

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3476/M/2024
Assessment Year: 2021-22**

M/s. Sapphire Foods India Limited, 7 th Floor, A Wing, PRISM Tower, Link Road, Mindspace, Goregaon West, Mumbai - 400062 PAN: AANCS5595A	Vs.	DCIT, Circle 3(3)(1), Room No.609, 6 th Floor, Aaykar Bhavan, Maharishi Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Aarti Sathe, A.R. a/w
Ms. Aasavari Kadam, A.R.

Revenue by : Smt Sujatha P. Iyengar, Sr. AR

Date of Hearing : 03.09.2024

Date of Pronouncement : 23.10.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 14.06.2024, impugned herein, passed by the Ld. Addl/Joint Commissioner of Income Tax (Appeals) (in short "Ld. Addl./Joint Commissioner") for the A.Y. 2021-22.

2. The sole addition u/s 14A of the Act read with rule 8D of the Income Tax Rules, 1962 (in short 'the Rules') is in controversy before us and the relevant facts for adjudication of the same are that the Assessee being engaged primarily in the franchise business of KFC and Pizza Hut restaurants in India had declared its income at a loss of Rs.59,13,62,620/- by filing its return of income on 08.02.2022. The Assessee during the assessment year under consideration also made a total investment of Rs.4,25,35,023/- in the equity shares of its subsidiary company i.e. Gamma Pizzakraft (Overseas) Private Limited. The Assessee claimed that the said investment was made out of sufficient non-interest-bearing funds or its own funds available as evident from the fund flow analysis. The Assessee further claimed that it did not earn any dividend income on the investment made during the assessment year under consideration and therefore no addition under section 14A of the Act rwr 8D of the Rules is warranted.

3. The Assessing Officer (AO) though not refuted the aforesaid claim of the Assessee, however, by taking refuge of the provisions of section 14A of the Act & rule 8D of the Rules and the CBDT circular no.5/2014 made a disallowance of Rs.1,58,57,457/- i.e. 1% of Rs.1,58,57,45,700/- and added back the same to the total income of the Assessee.

4. The Assessee, being aggrieved, challenged the said addition before the Ld. Addl./Joint Commissioner and has claimed that the Assessee has not earned any dividend income (exempt income) on

the said investment during the assessment year under consideration and even otherwise the investment has been made out of his own interest-bearing funds. The Assessee made the investments starting from A.Y. 2016-17 onwards in Gamma Pizzakraft (Overseas) Private Limited. The Assessee further claimed, as the Assessee has not earned any exempt income during the assessment year under consideration, hence no addition is warranted in view of various judgments including Cheminvest Ltd. v. ITO [(2009) 317 ITR (AT) 86 (Del)(SB)] as well as HDFC Bank Ltd. case (ITA No.330 of 2012) wherein the Jurisdictional High Court has held *“that if the Assessee’s own funds and non interest bearing funds exceeds investment in the tax free securities then no disallowance u/s 14A of the Act can be made qua interest paid on borrowing. Further, if there are funds available both interest free and overdraft and/or loans taken then presumption would arise that investment would be out of interest sufficient to meet the investment”*.

5. The Ld. Addl./Joint Commissioner though considered the claim/contention of the Assessee, however, mainly relying on the amendment made to section 14A by way of Finance Act, 2022 which was amended to give effect to the CBDT circular No.5/2014 dated 11.02.2014, to overturn the observations made by various Hon’ble Courts, towards impermissibility of disallowance of any expenditure in the absence of exempt income reported by the tax payer, observed that legislature has made two changes to section 14A through the Finance Act 2022, which are as under:

- (a) *Insertion of non-obstinate clause by way of substitution*
- (b) *Insertion of an explanation to reinforce by way of clarification between contents of the CBDT order.*

AY	Investments in Gamma Pizzakraft Rs.	Year to date Investments in Gamma Pizzakraft. Rs.
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5.1 The Ld. Addl./Joint Commissioner by further observing that where substantive law originally enacted or amended is not able to clarify the intention of the legislature, then in order to clarify the intention of the legislature, bringing the law amendments are carried out to clarify the real intent. Such clarificatory or explanatory amendments are declaratory and they take effect from the date, when the original provision was introduced, and therefore amendment brought in the provision of section 14A by way of Finance Act, 2022 is retrospective being declaratory and would take effect from the date when the original provision was introduced.

5.2 The Ld. Addl./Joint Commissioner ultimately applied the provision of section 14A as amended vide Finance Act, 2022 to the case of the Assessee and accordingly upheld the addition made by the AO u/s 14A of the Act r.w.r 8D of the Rules.

6. The Assessee, being aggrieved, is in appeal before us. The Assessee at the outset reiterated its claim/contention as raised before the authorities below. The Assessee further submitted that it had made the initial investment in Gamma Pizzakraft (Overseas) Private Limited to the tune of Rs.88,92,24,951/- out of its own non-interest-bearing funds and thereafter the Assessee continuously made the investment in the said company in every subsequent assessment year as detailed below:

AY 2016-17	889,224,951	889,224,951
AY 2017-18	7,313,842	896,538,793
AY 2018-19	7,352,209	903,891,002
AY 2019-20	88,438,034	992,329,036
AY 2020-21	571,083,109	1,563,412,145
AY 2021-22	42,535,023	1,605,947,168
AY 2022-23	75,501,171	1,681,448,339
AY 2023 -24	109,999,914	1,791,448,253

6.1 The Assessee further reiterated that during the assessment year under consideration, it has made investment in Gamma Pizzakraft (Overseas) Private Limited to the tune of Rs.4,25,35,023/- out of its own surplus funds and did not utilize any borrowed funds for the same. The Assessee has also not incurred any expenditure towards the said investment; hence question of disallowance does not arise. The Assessee further claimed that during the assessment year under consideration upto 31.03.2021, had its own funds consisting of capital and reserves of Rs.51,491.58 lakhs, which were sufficient to meet its investment and no part of the borrowed funds were used for the investment of Rs.4,25,35,023/- and therefore question of disallowance of expenditure u/s 14A r.w.r 8D of the Rules, at all does not arise. The Assessee further claimed that amendment brought in section 14A of the Act by Finance Bill 2022 has no applicability to the case of the Assessee, as it pertains to A.Y. 2021-22. The Assessee in support of afore-stated contentions also relied on various judgments.

7. On the contrary the Ld. D.R. refuted the claim of the Assessee by relying on the orders passed by the authorities below.

8. Having heard the parties and perusing the material available on record and considering the rival claims of the parties, following question emerge

“Where the Assessee has not earned any exempt income and made the investment from its own interest free funds, can still the addition u/s 14A of the Act r.w.r. 8D of the Rules be made in the case pertaining to A.Y. 2021-22 in view of the amended provisions of section 14A as amended vide Finance Act 2022”.

8.1 In the instant case, the Assessee has claimed that it has made investment in its subsidiary company i.e. Gamma Pizzakraft (Overseas) Private Limited from its own non-interest-bearing funds, which were more than the invested amount of Rs.4,25,35,023/-. We further observe that the Hon’ble Jurisdictional High Court in the case of Commissioner of Income Tax Vs. Reliance Utilities & Power Ltd. 313 ITR 340 (Bombay) has also dealt with the identical issue wherein the Assessee had also having interest free funds available more than the investment made by the Assessee and therefore the Hon’ble Jurisdictional High Court affirmed the decision of the Tribunal in drawing the presumption that investment would be out of investment free funds generated or available with the company, if the interest free funds were sufficient to meet the investments”.

8.2 The judgment in the case of Reliance Utilities & Power Ltd. (supra) has also been considered by the Hon’ble Jurisdictional High

Court in the case of Pr. CIT vs. Shapoorji Pallonji and Co. Ltd. (2020)423 ITR 220 (Bom)(HC) wherein the Hon'ble High Court has held as under:

"7. We have perused the decision of this Court in Reliance Utilities & Power End (supra) wherein it has been held that if there are funds available with the assessee, both, interest-free and overdraft and/ or loans taken then a presumption would arise that investments would be out of the interest-free funds generated or available with the assessee if the interest-free funds were sufficient to meet the investments. In the facts of that case, it was noted that the said presumption was established considering the finding of fact returned by the first appellate authority as affirmed by the Tribunal which is identical in the present case."

The Hon'ble Jurisdictional High Court ultimately affirmed the decision of the Tribunal in affirming the decision of the first appellate authority for deletion of the addition made by the AO u/s 14A of the Act, on the reason that the interest free funds available with the Assessee were far in excess of the advance given.

8.3 We further observe that the above decision of the Hon'ble Jurisdictional High Court in Reliance Utilities & Power Ltd (supra) also stands affirmed by the Hon'ble Apex High Court in CIT vs. Reliance Industries Ltd. (2010) 10 taxman.com 52/261 taxman.com 165/410 ITR 466.

8.4 We further observe that Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT (14) 378 ITR 33 (Delhi) has held that

section 14A will not apply, if no exempt income is received or receivable during the relevant previous year.

8.5 We also observe that the Hon'ble Delhi High Court in the case of PCIT vs. Era Infrastructure (India) Ltd. (2022) 448 ITR 674 (Delhi) by considering the amendment brought in section 14A of the Act, vide Finance Act 2022 has held the amendment as brought in section 14A of the Act by Finance Act 2022 is retrospective in nature.

8.6 The Hon'ble Madhya Pradesh High Court as well in the case of PCIT (Central) vs. Keti Construction Ltd. (2024) 162 taxmann.com 278 (MP) has also reiterated that the amendment brought in section 14A will apply in relation to the A.Y. 2022-23 and subsequent assessment year.

8.7 From the above said discussions and analyzations, it is clear that where the Assessee has not earned any exempt income in the A.Y. 2021-22 and made investment from its own free funds available and/or if the interest free funds available are sufficient or more than the investment then by the aid of amended provisions as brought vide Finance Act 2022, no addition can be made. Hence, question posted by us is answered accordingly and the addition made by the AO as affirmed by the Ld. Addl./Joint Commissioner is deleted accordingly.

9. In the result, the Assessee's appeal is allowed.

Order pronounced in open Court on 23.10.2024.

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.