

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

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.3527/M/2024
Assessment Year: 2015-16**

Income Tax Officer- 11(1)(1), Mumbai Room No. 201, Aayakar Bhawan, M.K. Road, Churchgate, Mumbai - 400020	Vs.	Ms. Saicharan Consultancy Pvt Ltd Office No. 317, Raheja Chamber, 3 rd Floor, Free Press Marg, Nariman Point, Mumbai - 400021 PAN: AAKCS5972N
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Jayeshkumar Jain
Revenue by : Shri Bhangapatil Pushkaraj Ramesh

Date of Hearing : 21.10.2024
Date of Pronouncement : 22.10.2024

ORDER

Per : Prabhash Shankar, Accountant Member:

The present appeal has been filed by the Revenue, which emanates from the appellate order passed by the Ld. CIT(A)/NFAC, Delhi, with regard to the assessment order passed under section 143(3) r.w.s. 144 of the Income Tax Act 1961, (in short 'the Act'). In the only ground of appeal, the Revenue has contended that the Ld. CIT(A)/NFAC erred in holding that no disallowance under section 14A can be made even when no exempt income during the year.

2. Briefly stated the facts of the case are that during the course of assessment proceedings, the Ld. Assessing Officer invoked the provision of sub-section 14A of the Act. The assessee has challenged action of the

AO in making addition u/s 14A amounting to Rs.2,37,12,256/-. In this regard, it has submitted that the disallowance u/s 14A ought not have been made in absence of any exempt income earned by it. The AO on the other hand, relied on the CBDT circular of the file 5/2014 dated 11/02/2014 in making the above disallowance. In the subsequent appeal before the Ld. CIT(A) vide order No. ITBA/ NFAC/S/250/2024-25/1065080716(1) dated 22/05/2024 deleted the said addition by the relying on various judicial decisions.

3. Before us the Ld. Sr. DR relied on the order of the Ld. AO. On the other hand the Ld. Sr. Authorized Representative relied on order passed by this Bench itself in assessee's own case in **ITA No. 3451/Mum/2018** dated 28.08.2019 for the assessment year 2014-15 wherein the tribunal deleted the said addition on similar set of facts. The copy of said order is placed on record. Para 6 of the order on page 3 is reproduced for ready reference :

"6. We have heard the Ld. DR and perused the relevant materials on record. The fact remain that the assessee-company has not earned any exempt income during the year under consideration. We are of the considered view that the legislative intent is more discernable in the judicial decisions. In CIT vs. Chettinad Logistics (P) Ltd. (2017) 80 taxmann.com 221 (Mad), the Hon'ble Madras High Court has held that section 14A cannot be invoked where no exempt income was earned by the assessee in the relevant assessment year. In the case of CIT v. Shivam Motors (P) Ltd. (2015) 55 taxmann.com 262 (All), it has been held that in absence of any tax free income earned by the assessee, disallowance u/s 14A could not be made. In a similar vein, it has been held in Ballarpur Industries Ltd. (supra) that section 14A will not apply if no exempt income is received or receivable during the relevant previous year. Following the above decisions, we confirm the order of the Ld. CIT(A)."

4. It can be observed from the assessment order that the AO has made the disallowance u/s 14A even when there is no exempt income. The

issue whether provisions of section 14A can be invoked in absence of any exempt has reached a finality in view of Hon'ble Supreme Court dismissing SLPs filed by the Department against the orders of Hon'ble Madras High Court and Hon'ble Delhi High Court. Both the SLPs have been dismissed on merits. Hon'ble Madras High Court in the case of **Commissioner Of Income Tax vs M/s. Chettinad Logistics Pvt. Ltd** inter alia held that provision of section 14A is clearly relatable to the earning of actual income and not notional or anticipated income. Hon'ble Delhi Court in the case **Cheminvest Ltd. v/s CIT, [215] 378 ITR 33 (Del.)** has held Section 14A will not apply if no exempt income is received or receivable during the relevant previous year." Again, SLP filed by the Department against the above judgement of Hon'ble Delhi Court was dismissed on merits by Hon'ble Supreme Court in April 2019.

4.1 Thus, in view of the discussions made above and respectfully placing reliance on the case laws cited supra, we hold that no disallowance could be made u/s 14A in absence of any exempt income. Moreover, the facts and circumstances of the case remaining the same as in AY 2014-15, respectfully following the decision of this Bench(supa), we confirm the order of the Ld. CIT(A) deleting the addition made.

5. In the result, the appeal of the Revenue is **dismissed**.

Order pronounced in the open court on 22.10.2024.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Poonam Mirashi,
Stenographer

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.