

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**Shri Sonjoy Sarma, Judicial Member  
Shri Rakesh Mishra, Accountant Member**

**I.T.A. No. 1360/Kol/2024  
Assessment Year: 2014-15**

**M/s Salarpuria Homes Pvt. Ltd.**

C/o M/s Salarpuria Jalodia & Co.,  
7, C. R. Avenue, 3<sup>rd</sup> Floor,  
Kolkata - 700072

[PAN: AAHCS9410J] ..... **Appellant**

**vs.**

**ACIT, Circle -1(2), Kolkata,**

Ayakar Bhawan, P-7,  
Chowringhee Square,  
Kolkata – 700069

..... **Respondent**

**Appearances by:**

Assessee represented by : S. Jhajharia, A.R.

Department represented by : Sanjoy Paul, Addl. CIT, Sr. DR

Date of concluding the hearing : September 12, 2024

Date of pronouncing the order : September 13, 2024

**ORDER**

**Per Sonjoy Sarma, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2014-15 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the Addl./JCIT(A)-13, Mumbai, dated 27.05.2024 arising out of Assessment Order dated 14.12.2016, passed under Section 143(3) of the Act.

2. The Assessee has raised the following grounds of appeal:

*"1. For that in view of the facts and in the circumstances, Ld. CIT(A) was wholly unjustified in affirming the addition of Rs. 10,83,591/- made by the AO u/s 14A read with Rule 8D and in view of the facts and in the circumstances of the Ld. CIT(A)'s action is bad in law and addition is liable to be deleted and it may be held accordingly.*

*2. Without prejudice to Ground No 1 above, the Ld.CIT(A) was wholly unjustified in affirming the addition of Rs. 10,83,591/- u/s 14A read with Rule 8D(2) without appreciating the facts that there was no exempt income earned by the appellant during the year and as such, such provision were not at all invocable in this case and such action of Ld. CIT(A) is bad in law and the addition so made is liable to be deleted and it may be held accordingly.*

*3. Without prejudice to Grounds No 1 & 2 above, there being no investment in shares & securities either at the beginning of the year or at the end of the year, question of any disallowance u/s 14A read with rule 8D(2) did not arise and as such Ld. CIT(A) was wholly unjustified in affirming such addition of Rs. 10,83,591/- made by AO and hence such action of the Ld. CIT(A) is bad in law and it may be held accordingly.*

*4. For that in view of the facts and in the circumstances, Ld. CIT(A) was wholly unjustified in not allowing the MAT credit of Rs. 1,38,064/-, although all evidences in such accordingly much available on record and hence MAT credit may kindly be allowed*

*5. For that your petitioner craves the right to put additional grounds and/or to alter/amend /modify the present grounds at the time of hearing."*

3. In this case, the appellant filed his return of income on 14.12.2016 showing an income of Rs. 88,55,330/-/-. The Assessing Officer (hereinafter referred to as Id. 'AO') found that there were investments in equity share which had the potential to yield exempt income in the shape of dividends. Admittedly, during the year under consideration no exempt income was received by this assessee as there was no investment made in equity shares as alleged by the Assessing Officer, but the Id. AO apply the provisions of Section 14A of the Income Tax Act, 1961 (in short the 'Act') read with Rule 8D of the Income Tax Rules, 1962 to make an addition of Rs. 10,83,591/- (impugned assessment).

4. Aggrieved with this action of Id. AO, the appellant approached the Id. Commissioner of Income Tax (Appeals)-NFAC, [hereinafter referred to as Id. 'CIT(A)'] who confirmed the action of the Id. AO by an additional line of argument based on the amendment to Section 14A of the Act by the Finance

Act, 2022 and relying on CBDT Circular dated 11.02.2014 which clarified that Rule 8D read with section 14A of the Act provides for disallowance of expenditure which even investments which have not yielded any exempt income would be subjected to treatment u/s 14A of the Act read with Rule 8D of the Rules. Some portions from the findings of Id. CIT(A) deserve to be extracted as under:

*"5.2 Ground of appeal nos. 2, 3 and 4 pertain to disallowance of Rs. 10,83,591/- u/s 14A r.w.r. 8D.*

*5.2.1 During the course of assessment proceedings, the AO noted from the balance sheet that the appellant had made investment in equity shares. However, the appellant had not disclosed proportionate interest expenditure which were incurred for earning exempt income or capable to earn exempt income. Therefore, the Assessing Officer invoked the provisions of section 14A r.w.r. 8D and computed the disallowance of Rs. 10,83,591/-*

*5.2.2 The appellant contended during the course of appellant proceedings as well as during the assessment proceedings that as there was no dividend income for the year under consideration and did not claim any income as exempt, therefore question of any disallowance u/s 14A r.w.r. 8D did not arise. During the appellate proceedings, the appellant further submitted without prejudice that the AO had wrongly treated Rs.5,89,37,050/- as investment in shares which represent investment in land and expenditure towards construction of buildings and the same is apparent from the note 11 of the Audited Accounts.*

*5.2.3 The submission of the appellant has been considered and placed on record. The contention that no dividend was earned, and no exempt income was claimed by the appellant during the year under consideration, is not acceptable. The CBDT vide circular dated 11 February 2014 clarified that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.*

*5.2.4 The tax laws of India treat certain income as not taxable, such as agricultural income, shares from a partnership firm, income of eligible charitable institutions, and tax-free interest. It is possible that taxpayers might have incurred certain expenditures in order to earn such income. To earn such income, the taxpayers might have incurred certain expenditures-for example, the interest on a loan to undertake agricultural activities, etc.*

*In contrast, the income tax department held on to the view that the income is already completely exempted from taxation. Therefore, any expenditure incurred to earn or capable to earn such income should not be allowed for deduction as it reduces tax on non-exempt income as well.*

*5.2.5 In the instant case, the appellant submitted the investment are made on the land and construction. During the course of appellate proceedings, the appellant failed to substantiate that these investments are not capable of earning exempt income. Further during the course of assessment proceedings as well as during the course of appellate proceedings, the appellant has failed to prove that expenditure debited in its P& L*

*accounts does not include expenditure, which was incurred for earning exempt income, therefore, the AO has rightly made disallowance u/s 14A r.w.r. 8D.*

*5.2.6 In view of the above discussion, these three grounds of appeal are required to be dismissed."*

5. Before us, Id. Counsel for the assessee placed a short paperbook in which the audited accounts of the appellant were placed and vehemently argued that in the absence of any exempt income there could not be any disallowance u/s 14A of the Act. The Id. D/R was content to rely on the orders of the authorities below.

6. We have considered the arguments of Id. AR/DR and the documents before us. In another matter dealt with by a Coordinate Bench of Kolkata ITAT, in the case of Elegant Dealmark Pvt. Ltd. vs. ITO in ITA No. 51/KOL/2024 order dated 21.08.2024 an identical issue came up for adjudication. The findings therein may be reproduced to decide this case:

*"3. Regarding the addition of Rs. 9,647/- made u/s 14A of the Act read with Rule 8D of the Rules, it is evident that the appellant has not earned any exempt income this year and thus, relying on the findings in the case of (i) Eveready Industries India Ltd. vs. PCIT reported in [2020] 114 taxmann.com 610 (Kolkata - Trib.), (ii) PCIT vs. Vardhman Chemtech (P.) Ltd. reported in [2020] 423 ITR 241 (Punjab & Haryana) and in the case of (iii) ERA Infrastructure (India) Ltd. reported in 448 ITR 674 (Delhi)[20-07-2022], the appellant deserves relief. The relevant extracts from the three authorities are as under:*

*(i) Eveready Industries India Ltd.:*

*"33. From the assessment order as also from the facts on record it appeared that during the relevant year the appellant did not earn any dividend from its investments made in shares of other bodies corporate. We also note that barring investment of about Rs.5 lacs, the investments held by the appellant were in foreign subsidiaries from which no exempt dividend could have been earned. We also note that in the course of assessment the AO had specifically required the assessee to explain why disallowance u/s 14A of the Act should not be made. The assessee vide its letter dated 14.12.2016 had explained before the AO that no disallowance u/s 14A was warranted since during the relevant year it did not earn any tax free dividend. The relevant letter is available at Page 23 of the paper book. After considering the submissions of the assessee, the assessment order was passed u/s 143(3) of the Act in which no disallowance u/s 14A was made. We thus find that it was not a case where the aspect of disallowance u/s 14A was not enquired into by the AO prior to completion of assessment. We also find that the view entertained by the AO for not making*

*disallowance u/s 14A of the Act, in absence of earning of tax free dividend, was in consonance with the judicial view expressed by the High Courts at Calcutta, Delhi, Gujarat, Madras & Allahabad. The relevant citations are as follows:*

- *CIT v. Ashika Global Securities Ltd. [GA No. 2122 of 2014, dated 11-6-2018]*
- *Cheminvest Ltd. v. CIT [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 (Delhi)*
- *Pr. CIT v. IL & FS Energy Development Co. (P.) Ltd. [2017] 84 taxmann.com 186/250 Taxman 174/399 ITR 483 (Delhi)*
- *CIT v. Corrttech Energy (P.) Ltd. [2014] 45 taxmann.com 116/223 Taxman 130/[2015] 372 ITR 97 (Guj.)*
- *CIT v. Shivam Motors (P.) Ltd. [2015] 55 taxmann.com 262/230 Taxman 63 (All.)*
- *Redington India Ltd. v. Addl. CIT [2017] 77 taxmann.com 257/392 ITR 633 (Mad.)*

*34. For the reasons set out above we therefore hold that the assessment order passed by the AO in which no disallowance u/s 14A of the Act was made, could not be said to be unsustainable in law because the course adopted by the AO while passing the order u/s 143(3) of the Act was not only permissible in law but the said course was in conformity with the view expressed by the jurisdictional high court. Accordingly the impugned order of the Ld. Pr. CIT with reference to the reasons set out in clause (c) of the SCN is held to be unsustainable and accordingly set aside. Ground Nos. 8 & 9 are therefore allowed."*

*(ii) Vardhman Chemtech (P.) Ltd.:*

*"■ Section 14A provides for disallowance of expenditure in relation to income not 'includible' in total income. [Para 7]*

*■ The Tribunal while relying upon the judgment of this Court in CIT v. Lakhani Marketing Inc. [2014] 49 taxmann.com 257/226 Taxman 48 (Punj. & Har.) (Mag.) had held that section 14A cannot be restored to in the year in which no exempt income had been earned. However, the revenue relied upon the CBDT Circular dated 11-2-2014 to contend that section 14A can be invoked even in the year in which no exempt income had been earned. Accordingly, the Tribunal had dismissed the appeal of the revenue holding that unless and until there is receipt of exempted income for the concerned assessment year, section 14A is not attracted. [Para 11]*

*■ The Tribunal had, regarding the ground of deletion of disallowance amounting to Rs. 40.29 lakhs under section 14A, recorded that there was no infirmity in the order of the Commissioner (Appeals), who deleted the disallowance made following the decision of the jurisdictional High Court in the case of Lakhani Marketing Inc. (supra). The argument of the revenue that the CBDT Circular No. 5/2014, dated 11-2-2014 stating that even in the absence of any exempt income disallowance under section 14A had to be made, is binding on the revenue authority, had no merit. [Para 12]*

*■ No illegality or perversity could be demonstrated by the Revenue in the aforesaid findings recorded by the Tribunal. [Para 13]*

■ Thus, the substantial question of law as claimed is to be answered accordingly and the appeal is to be dismissed. [Para 15]"

(iii) ERA Infrastructure (India) Ltd.:

*Section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (Computation of disallowance) - Assessment year 2013-14 - Whether in relevant assessment year, no disallowance could be made under section 14A if no exempt income was earned by assessee - Held, yes [Paras 9 and 10] [The Hon'ble High Court relied on the order in the case of IL & FS Energy Development Co. Ltd. and Cheminvest Ltd. v. CIT [2015] 378 ITR 33 (Delhi).]*

*3.1. Accordingly, the appellant gets relief on this point and the addition of Rs. 9,647/- is directed to be deleted."*

7. Furthermore, the prospective operation of the clarificatory amendment vide Finance Act, 2022 has been dealt with in the case of Pr. CIT vs. Avantha Realty Ltd. reported in [2024] 164 taxmann.com 376 (Calcutta). Some portions from the head notes may be extracted as under:

*"■ The Tribunal took note of the decision of the High Court of Delhi in Pr. CIT (Central) v. Era Infrastructure (India) Ltd. [2022] 141 taxmann.com 289/288 Taxman 384/448 ITR 674, which had taken note of the decision in the case of Cheminvest Ltd. v. CIT-IV [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 (Delhi), wherein it was held that amendment by the Finance Act, 2022 of Section 14A by inserting a non-obstante clause and explanation would take effect from 01.04.22 and could not be presumed to have retrospective effect and, therefore, on facts the amendment could not be applied to the assessment year under consideration. There was find no error in such conclusion arrived at by the Tribunal. [Para 9]*

*■ Accordingly, the appeal is decided against the revenue. [Para 10]"*

8. Considering the discussions above, the addition made by the Id. AO is directed to be deleted. In light of this, the appellant succeeds on all the substantive grounds of appeal pertaining to disallowance u/s 14A of the Act read with Rule 8D of the Rules.

9. The assessee has not pressed Ground No. 4 during the proceedings. Accordingly, Ground No. 4 is dismissed as not pressed.

10. Ground No. 5 raised by the assessee is general in nature and does not require any specific adjudication, therefore, no separate decision is required of this ground.

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

***Kolkata, the 13<sup>th</sup> September, 2024.***

***Sd/-***  
**[Rakesh Mishra]**  
**Accountant Member**

***Sd/-***  
**[Sonjoy Sarma]**  
**Judicial Member**

Dated: 13.09.2024.  
*AK, PS*

*Copy of the order forwarded to:*  
1 M/s Salarpuria Homes Pvt. Ltd  
2.ACIT, Circle -1(2), Kolkata  
3. CIT(A)-  
4. CIT- ,  
5. CIT(DR),

*//True copy//*

By order

Assistant Registrar, Kolkata Benches