

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRIGIRISH AGRAWAL, ACCOUNTANT MEMBER

I.T.A No.2690/Mum/2024 - A.Y. 2013-14
I.T.A No.2578/Mum/2024 - A.Y. 2014-15
I.T.A No.2941/Mum/2024 - A.Y. 2015-16
I.T.A No.2940/Mum/2024 - A.Y. 2017-18

Deputy Commissioner of Income-tax-15(1)(2), Mumbai Room No.126B, 1 st Floor, Aayakar Bhavan, M.K. Road, Mumbai	vs	HCC Infrastructure Co Ltd (Pursuant to merger of HCC Concessions Ltd) Hincon House, Lal Bahadur Shastri Marg, Vikhroli(West), Mumbai-400 083 PAN : AACCH0024L
APPELLANT		RESPONDENT

Assessee represented by : Shri Hasmukh Ravaria
Respondent represented by : Shri Biswanath Das - CIT DR /Shri P.D.
Choughule
Date of hearing : 03/09/2024
Date of pronouncement : 11/09/2024

ORDER

PER BENCH:

These four appeals filed by the revenue arise out of the independent orders of the Learned National Faceless Appeal Centre (NFAC), Delhi (in short, 'Ld.CIT(A)') passed under section 250 of the Income-tax Act, 1961 (in short, 'the

Act') dated 12/03/204, 29/03/2024, 31/03/2024 & 31/03/2024 for A.Ys. 2013-14, 2014-15, 2015-16 & 2017-18, respectively. The impugned orders arise from the orders passed by the Id. Deputy Commissioner of Income-tax – 15(1)(2), Mumbai (in brevity the "AO"), order passed U/s 143(3) of the Act.

2. At the outset, it may be mentioned on 22/07/2024 when the matter was called up for hearing, the Ld.AR for the assessee, vide letter dated July 19,2024 had sought adjournment on the following grounds: -

"Re: HCC Concessions Limited, now merged with HCC Infrastructure Company Limited ('Assessee')

PAN-AACCH0024L

ITA No. 2690/Mum/2024 - AY 2013-14 - Filed by Department

Sub: Direction to Department to amend form 36 and request for adjournment

The captioned Department's appeal is coming up for hearing before Your Honors on 22nd July.

*Your Honors may please note that the Assessee, formerly HCC Concessions Limited, was merged into HCC INFRASTRUCTURE COMPANY LIMITED with effect from April 1, 2021, vide order dated February 9, 2023, passed by the Hon'ble National Company Law Tribunal (NCLT), Mumbai Bench in Company Scheme Petition bearing CP(CAA)/117/MB-IV/2022. A copy of the said merger order is enclosed herewith as **Annexure 1** for reference.*

Due to aforesaid merger, the Department will be required to take necessary steps for amending the appeal Form 36, which is presently in the old name to incorporate the new name of the Assessee.

Accordingly, we would request Your Honors to kindly direct the learned DR to do the needful as above and, in the meantime, adjourn the hearing fixed for 22nd to a suitable future date."

The matter was accordingly adjourned to 03/09/2024. Finally, Form-36 of all the appeals is amended by the department. We proceed to dispose of the appeals accordingly.

3. In all the 4 appeals, the revenue has agitated the issue of deletion of disallowance made under section 14A of the Act read with Rule 8D of Income Tax Rules, 1962 (in short, the 'Rule') we deem it fit to extract the grounds raised for A.Y. 2014-15, which are as under: -

"1. Whether on the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 14,61,63,938/- made on account of disallowance of expenses u/s. 14A of the Income Tax Act, 1961 holding that no disallowance u/s. 14A is called for, ' when there is no exempt income received by the assessee during the year under consideration.

2. Whether on the facts and circumstances of the case, the CIT(A) erred in law in deleting the addition of Rs, 14,61,63,938/- u/s. 14A ignoring the CBDT : Circular No, 5/2014 dated 11.02,2014 wherein it is clarified that even if there is no exempt income earned by the assessee in the year under consideration, disallowance under Rule 8D read with section 14A is required to be made.

The Appellant prays that the order of the CIT(A) on the grounds be set aside and that of the Assessing Officer be restored.

3. The appellant craves leave to amend, or alter any grounds or add new grounds, which may be necessary."

4. The brief facts of the case are that the assessee is a company engaged in the business of construction of 'Built own and Transfer' (BOT) infrastructure projects

such as Roads and Bridges and has made investments into subsidiaries. For A.Y. 2013-14, in the course of assessment proceedings, the Id. AO noticed that the assessee had investments, the returns of which were exempt from tax. The Id. AO was, therefore, of the opinion that the expenditure incurred for those investments should be disallowed under section 14A of the Act read with rule 8D of the Rule. When showcause notice was issued, the assessee explained that the investment in subsidiary is more of compulsory or strategic investments in order to get contracts and not made to earn any dividend/exempt income. The Id. AO, however, did not find it acceptable, he proceeded to calculate the disallowance and worked out a disallowance of Rs.9,06,44,147/- in the following manner: -

"A.Y. 2013-14

	Particulars	Amt (Rs.)	Amt (Rs.)
1	Amount of expenses directly related to the income		0
A	Amount of interest expenses other than 1(A)	10,81,23,015	
B1	Investments as on 01-04-12	540,47,87,500	
B2	Investment as on 31-03-13	649,07,90,700	
B	Average value of investment $[B=(B1 + B2)/2]$	594,77,89,100	
C1	Assets as on 01-04-12	1043,77,88,401	
C2	Assets as on 31-03-13	1068,00,43,217	
C	Average of total assets $[C-(C1+C2)/2]$	1055,89,15,809	
2	Attributable indirect interest expenses $[A*B/C]$		6,09,05,201
3	$\frac{1}{2}\%$ of the average value of investment		2,97,38,946
	Disallowance under Section 14A (1+2+3)		9,06,44,147

Accordingly, the disallowance / addition worked out by the Id.AO in different assessment years was as below: -

A.Y. 2013-14	-	Rs. 9,06,44,147/-
A.Y. 2014-15	-	Rs.12,85,92,373/-
A.Y. 2015-16	-	Rs. 14,61,63,938/-
A.Y. 2017-18	-	Rs. 6,67,13,654/-

The assessee was aggrieved and carried the matter before the Id. CIT(A). The Id.CIT(A) deleted the addition. The revenue is aggrieved on the action of the Id.CIT(A) and filed these appeals before us.

5. We have heard the rival submission and considered the documents available in the record. The Id. AR confirmed that the assessee has no exempt income during this impugned assessment year. So, the disallowance under section 14A is uncalled for. The Id.AR also relied on assessee's own case in **ITA No.6203/Mum/2016**, date of pronouncement **03/01/2018**, where the co-ordinate bench of ITAT, Mumbai Bench "I" accepted that if there is no exempt income, the addition cannot be sustained. Considering the appeal order, we find that the Id.CIT(A) had considered the orders of the co-ordinate bench of ITAT-Mumbai and followed accordingly. The relevant part of the order of ITAT-Mumbai Bench is reproduced as below: -

"5. We have heard the rival submissions. We find that the assessee had not earned any exempt income during the year under consideration, that the AO had invoked the provisions of Rule 8D of the rules r.w.s. 14A of the Act, that the FAA has given a categorical finding of fact that assessee were much more than the investments made. In our opinion, in absence of exempt income and claim of expenditure made against such income, disallowance u/s 14A should not have been made. The provisions were brought on statute to prevent the misuse of

double deduction i.e. claiming exempt income and claiming expenditure against such income. No disallowance can be made if assessee does not show any exempt income and expenditure against the income that does not form part of the total income.

Considering the above, we are of the opinion that FAA has rightly deleted the disallowance made by the AO. So, confirming his order, we decide the effective ground of appeal against the A.O.”

6. The Id. DR fully relied on the impugned assessment order but was unable to produce any contrary judgement against the order of the co-ordinate bench of ITAT.

7. We respectfully follow the order of the co-ordinate bench of ITAT-Mumbai in assessee’s own case (supra) and it is accepted for impugned issue. Hence, we are not interfering in the impugned appeal order. The disallowance U/s 14A r.w.r. 8D amount to Rs. 12,85,92,373/- is deleted.

Accordingly, the grounds of the revenue are dismissed.

8. Since we have decided on the appeal for AY 2014-15 in favour of the assessee, the decision therein shall apply *mutatis mutandis* to the other three appeals also.

9. In the result, appeals of the revenue bearing **ITAs No.2578, 2690, 2940& 2941/Mum/2024** are dismissed.

Order pronounced in the open court on 11th day of September, 2024.

Sd/-

sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 11/09/2024
Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**