IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH: BANGALORE

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No. 1392/Bang/2024
Assessment Year: 2017-18

Maini Materials Movement Pvt. Ltd., No.38, Maini Sadan, 7th Cross, Lavelle Road, Bengaluru-560 025. **PAN – AABCM 8922 D**	Vs.	The Dy. Commissioner of Income Tax, Circle – 4(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri G Venkatesh, CA
Revenue by	:	Shri V Parithivel, JCIT (DR)

Date of hearing	:	02.09.2024
Date of Pronouncement	:	15.10.2024

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 27/05/2024 in DIN No. ITBA/NFAC/S/250/ 2024-25/1065136558(1) for the assessment year 2017-18.

2. The first issue raised by the assessee is that the ld. CIT(A) has erred in confirming the disallowance of Rs. 18,57,840/- under the provisions of sec. 14A r.w. Rule 8D of the Act. In the present case, the AO found that the assessee has made investment in the securities which are capable of generating exempt income, but the assessee has not

made any disallowance of such expense relating to such investment. Thus, the AO invoked the provisions of sec. 14A r.w. Rule 8D of the Act and determined the expenses at Rs. 18,57,840/- which were disallowed and added to the total income of the assessee. The view taken by the AO was subsequently confirmed by the ld. CIT-A.

3. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

4. The learned AR before us filed a paper book running from pages 1 to 230 and filed detailed written submissions running from pages 1 to 18 and contended that there was no dividend income earned by the assessee in the year under consideration. Therefore, no disallowance u/s 14A r.w. Rule 8D of Income-tax Rule is warranted.

5. On the other hand, the learned DR vehemently supported the order of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. From the order of the authorities below, it is undisputed that no exempt income was earned by the assessee in the year under consideration. Thus, the question arises whether the provision of section 14A of the Act can be invoked in the absence of exempted income. This question has been answered by the several Hon'ble High Courts including the Hon'ble Gujarat High Court in the case of CIT vs. Corrtech Energy Private Limited reported in 45 taxmann.com 116. The Hon'ble Gujarat High Court in the above-mentioned case held that the provision of section 14A of the Act cannot

.

be applied in the absence of any exempted income. The relevant observation of the Hon'ble Court reads as under:

> *Section 14A(1) provides that for the purpose of computing total income under chapter IV, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. In the instant case, the Tribunal has recorded the finding of fact that the assessee did not make any claim for exemption of any income from payment of tax. It was on this basis that the Tribunal held that disallowance under section 14A could not be made. In the process tribunal relied on the decision of Division Bench of Punjab and Haryana High Court in case of CIT v. Winsome Textile Industries Ltd. [2009] 319 ITR 204 in which also the Court had observed that where the assessee did not make any claim for exemption, section 14A could have no application.*

6.1 Respectfully following the judgment of the Hon'ble Gujarat High Court as mentioned above, we hold that no disallowance under the provision of section 14A of the Act is required to made in the case of present assessee as no exempt income was earned/claimed during the year under consideration. Thus, no disallowance under section 14A of the Act was required to be made in the case of the assessee. Hence, we set aside the finding of the ld. CIT(A) and direct the AO to delete the disallowance made before him. Thus, the ground of appeal of the assessee is hereby allowed.

7. The next issue raised by the assessee is that the ld. CIT(A) erred in confirming the disallowance made by the AO for Rs. 23,032/- representing the club expenses.

7.1 The assessee in the year under consideration has shown expenses under the head 'club expenses' amounting to Rs. 23,032/- only. As per the AO, such expenses are personal in nature therefore, he disallowed the same. The view taken by the AO was subsequently confirmed by the ld. CIT(A).

.

8. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

9. The ld. AR before us submitted that the impugned expenses were incurred only for the purpose of the business and, therefore, the same cannot be disallowed u/s 37 of the Act.

10. On the other hand, the learned DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the Managing Director of the Company has incurred certain expenses at Bangalore Club, which were treated as personal in nature. Undeniably the club is a place where people gather for meeting with other people. As such, a club provides social platform to different persons and the assessee use to participate in social and other allied activities. In the current scenario, the meeting at the club is done to promote the business. The Hon'ble Supreme Court in the case of CIT Vs. United Glass Manufacturing Company Limited reported in 28 Taxmann.com 429 has held as under:

> *As far as Question No. 2 is concerned, we find that a series of judgements have been passed by High Courts holding that club membership fees for employees incurred by the assessee is business expense under Section 37 of the Income Tax Act, 1961. We also find that none of the decisions have been challenged in this Court. Even otherwise, we are of the view that it is a pure business expense.*

.

11.1 Considering the fact that a club is a platform for building relationship with other businessman and potential customers and, therefore, such expenses can be categorized under the head 'business expenses. Thus, we hold that such expenses cannot be disallowed under the provisions of sec. 37 of the Act. Accordingly, we set aside the findings of the ld. CIT(A) and direct the AO to delete the addition made by him.

12. The next issue raised by the assessee is that the ld. CIT(A) was not allowing the set off of the brought forward losses from assessment year 2016-17 of Rs.1,35,02,770/- only.

13. At the outset, we note that there is no discussion in the order of the AO as well as before the ld. CIT(A) about the denial of brought forward losses. Accordingly, in the interest of justice and fair play, we are inclined to set aside the issue to the file of the AO for fresh adjudication as per the provisions of law. Hence, the ground of appeal of the assessee is hereby allowed for statistical purpose.

14. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in court on 15th day of October, 2024

Sd/-	Sd/-
(GEORGE GEORGE K)	**(WASEEM AHMED)**
Vice President	Accountant Member

Bangalore,
Dated, 15th October, 2024

.

vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

.