

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.1422/MUM/2024
Assessment Year: 2015-16**

M/s. Awaita Properties Private Limited, Skil House, 209 Bank Street Cross Lane, Fort, Mumbai - 400023 PAN: AAACA8293L	Vs.	Commissioner of Income Tax (Appeals), NFAC, Delhi
(Appellant)		(Respondent)

Present for:

Assessee by : Shri J.P. Bairagra, CA
Revenue by : Shri Manoj Kumar Sinha, Sr.D.R.

Date of Hearing : 24 . 06 . 2024
Date of Pronouncement : 28 . 06 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 29.01.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2015-16.

2. In the instant case, the Assessing Officer (AO) vide assessment order dated 30.10.2017 u/s 143(3) of the Act has made two additions, **first** the amount of Rs.6,46,631/- on account of business promotion expenses and electricity charges respectively to the tune of Rs.4,89,610/- and Rs.1,57,021/-. **Second** the addition of Rs.29,37,025/- being 0.5% of Rs.54,13,53,992/- (investment) u/s 14A of the Act.

3. The Assessee challenged the aforesaid additions before the Ld. Commissioner by filing first appeal on 06.12.2017 which was taken into consideration only after three years i.e. on 03.03.2020 and thereafter on 06.01.2021 and on 15.01.2021 admittedly the Covid-19/Corona period and thereafter on 10.07.2023 i.e. after more than two and half years which resulted into non-attendance by the Assessee. However, the Ld. Commissioner decided the additions raised by the Assessee on merits and ultimately affirmed the same, against which the Assessee is in appeal before us.

4. We have heard the parties and perused the material available on record. Coming to the **first addition** to the tune of Rs.6,46,631/- (Rs.4,89,610/- business promotion expenses + Rs.1,57,021 electricity charges) the AO made the aforesaid addition/disallowance due to mismatch in audit report and ITR, however, the Assessee's Counsel Shri J.P. Bairagra by drawing our attention to the computation of income for the relevant assessment year, demonstrated that the Assessee in column "the profit & gains from the business and profession" has clearly disallowed the business promotion expenses (50%) to the tune of

Rs.4,89,610/- and electricity charges (25%) to the tune of Rs.1,57,021/- and therefore the said addition is un-sustainable. The Assessee also submitted that though the Assessee has disclosed the aforesaid expenses in the computation of income as well as in the tax audit report and also disallowed the same in its return of income but the same has been missed by oversight by Article Assistant to be disclosed in ITR under the head "other information". Therefore, if the addition is going to be confirmed, then the same would lead to double disallowance, which is not permissible in law. The Ld. D.R. though not refuted the aforesaid fact, however, supported the impugned order. Considering the peculiar facts and circumstances, we observe that the Assessee has duly shown the aforesaid business promotion expenses (50%) and electricity charges (25%) respectively to the tune of Rs.4,89,610/- & Rs.1,57,021/- {in total Rs.6,46,631/-} in its computation/financials and subjected to tax, hence, the addition is liable to be deleted. **Consequently, the same is deleted.**

5. Coming to the **second addition** of Rs.29,37,025/- u/s 14A of the Act, we observe that admittedly the assessee during the assessment year under consideration has not earned any dividend income, however, still the AO made the addition by relying on Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules') applicable to section 14A of the Act. and the CBDT circular No.5 dated 11.02.2014.

5.1 The Hon'ble Madras High Court in the case of Commissioner of Income Tax vs. Chettinad Logistics Pvt. Ltd. (2017) 80 taxmann.com 221 and Hon'ble Delhi High Court in the case of

Cheminvest Ltd. v. ITO [(2009) 317 ITR (AT) 86 (Del)(SB)] have categorically held that "where the Assessee has not earned any exempt income received or receivable during relevant assessment year, then no addition can be made u/s 14A of the Act".

5.2 The Hon'ble Madras High Court in Chettinad case (supra) also considered the Rule 8D of the Rules as well as the circular No.5 dated 11.02.2014 issued by CBDT (as relied by the AO in this case while making the addition) and ultimately rejected the contention of the Revenue Department to the effect "*that as per circular No.5 dated 11.02.2014 a disallowance u/s 14A r.w.r 8D can be effected even in a case where a tax payer has not earned any exempt income in a particular year, as the Circular at para No.4 states that it is not necessary for exempt income to have been included in the income of a particular year for the disallowance to be triggered. Rule 8D cannot be read in a manner which states beyond the scope and content of the main provision which is section 14A of the Act. The computation of total income in terms of section 5 of the Act is at real income and there is no sanction in law for the assessment and admittedly notional income particularly in the context of affecting a disallowance in connection therewith*".

5.3 Since the Assessee has not earned any exempt income and therefore no disallowance u/s 14A of the Act is warranted, hence respectfully following the aforesaid judgments, the addition under challenge is deleted.

6. In effect, both the additions are deleted

7. In result, the appeal filed by the Assessee stands allowed

Order pronounced in the open court on 28.06.2024.

**Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.