

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No. 4633/Mum/2023
(Assessment Year: 2017-18)

M/s. Hem Sil Trading and Manufacturing Private Limited Plot No. 645/646, Oberoi Chambers II, New Link Road, Andheri, Mumbai-400 053	Vs.	Asst. CIT, Circle 12(2)(2) Mumbai
PAN/GIR No. AAACH 1716 P		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Madhur Agrawal a/w Shri Fenil Bhatt
Respondent by	:	Shri P. D. Chougule
Date of Hearing	:	09.05.2024
Date of Pronouncement	:	05.08.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The assessee has challenged the solitary ground of disallowance made u/s. 14A read with Rule 8D amounting to Rs.58,75,000/- on the ground that the assessee has not earned dividend income during the year under consideration which warrants no disallowance u/s. 14A r.w. Rule 8D of the Rules.

3. The brief facts of the case are that the assessee company is an investment company and had e-filed its return of income on 28.10.2017, declaring total income at Rs.2,05,97,250/- as income from house property amounting to Rs.12,24,506/- and short term capital gain of Rs.1,86,38,699/-. The assessee's case was selected for limited scrutiny and notices u/s. 143(2) of the Act 142(1) were issued and served upon the assessee.

4. The learned Assessing Officer (Id. A.O. for short) vide order dated 30.10.2019 passed u/s. 143(3) of the Act, determined the total income at Rs.2,64,72,250/- under the normal provisions and Rs.2,10,83,103/- u/s. 115JB of the Act on the book profit, by making a disallowance of Rs.58,75,000/- towards the expenses claimed by the assessee u/s. 14A read with Rule 8D of the Act.

5. The assessee was in appeal before the first appellate authority who vide order dated 19.10.2023 upheld the disallowance made by the Id. A.O. for the reason that the assessee has failed to substantiate its claim of interest expenses during the appellate proceeding.

6. The assessee is in appeal before us, challenging the order of the Id. CIT(A).

7. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee company had made investment in various companies, aggregating to Rs.59,60,87,490/- at the beginning of the year and Rs.61,20,87,490/- on the date of closing as per the financials. The assessee has declared business income out of the interest receipt of Rs.59,73,866/- on Rs.3.47 crores advanced

as business loans and against which the assessee has claimed an expenses of Rs.52.40 lacs and liabilities written back at Rs.33,878/-. The Id. A.O. disallowed the interest expenses claimed by the assessee for the reason that the assessee has invested more than Rs.60 crores for which the assessee contends that there was no expenditure incurred for the same and the expenditure claimed by the assessee was only towards earning of taxable income. The Id. A.O. rejected the assessee's contention that no disallowance is warranted u/s. 14A r.w. Rule 8D of the Rules when the assessee has not earned any exempt income during the year under consideration.

8. The learned Authorised Representative (Id. AR for short) for the assessee submitted that the assessee did not earn any exempt income during this year and contended that no disallowance u/s.14A is required to be made when there is no exempt income. The Id. AR relied on the decision of Hon'ble Delhi High Court in the case of *Cheminvest Ltd. vs. ITO* 124 TTJ 577 and the Delhi Special Bench decision in the case of *Vireet Investment Pvt. Ltd.* [2018] 165 ITD 27.

9. On the above factual matrix of the case, it is observed that the lower authorities have not denied the fact that the assessee has not earned any exempt income during the year under consideration but has held that the criteria whether the assessee has earned any exempt income or not, is irrelevant for disallowing the expenditure claimed by the assessee and thereby proceeded to disallow the expenses claimed as per section 14 read with Rule 8D of the Rules. It is pertinent to point out that the issue whether disallowance could be made u/s. 14A r.w Rule 8D in the absence of any exempt income during the

year under consideration, is a settled proposition of law which has held this issue in favour of the assessee.

10. By respectfully following the decision of Hon'ble Delhi High Court in the case of *Cheminvest Ltd. vs. ITO* (supra) and the Delhi Special Bench in the case of *Vireet Investment Pvt. Ltd.* (supra), we decide this issue in favour of the assessee.

11. Hence, ground no. 1 raised by the assessee is allowed. Ground no. 2 being a consequential ground requires no separate adjudication. As ground no. 3 is also not adjudicated for the reason that the counsels for both the sides have not placed their arguments on this issue.

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

Order pronounced in the open court on 05.08.2024

Sd/-

(B R Baskaran)
Accountant Member

Mumbai; Dated : 05.08.2024
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai