

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

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

**ITA No.3610/M/2024
Assessment Year: 2014-15
&
ITA No.3611/M/2024
Assessment Year: 2017-18**

Satidha Syntex Limited Office No. 406, Tandice – 69, Govind Nagar, Kurla Rd Near Darpan Telephone Exchange Andheri East, Mumbai City, Mumbai - 400059 PAN: AAFCS6656N	Vs.	Income Tax Officer, - 5(3)(2) Aayakar Bhavan, Maharishi Karve Road, Mumbai – 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rakesh Joshi, CA
Revenue by : Shri Bhangapatil P.Ramesh, Sr.DR

Date of Hearing : 24.10.2024
Date of Pronouncement : 30.10.2024

ORDER

Per : Prabhash Shankar, Accountant Member:

The above two appeals have been filed by the assessee, which arise from the appeal orders passed by the Ld. CIT(A)/National Faceless Appeal Centre (NFAC), Delhi, with regard to the assessment order passed under section 143(3) of the Income Tax Act 1961, (in short 'the Act') for the AY 2014-15 and AY 2017-18. Since these appeals pertain to the same assessee and were also heard together, they are being decided vide this composite order of even date for the sake of convenience and brevity.

ITA No.3610/M/2024/Assessment Year: 2014-15

2. The Assessee has raised following grounds of appeal :

"1 On the facts and circumstances of the case as well as in law, the Learned CTT(A) has erred in confirming the action of the Learned Assessing Officer in disallowing the claim of expenses of Rs.12,57,071/- u/s 14A of the Income Tax Act, 1961 by invoking the rule 8D on the alleged plea that the same was incurred for earning an exempt income, without considering the facts and circumstances of the case.

2 On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an addition of Rs. 16,00,664/- u/s 41 of the Income Tax Act, 1961 as alleged cessation of liabilities, without considering the facts and circumstances of the case.

3.The facts in brief are that return of income filed by the appellant for the AY 2014-15 disclosing a loss of Rs.2,88,433/- and subsequently order u/s 143(3) was passed arriving at a gross total income of Rs.25,69,302/-.The additions to total income were on account of disallowance u/s 14A of Rs. 12,57,071/- and Cessation of liability of Rs. 16,00,664/- brought to tax u/s 41(1) of the Act. The AO made the addition u/s 14A by applying the provisions of Rule 8D though the expenditure claimed was negligible. In so far as addition u/s 41(1) is concerned, it was noted that certain liabilities were bring carried forward the accounts unchanged over a period of three years. Since the assessee could not give any reason in the matter and also could not submit respective confirmation, he treated such cessation of liability liable to addition u/s 41(1) of the Act.

4. The learned CIT(A) upheld the disallowance 14A on the ground of amended provisions. Before him, it was submitted that the disallowance u/s 14A r.w. Rule 8D was inappropriate when the appellant had not derived any exempt dividend income out of such investment. The Id.CIT(A) however, dismissed the arguments observing that case laws relied upon by the appellant in favour of the appellant, were no longer applicable, when the legislature through an Explanation to section 14A, inserted by the Finance Act 2022 had expressed its intent to emphasize that disallowance u/s 14A has to be made as per Rule 8D, irrespective of the fact that the income exempt under this Act has not accrued or arisen has not been received during the previous year relevant to an assessment

year. Therefore when the statute has been suitably amended, all the case laws relied upon by the appellant which were pronounced earlier have become redundant and therefore the action on part of the Assessing Officer in making the disallowance u/s 14A of Rs. 12,57,071/- was upheld.

5. 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.

5.1 As regards, invoking of Explanation by the Id.CIT(A), it may be stated that there are plethora of decisions of various high courts and tribunals which have held that the Explanation inserted in Section 14A by the Finance Act 2022 is applicable prospectively i.e. the hon'ble Delhi High Court in the case of **Era Infrastructure (India) Ltd. [2022] 448 ITR 674 and** the High Court of Calcutta in the case of **Avantha Realty and Williamson Ltd. [2024] 164 taxmann.com 376 Financial services Ltd 166 Taxman.com.607(Gauhati)**.The High Courts have held that the Explanation to Section 14A of the Income Tax Act, 1961 is inserted vide Finance Act, 2022. The Ministry of Finance, Union of India, issued a Memorandum Explaining the Provisions in the Finance Bill 2022. It explicitly stipulates that the amendment made to Section 14A will take effect from 1st April 2022 and will apply in relation to the assessment

year 2022-23 and subsequent assessment years. The amendment of section 14A which is "for removal of doubts" cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood. Furthermore, the Supreme Court in **Sedco Forex International Drill. Inc. v. CIT, (2005) 12 SCC 717** has held that a retrospective provision in a tax act that is "for the removal of doubts" cannot be presumed to be retrospective, even where such language is used if it alters or changes the law as it earlier stood. Therefore, the Explanation to Section 14A of the Income Tax Act, 1961, inserted vide Finance Act 2022, is applicable prospectively.

5.2 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 upheld. The AO is directed to delete the addition.

6. In respect of addition of Rs 16,00,664/-u/s 41(1) of the Act, the Id.CIT(A) observed and concurred with the views of the AO holding that the assessee failed to submit any confirmation of the said parties. It was stated that in the matter the appellant had only provided copies of ledger folio of the relevant copies of ledger folio as appearing in the books of appellant that for a limited period and not completely. These balances subsist in the account as opening balance for the past many years and hence exhibit a character of either being suspicious or not being genuine. Even in the appeal proceedings, the appellant was requested to obtain confirmations from the respective six parties who were appearing as creditors for expenses/yarn purchase/ others. However, the appellant had not provided any such corroborative evidence. Therefore, the subsistence of the liability as on 01.04.2013, was not established beyond doubt. Hence, the action on part of the Assessing Officer to undertake this addition u/s 41(1) of Rs. 16,00,664/- was also upheld by the Id.CIT(A).

7. In the course of hearing of the appeal, the Id.Sr.DR relied on orders of lower authorities. On the other hand, the Id.AR argued against

the disallowance. However, he admitted that necessary confirmations from respective parties could not be furnished before the above authorities. On being requested to narrate any development in the matter in the subsequent years, he showed willingness to furnish the relevant evidence to show that the said liabilities were still alive and payments were made later on. Accordingly, the matter is restored to the AO for the limited purpose of obtaining such confirmation by the assessee and decide the matter in the light of any subsequent payment made to such parties, so as to justify the contention that the impugned liabilities were not bogus or non-existent. The assessee is directed to submit the same for adjudication of the matter by the AO. This ground is, therefore, allowed for statistical purposes.

ITA No.3611/M/2024/Assessment Year: 2017-18

8. In the **ground no.1** it is stated that the CIT(A) erred in upholding the addition of Bad debts of Rs 2,19,92,850/- without considering the facts and circumstances of the case. In the course of hearing, the learned AR did not press the ground which therefore, is dismissed.

9. In the **ground no.2**, it is contented that the Id.CIT(A) erred in confirming the disallowance of Bad debts of Rs 2,19,92,850/- **without appreciating that the bad debts were not claimed in the return of income.**

10. The appellant filed the return of income for the AY 2017-18 admitting a loss of Rs.68,32,718/- after claim of bad debt written off of Rs.2,19,92,850/-. Order u/s 143(3) was passed on 18.12.2019 arriving at a taxable income of Rs.1,51,60,130/-on account of disallowance of the claim of bad debt. As per schedule 2.21 Other Expenses, the claim of bad debt was Rs.2,19,92,850/- which is debited to the Profit & Loss Account. The same has been added by the Assessing Officer for want of supporting evidences and compliance to the provisions of section 36(1)(vii).The Id.CIT(A) held that the Assessing Officer was correct in disallowing the

claim of bad debts u/s 36(1) (vii) of Rs. 1,49,48,810/-and thus the addition to such extent is also upheld.

11. In the course of hearing before us, the Id.AR pointed out that the assessee itself had disallowed the entire amount of Rs 2,19,92,850/- being bad debt. He has referred to **Page no.2 of the Paper book** submitted wherein the computation of income clearly reflects that this impugned sum is duly added to the Loss figure of Rs 1,49,67760/.Consequently, the loss as per return is worked out at (-)Rs 68,32,718/-.Further, as per **Page-60 of the P.B.** which is the profit and loss account statement, 'Other expenses' amounted to Rs 2,22,34,650/- and this sum of Rs 2,19,92,850/-is part of the same as per schedule 'Other Expenses' on **page no.65 of the PB.** Thus, it is clearly a case of double addition made by the AO. The Id.Sr.DR conceded this omission on part of the AO. **The addition made is devoid of any basis and is accordingly, deleted.**

12. In the **ground no.3**,it is contented that the Id.AO erred in making the addition of Rs 2,19,92850/- while computing the book profit u/s 115JB on the alleged disallowance of Bad debts without considering the facts and circumstances of the case. In view of our decision in para 11 above, this ground is consequential. Accordingly, addition made is deleted and ground allowed.

13. In the result, the appeals **ITA No.3610/M/2024/Assessment Year: 2017-18 and ITA No.3611/M/2024/Assessment Year: 2017-18** are partly allowed.

Order pronounced in the open court on 30.10.2024.

**Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER**

**Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER**

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.