

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"F" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No. 5262/MUM/2024**

**(Assessment Year : 2018-19)**

**Sapphire Foods India Limited**

7<sup>th</sup> Floor, A Wing, Prism Tower,

Link Road, Mindspace,

Goregaon West,

Mumbai - 400062

PAN: AANCS5595A

..... Appellant

v/s

**DCIT, Circle – 3(3)(1)**

Room No.609, 6<sup>th</sup> Floor,

Aaykar Bhavan, Maharishi Road,

Mumbai- 400020

..... Respondent

Assessee by : Ms. Aarti Sathe / Ms. Aasavari Kadam

Revenue by : Shri Prashant Barate, Sr.DR

Date of Hearing – 11/11/2024

Date of Order - 12/11/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 27/08/2024, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*learned CIT(A)*], for the assessment year 2018-19.

2. In this appeal, the assessee has raised the following grounds: –

*"Being aggrieved by the CIT(A) order u/s. 250 dated 27.08.2024 passed by the learned National Faceless Appeal Centre (NFAC), Delhi, this appeal petition is submitted on the following grounds which it is prayed may be considered without prejudice to one another.*

*1. In the facts and circumstances of the case and in law, the learned CIT(A) erred both in facts and in law in disallowing Rs. 89,68,462/- under the provisions of section 14A of the Income Tax Act, 1961 without considering the fact that, the Company has not earned any exempt income nor incurred any expenditure on making investments during the year.*

*2. In the facts and circumstances of the case and in law, the learned CIT(A) erred both in facts and in law by not considering the fact that the owned funds were more than the borrowed funds for making investments.*

*3. In the facts and circumstances of the case and in law, the learned CIT(A) erred both in facts and in law by applying the amendment to Finance Act, 2022 to section 14A, as the same is not applicable to present A.Y. 2018-19.*

*4. In the facts and circumstances of the case and in law, the learned CIT(A) erred both in facts and in law by confirming the disallowances of payment of employee's contribution to Provident Fund, ESIC and LWF amounting to Rs.1,68,40,791/- which were paid before the due date of filing of Income Tax Return."*

3. Ground no.1, raised in assessee's appeal, is general in nature and therefore needs no separate adjudication.

4. The issue arising in ground no.2, raised in assessee's appeal, pertains to disallowance under section 14A read with Rule 8D of the Income Tax Rules, 1962.

5. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case pertaining to this issue, as emanating from the record, are that the assessee is engaged in the business of Quick Service Restaurants. The assessee is principally engaged in the franchise business of KFC and Pizza Hut Restaurants in India. For the year under consideration, the assessee filed its return of income on 28/03/2019 declaring a loss of INR 45,68,83,426. The return filed by the

assessee was selected for scrutiny and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, inter-alia, it was observed that the assessee has made substantial investments in shares, the income of which is or will be exempt from taxation as per the provisions of the Act. Accordingly, the assessee was asked to show cause as to why the disallowance under section 14A read with Rule 8D be not made in the present case. The Assessing Officer ("AO") vide order dated 30/03/2021 passed under section 143(3) read with section 143(3A) and section 143(3B) of the Act disagreed with the submissions of the assessee and held that the assessee has substantial amount in investment portfolio during the financial year 2017-18 to the tune of INR 9038.91 lakh and more investment of INR 73.51 lakh were made during the year. The AO held that such huge investment decisions are not taken casually in any business and entail research, deliberation, large funds and engagement of personnel at various levels, especially at the managerial level to make such decisions and such decisions assume significance for the business. The AO noted that the assessee has incurred expenditures in the nature of managerial remuneration, brokerage expenses, employee benefits expenses, interest expenses, administrative expenses, general expenses, printing and stationery, postage and courier, etc. Thus, the AO held that the assessee has failed to disallow expenses incurred as required for the purpose of transacting investments, the income of which will be exempt. The AO relied upon the CBDT Circular No. 5 of 2014, which provides that the provisions of section 14A read with Rule 8D shall be applicable for disallowance of

expenditure even where the taxpayer, in a particular year, has not earned any exempt income. Accordingly, the AO computed the disallowance of INR 89,68,462 under section 14A read with Rule 8D. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and upheld the disallowance made by the AO under section 14A read with Rule 8D. The learned CIT(A) further held that the clarificatory amendment brought in section 14A by the Finance Act, 2022 is applicable to the case of the assessee and any expenditure incurred in the previous year which earns exempt income would be disallowed.

6. From the perusal of the annual report of the assessee for the financial year 2017-18, forming part of the paper book from pages 21-68, we find that during the year the total investment declared is INR 9038.91 lakh. We further find that during the year the assessee received no dividend income from its investments and thus claimed no exemption under section 10(34) of the Act while filing its return of income. The aforesaid fact has also not been disputed by the Revenue. We find that the Hon'ble Delhi High Court in *Cheminvest Ltd. v/s CIT*, reported in [2015] 378 ITR 33 (Delhi) held that section 14A will not apply if no exempt income is received or receivable during the relevant previous year. We further find that the Hon'ble Jurisdictional High Court in *Pr.CIT v/s Kohinoor Project (P) Ltd.*, reported in [2020] 121 taxmann.com 177 (Bom.), rendered similar findings and dismissed the Revenue's appeal on a similar issue. Since, in the present case, the assessee has not earned any dividend income, therefore,

respectfully following the aforesaid judicial pronouncements, disallowance of expenditure under section 14A read with Rule 8D is not sustainable.

7. We further find that vide amendment by the Finance Act, 2022, the non-obstante clause and explanation were inserted in section 14A of the Act to the effect that the section shall apply even if no exempt income has accrued or arisen or has been received during the year. We find that while dealing with the issue of whether the aforesaid amendment by the Finance Act, 2022 is prospective or retrospective in operation, Hon'ble Delhi High Court in PCIT vs M/s Era infrastructure (India) Ltd, [2022] 288 Taxman 384 (Delhi) held that the amendment by Finance Act, 2022 in section 14A is prospective and will apply in relation to the assessment year 2022-23 and subsequent assessment years. Thus, even in view of the aforesaid amendment also, the disallowance under section 14A read with Rule 8D is not permissible in the present case.

8. Thus, in view of the above, the disallowance computed under section 14A read with Rule 8D is directed to be deleted. Accordingly, ground no.2 raised in assessee's appeal is allowed.

9. The issue arising in ground no.3, raised in assessee's appeal, pertains to disallowance on account of delayed payment of employees' contribution to Provident Fund (P.F.) and Employees State Insurance Corporation (E.S.I.C) under section 36(1)(va) of the Act. Having considered the submissions of both sides and perused the material available on record, we find that the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. v/s CIT, reported in

[2022] 448 ITR 518 (SC) held that the payment towards employees' contribution to P.F. and E.S.I.C., after the due date prescribed under the relevant statute is not allowable as a deduction under section 36(1)(va) of the Act. The relevant findings of the Hon'ble Supreme Court, in the aforesaid decision, are as follows:—

*"53. The distinction between an employer's contribution which is its primary liability under law in terms of Section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (Section 36(1)(va)) is, thus crucial. The former forms part of the employers' income, and the later retains its character as an income (albeit deemed), by virtue of Section 2(24)(x) – unless the conditions spelt by Explanation to Section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked distinction between the nature and character of the two amounts - the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees' income and held in trust by the employer. This marked distinction has to be borne while interpreting the obligation of every assessee under Section 43B.*

*54. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assessees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non- obstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction."*

10. In the present case, there is no dispute regarding the fact that the employees' contributions to P.F. and E.S.I.C. were deposited after the due date prescribed under the relevant statute. Thus, respectfully following the aforesaid decision of the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. (supra), ground no.3 raised in the assessee's appeal is dismissed.

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

Order pronounced in the open Court on 12/11/2024

**Sd/-**  
**OM PRAKASH KANT**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 12/11/2024**

*Prabhat*

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai