earned. It is observed that CBDT Circular referred supra along with use of non-obstante clause u/s.14A and explanation inserted to such section leave no room for any doubt and intention of legislature right from beginning is to apply provisions of section 14A even if there is no exempt income. The language of explanation 'for removal of the doubt' clearly and unambiguously states that amendment is retrospective in nature. The explanation referred supra no where enlarge the scope of original section 14A but only clarify the intention of legislature. Merely, memorandum explaining amendment to section 14A states that such provisions are applicable from A.Y.2022-23, it does not make such provision applicable prospectively as memorandum has already explained the intention of the legislature along with CBDT Circular referred supra and amendment brought by Finance Act only provide clarification, it is pertinent to note that there is no substantial amendment to section 14A i.e. crux of section 14A has not at all changed hence, such amendment is retrospective in nature. However, if the Legislature intended to apply these provisions prospectively, as interpreted, it would not have used the phrases 'It is hereby clarified' and 'shall be deemed never to have been applied for the purposes of'. The language of the Act is very clear and unambiguous. It clearly indicates that these amendments were made to bring out retrospective clarification to law on the issue involved. In such a case, there is no requirement at all to rely on any subordinate piece of legislation like the Memorandum, Any contrary interpretation, if accepted, would render these amendments, redundant and superfluous which cannot be agreed to, as it belies the basic tenet of rule of

interpretation as discussed above. Considering these facts, contention of appellants that disallowance u/s.14A cannot be made even there is no exempt income or disallowance u/s.14A is required to be restricted to such exempt income cannot be accepted.

8.17 The object of an amending and validating Act is to remove and rectify the defect in phraseology or lacuna of other nature and also to validate the proceedings, including realization of tax, which have taken place in pursuance of the earlier enactment which has been found by the Court to be vitiated by an infirmity. Such an amending and validating Act in the very nature of things has a retrospective. Its aim is to effectuate and carry out the object for which the earlier principal Act had been enacted.

8.18 It is observed that though Hon'ble Delhi High Court in the case of Cheminvest Ltd. (61 Taxmann.com 118), CIT Vs. Holcim India Pvt. Ltd. (57 Taxmann.com 28), CIT Vs. Corrtch Energy Pvt. Ltd. (Gujarat High Court) 45 Taxmann.com 116, CIT Vs. Shivam Motors Pvt. Ltd. (Allahabad high Court) 55 Taxmann.com 262, Redington India Ltd. Vs. Addl. Commissioner of Income Tax (Madras High Court) 77 Taxmann.com 257, Pr. CIT Vs. GVK Project & Technical Service Ltd. (SLP dismissed by Supreme Court) 106 Taxmann.com 181 and others have consistently taken a view that once assessee has not earned exempt income, disallowance u/s.14A cannot be made. The courts have held that if the assessee has earned exempt income, disallowance u/s.14A can be restricted to such exempt income. However, due to amendment brought to section 14A which is retrospective in nature for discussion made hereinabove, cannot be applied. It is observed that by inserting above explanation to section 14A, the CBDT has given its clarification regarding intention of applicability of section 14A even when no exempt income is earned and a non-obstante clause was introduced to overcome the judicial observation/decisions of various courts referred supra.

8.19 It is relevant to refer to recent decision of Hon'ble Guwahati ITAT in the case of ACIT Vs Williamson Financial Services Limited I.T.A. Nos,154 to 156/Gau/2019 dated 06/07/2022[2022] 140 taxmann.com 164 wherein on similar issue, it is held as under:

"The opening words of the explanation reveal in an unambiguous manner that the said provision is clarificatory and has been inserted for removal of doubts. Further, as provided in the memorandum explaining the aforesaid provision, the aforesaid explanation has been inserted in order to make the intention clear and to make it free from any misinterpretation. The said explanation when seen in the light of the principle laid down by the various decisions of the Supreme Court as discussed above. There leaves no doubt that the said explanation is clarificatory in nature inserted for the purpose of removal of doubts and to make the intention of the legislature clear and free from misinterpretation and thus the same, obviously, would operate retrospectively. Any contrary interpretation-that the said explanation shall operative prospectively will render the words

"shall apply and shall be deemed to have always applied" contained in the said statutory provision as redundant and meaningless, which, in our view, is not the intention of the legislature.

35. The aforesaid explanation does not propose to levy any new taxes upon the assessee but it only purports to clarify the intention of the legislature that actual earning or not earning of the exempt income is not the condition precedent for making the disallowance of the expenditure incurred to earn exempt income. This was the legal position as declared by the Hon'ble Supreme Court in the case of Walfort (supra) that the expenses allowed can only be in respect of earning of taxable income that the basic principle of the taxation is to tax the net income and on the same analogy the exemption is also in respect of net income. The Hon'ble Supreme Court thus way back in the year 2010 has, by saying so, held that the expenditure in relation to earning of exempt income has to be disallowed and exemption is only of net income. The Hon'ble Supreme Court in the case of CIT vs. Rajendra Prasad Moody (2002-TIOL-751-S&115 ITR 519 (SC) has held that even if there was no income, the expenditure is allowable. It is now well settled that income includes loss also as held by the Hon'ble Supreme Court in the case of CIT vs. Harprasad & Co. P Ltd. 99 ITR 118 (SC). As held by the Hon'ble Supreme Court in the case of Walfort (supra) that only the net of the income is taxable i.e. gross income minus expenditure and as discussed above the net income may be a loss also. Since the earning of positive net income is not a condition precedent for claiming deduction of expenditure, on the same analogy, the earning of exempt income is also not a condition precedent for attracting disallowance of expenditure incurred to earn exempt income.

This position, only, has been reiterated and clarified by the aforesaid explanation to section 14A so as to remove the doubts and to make clear the intention of the legislature and to make the provision of section 14A free from any other interpretation. Therefore, it cannot be said that the aforesaid explanation proposes or saddle any fresh liability on the assessee. We are unable to agree with the contention of the Ld. AR of the assessee that the aforesaid explanation alters or change the law as it early stood.

In appeal before the CIT(A), the assessee took the plea that he had made strategic investment in group companies for business purposes. However, the Id. CIT(A) relied upon the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra) and rightly held that dominant purpose theory was not applicable for the purpose of apportionment of expenditure relatable to exempt income. However, the Id. CIT(A) accepted the contention of the assessee that the disallowance u/s 14A cannot exceed the exempt income earned during the year relying upon the decision of the Delhi High Court in the case of PCIT vs. Moderate Leasing and Capital Services Pvt. Ltd. (supra). In view of our discussion made above and in

view of the fact that we have held that the explanation to section 14A inserted by Finance Act 2022 being clarificatory in nature has retrospective effect, the impugned order of the CIT(A) is not sustainable in the eyes of law and the same is accordingly set aside. The order of the Assessing Officer is hereby restored. The appeal of the Revenue stands allowed.....

8.20 Considering all these facts, disallowance u/s.14A made by AO for Rs.9,60,100/- is confirmed. This, the ground of appeal no. 3 is dismissed.”

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A). Before us, the counsel for the assessee submitted that it is a well established law, as held by various judicial precedents on the subject, that disallowance under section 14A read with Rule 8D cannot exceed the amount of exempt income earned by the assessee. In the instant facts, the assessee has indisputably earned only exempt income to the tune of ₹ 2,088/-, and accordingly, the disallowance cannot exceed the amount of exempt income. The second contention of the counsel for the assessee is that disallowance made under section 14A read with Rule 8D cannot be used for the purpose of making disallowance/adjustments to book profit under section 115 JB of the Act.

6. In response, DR placed reliance on the observations made by the Ld. CIT(A) and the assessing officer, in their respective orders.

7. We have heard the rival contentions and perused the material on record. We are of the considered view that it is a well-settled law on the subject that no disallowance can be made under section 14A in case the assessee has not earned any exempt income or in excess of income claimed to be exempt. The Hon'ble Supreme Court in the case of **State Bank of**

Patiala [2018] 99 taxmann.com 286 (SC) held that where High Court took a view that amount of disallowance under section 14A could be restricted to amount of exempt income only, SLP filed against said order was to be dismissed. The Hon'ble Supreme Court in the case of **Chettinad Logistics (P.) Ltd.[2018] 95 taxmann.com 250 (SC)** dismissed SLP against High Court ruling that section 14A cannot be invoked where no exempt income was earned by assessee in relevant assessment year. The Gujarat High Court in the case of **Dipesh Lalchand Shah [2022] 143 taxmann.com 419 (Gujarat)** held that where in relevant assessment year, assessee-individual earned profits from partnership firm and made investments in shares of a company, since its income from partnership was negative and no exempt income was earned, in such case disallowance under section 14A could not be made. In the case of **Corrtech Energy (P.) Ltd. [2014] 45 taxmann.com 116 (Gujarat)**, the Gujarat High Court held that where assessee did not make any claim for exemption of any income from payment of tax, disallowance under section 14A could not be made. The Delhi High Court in the case of **Delhi International Airport (P.) Ltd. [2022] 144 taxmann.com 80 (Delhi)** held that section 14A would not be applicable if no exempt income was received or receivable during relevant previous year. The Delhi High Court in the case of **Amadeus India (P.) Ltd.[2022] 145 taxmann.com 311 (Delhi)**, held that section 14A envisages that there should be an actual receipt of income which is not includible in total income; hence, section 14A will not apply where no exempt income is received or receivable during relevant previous year. The Ahmedabad ITAT in the case of **Edelweiss Financial Advisors Ltd. [2021] 124 taxmann.com 361 (Ahmedabad - Trib.)** held that disallowance of expenses under section 14A

read with rule 8D could not exceed amount of exempted income. The Ahmedabad ITAT in the case of **Addlife Investments (P.) Ltd.[2021] 124 taxmann.com 572 (Ahmedabad - Trib.)** held that disallowances made under section 14A read with rule 8D could not exceed amount of exempt income earned by assessee during year. In the case of **Asian Grantio India Ltd [2020] 113 taxmann.com 445 (Ahmedabad - Trib.)**, the Ahmedabad ITAT held that Disallowance of expenses under section 14A read with rule 8D of 1962 Rules cannot be made in absence of exempt income. Further, as observed by the Delhi High Court in the case of **Era Infrastructure supra** amendment made by the Finance Act, 2022 to section 14A by inserting a non-obstante clause and Explanation will take effect from 01-04-2022 and cannot be presumed to have retrospective effect and therefore will not apply to the impugned assessment year under consideration.

8. Secondly, on the issue whether disallowance made under section 14A could not be added in assessee-company's income for purpose of computation of income under section 115JB of the Act, the Supreme Court of India in the case of **Atria Power Corporation Ltd. [2022] 142 taxmann.com 413 (SC)** dismissed the SLP of the Department against High Court ruling that disallowance made under section 14A could not be added in assessee-company's income for purpose of computation of income under section 115JB of the Act. The Karnataka High Court in the case of **J.J. Glastronics (P.) Ltd. [2022] 139 taxmann.com 375 (Karnataka)** held that amounts disallowed under section 14A could not be added to net profit while computing book profit under section 115JB of the Act. The ITAT Ahmedabad in the case of **Vishal Export Overseas Ltd [2022] 143**

taxmann.com 305 (Ahmedabad - Trib.) held that disallowances made under section 14A read with rule 8D could not be applied to provision of section 115JB of the Act. The Delhi ITAT in the case of **Vireet Investment (P.) Ltd [2017] 82 taxmann.com 415 (Delhi - Trib.) (SB)** held that computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to computation as contemplated under section 14A read with rule 8D.

9. In view of the facts of the assessee and the judicial precedents highlighted above, we are hereby allowing assessee's appeal.

Order pronounced in the open court on 12-06-2024

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad : Dated 12/06/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद