

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री संजय अवरथी, लेखा सदस्य
के समक्ष
Before

**SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 1166/KOL/2024
Assessment Year: 2015-16**

***M/s. Bhumi Nirman Pvt. Ltd.....Appellant
[PAN: AADCB 8546 L]***

Vs.

ITO, Ward-10(4), Kolkata.....Respondent

Appearances:

Assessee represented by: Abhishek Bansal, FCA.

Department represented by: P.P. Barman, Addl. CIT, Sr. DR.

Date of concluding the hearing : September 9th, 2024

Date of pronouncing the order : October 16th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case there is a delay of 298 days in filing of this appeal, for which the appellant has filed a petition for condonation of such delay as under:

“The appellant do hereby most respectfully submits before your honours that in the present case, the appellate order is dated 29.05.2023. Accordingly the last date to file the appeal was 28.07.2023. As such there appears a delay of 293 days in filing the appeal.

From the e-filing portal it appears that the order was sent through email. The appellant apprehends that However no such email was ever delivered. One of the reasons for non-delivery may be that that the mail from income tax automatically went in 'junk mails' and got auto-deleted after lapse of 30

days time.

The appellate order for the first time came to the notice of the assessee company on 14.05.2024, when the assessee company was intimated by its Authorised Representative that a penalty notice u/s 271(1)(c) has been received on their email carajeshmohan(a)gmail.com.

It is immediately thereafter the appellant logged into the e-filing portal and downloaded the appellant order and prepared the appeal. However, in the process considering the date of order, there is a delay of 293 days.

In view of the facts stated hereinabove, the appellant do hereby most respectfully request for condonation of delay.”

1.1. Considering the reasons enunciated in the said petition, the delay is hereby condoned and this appeal is admitted for adjudication.

2. In this case the assessee filed his return of income on 06.01.2016 declaring total income of Rs. 3,00,857/-. Subsequently, the case was picked up for scrutiny for verifying the sale of property reported in Form 26AS. Thereafter, the Assessing Officer (hereinafter referred to as ld. 'AO') completed the assessment by holding that the assessee had not declared a profit of Rs. 98,92,290/- from sale of property. In doing so, the ld. AO did not believe the assessee's claim of loss on sale of investments, which were set off against gains from sale of property. The ld. AO also added Rs. 65,428/- u/s 14A of the Income Tax Act, 1961 (in short the 'Act') read with Rule 8D of the Income Tax Rules, 1962.

2.1. Thereafter, the appellant approached the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as ld. 'CIT(A)'] and raised an additional ground of appeal being allowed the benefit of indexation in the computation of capital gains. However, the ld. CIT(A) rejected this additional ground, along with other grounds and essentially upheld the order of ld. AO.

2.2. Aggrieved with this action of ld. CIT(A), the appellant is before us with the following grounds of appeal:

“1. For that the assessment order passed by the Ld. AO is bad in law as well as on facts.

2. For that the Ld. CIT(A) erred in dismissing the appeal in cryptic manner

by simply quoting the assessment order passed and submission of the appellant.

3. For that the Ld. CIT(A) erred in confirming the action of Ld. AO in assessing Rs. 98,92,290/- as undisclosed profit from sale of property whereas the profit on sale of property held as investment was duly accounted for.

4. For that the Ld. CIT(A) erred in rejecting the claim made before the Ld. CIT(A) for allowing benefit of indexation.

5. For that the Ld. CIT(A) erred in confirming the disallowance of loss of Rs. 2,70,383/- whereas necessary details and evidences were filed in support of the same.

6. For that the Ld. CIT(A) erred in confirming the disallowance of Rs. 65,428/- u/s 14A r/w Rule 8D whereas there was no exempt income.

7. For that the appellant craves leave to add, alter or withdrawn any ground(s) of appeal on or before hearing of the appeal.”

3. Before us, the ld. AR argued that all relevant facts and documents were placed before the ld. AO/ld. CIT(A) and it has been vehemently asserted that in course of appellate proceedings, the appellant filed details of gain from transfer of right in the property as under:

Particulars	Opening Balance	Given	Received	Closing Balance	Profit/ Loss
Mani Square Ltd.	15,660,371	1,690,786	2,60,42,292	Nil	8,691,135
Merlin Projects Ltd.	3,000,389	Nil	Nil	3,000,389	Nil
Megamall Management Services Pvt. Ltd.	Nil	1,082,400	Nil	1,082,400	Nil
	18,660,760	2,773,186	2,60,42,292	4,082,789	8,691,135

It can be seen from above that the net loss of Rs. 2,70,383/- consisted of profit on sale of investments Rs. 8,961,518/- and profit from sale of transfer of property rights Rs. 8,691,136/- was duly accounted for in the audited financial statements. Therefore, the allegation that the profit has not been accounted for by the assessee is factually incorrect. Resultantly, the addition of Rs. 98,92,290/- is liable to be deleted. Regarding the claim of indexation benefit, the ld. AR argued that the benefit of indexation was not claimed due to an inadvertent error and the ld. CIT(A) ought to have allowed the same as it was clearly legally due to the assessee. It has been averred that while there was a profit of Rs. 86,91,135/- from sale of property, there was a subsequent loss of Rs. 89,61,518/- from sale of investment in the shares of one Cressanda

Solutions Ltd., which is admittedly a company listed on the Bombay Stock Exchange. It has been further mentioned that the ld. AO disallowed a further amount of Rs. 2,70,383/- resulting from a difference between profit on sale of property and loss from sale of investments. Here the ld. AO disbelieved the transaction entirely and disallowed the loss remaining after adjusting for the profits from sale of property. Here also the ld. AR argued that in the return of income, the assessee claimed net loss of Rs. 2,70,883/- arising from transfer of right in the property and sale of shares. The assessee before the Ld. CIT(A), submitted a copy of purchase bill, demat statement, bank statement and party details in support of purchases and also contract note, demat statement and bank statement in support of sale, the genuineness of which has not been disputed by the Ld. CIT(A), which appear at PB Pages 94-97. The shares were acquired and sold at prevailing market price.

3.1. Regarding the disallowance u/s 14A of the Act read with Rule 8D of the Rules it has been averred that since no exempt income was earned during the year, hence there can be no disallowance. For this purpose, the ld. AR relied on a number of authorities.

3.2. The ld. DR relied on order of authorities below.

4. We have carefully considered the documents placed before us, orders of authorities below and the arguments of ld. AR/DR. It is evident that the appellant had fully disclosed the transactions before the ld. AO/CIT(A) and also proved the genuineness of the loss arising from the sale of investments.

4.1. In light of these facts, it deserves to be held that the impugned additions of Rs. 98,92,290/- and Rs. 2,70,383/- should be deleted. Furthermore, on this issue, the ld. AO is directed to allow the benefit of indexation to the assessee. For this limited purpose, this matter is remanded back to the file of ld. AO to re-compute the gains from sale of property.

4.2. Regarding the addition on account of Section 14A of the Act read with Rule 8D of the Rules, our attention has been invited to a Coordinate Bench order in the case of *Elegant Dealmark Pvt. Ltd. vs. ITO* in ITA No. 51/KOL/2024

order dated 21.08. This issue has been dealt with as under:

“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 (Punjab & 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.”

Considering the findings in the extract above, this issue is decided in favour of the appellant since there is no exempt income earned during the year.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 16th October, 2024.

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 16.10.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **M/s. Bhumi Nirman Pvt. Ltd., C/o. Rajesh Mohan & Associates, 34, G.C. Avenue, Bagati House, 5th Floor, Unit No.18, Kolkata, West Bengal, 700013.**
2. **ITO, Ward-10(4), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata