

आयकर अपीलीय अधिकरण, हैदराबाद पीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**Before Shri Vijay Pal Rao, Vice President**  
**and**  
**Shri Manjunatha G., Accountant Member**

आ.अपी.सं / **ITA No.685/Hyd/2024**  
(निर्धारण वर्ष / Assessment Year: 2014-15)

SBPL Infrastructure Limited Hyderabad [PAN : AACCS9014M]	Vs.	Deputy Commissioner of Income Tax Circle-3(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Sashank Dundu, AR	
राजस्व द्वारा / Revenue by:	Shri M.Vijay Kumar, CIT-DR	
सुनवाई की तारीख / Date of hearing:	04/12/2024	
घोषणा की तारीख / Date of Pronouncement:	16/12/2024	

आदेश / ORDER

**PER. MANJUNATHA G., A.M:**

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals) [Learned CIT(A)], National Faceless Appeal Centre (NFAC), Delhi dated 13.02.2024 and pertains to A.Y.2014-15.

2. This appeal filed by the Assessee is time barred by 94 days. The assessee filed a petition for condonation of delay and submitted that Shri Manoj Sharma, Chief Financial Officer of the appellant company, who was entrusted with the job of looking

after day to day issues concerning the income-tax matters, including filing of appeals before the Appellate Forums, suffered on account of high blood sugar, high cholesterol level, severe back pain and other exigencies and was diagnosed with Intervertebral Disc Prolapse. The assessee filed a medical certificate in support thereof. As soon as he recovered, he immediately ensured preparation and filing of appeal before the Tribunal. The assessee submitted that the delay in filing the appeal with 94 days is due to the reasons, which are beyond the control of the assessee and not intentional. The assessee, therefore, pleaded to condone the delay and admit the appeal for hearing.

3. We have gone through the condonation petition filed by the assessee. In this case, the order of the Ld.CIT(A) was passed and served on the assessee on 14.02.2024 and the assessee ought to have filed appeal before the Tribunal on or before 14.04.2024 but the assessee could file appeal before the Tribunal on 17.07.2024 with the delay of 94 days. We find that there is a reasonable cause for the assessee to file the appeal belatedly, therefore, we condone the delay and admit the appeal for hearing in the interest of justice.

4. The assessee has raised the following grounds of appeal :

1. *The ld. CIT(A) / NFAC erred in confirming the addition without appreciation of facts and law.*

2. *The NFAC erred in upholding the order passed by the AO even though the AO rejected the claim of the Appellant with respect to the profit being ₹3,87,28,089/- instead of ₹5,53,81,904/- without providing an opportunity of being heard and without giving any explanation in the final Assessment Order w.r.t. why the profit declared by the*

*appellant was being rejected/not considered, which is in gross violation of principles of Natural Justice.*

3. *The NFAC erred in upholding the order passed by the AO since the profit considered by the AO for the purpose of calculating Assessed Income was the Profit before extraordinary item(property tax) in the P&L account amounting to ₹5,53,81,904/- instead of considering the profit after extraordinary item(property tax) appearing in the P&L a/c to the tune of ₹3,87,28,089/-.*

4. *The NFAC ought to have appreciated that the amount of extraordinary item is nothing but property tax which was quantified by GHMC, Hyderabad, which was challenged before the Honourable High Court and now the matter is pending before GHMC to re-assess as per the High Court order and hence such amount could not have been claimed as expenditure in the earlier years or subsequent years due to which the said amount is eligible for deduction from the profit of the company for the purpose of computing taxable income.*

5. *The NFAC erred in not properly adjudicating ground no. 2 raised in Form 35 wherein the Appellate order is silent about why the profit inclusive of extraordinary item was considered for the purpose of computing Assessed Income instead of the profit excluding extraordinary items as available in the P&L account thereby not providing a fair opportunity of being heard and violating the principles of Natural Justice.*

6. *The NFAC erred in confirming the disallowance made by the AO u/s 14A of the Income-tax Act to the tune of Rs. 2,30,96,970/- without appreciating the fact that there was no exemption claimed by the appellant for the Dividend income i.e. Rs. 41,40,035/- which has been declared in the return of income and tax has been paid thereby resulting in double taxation.*

7. *The Tax Authorities ought to have appreciated the provisions of Sec. 14A of the Act refers to disallowance of expenditure which was otherwise claimed as exempt and, per contra, when there is no claim of allowance/claim of*

*exemption, there is no question of disallowance and thus the conclusions reached by the Tax Authorities amounts to double disallowance.*

*8. Alternatively, the NFAC erred in confirming the disallowance made by the AO u/s 14A of the Income-tax Act to the tune of Rs. 2,30,96,970/- without appreciating the fact that the total Dividend income was only Rs. 41,40,035/- and the maximum disallowance could not have been more than the dividend income earned.*

*9. The NFAC erred in upholding the order passed by the AO wherein an amount of Rs. 2,30,96,970/- is disallowed invoking the provisions of section 14A even though the appellant had demonstrated that the entire investment was made out of surplus funds and no interest bearing funds were utilised.*

*10. The lower authorities erred in invoking the provisions of section 234A,B & C.*

*11. For these and other grounds that may be urged at the time of hearing, appellant prays that the Hon'ble Tribunal may be pleased to delete the arbitrary additions made and upheld by the lower authorities.*

5. The brief facts of the case are that the assessee company, engaged in the business of construction, e-filed its return of income for the A.Y.2014-15 on 27.09.2014, admitting total income of Rs.1,00,26,320/-. The case was selected for scrutiny and the assessment has been completed u/s 143(3) of the Income tax Act, 1961 ("the Act") on 06.12.2016 and determined total income at Rs.7,85,92,884, by making various additions, including disallowance u/s 14A of the Act for Rs.2,30,96,970/- and disallowance of donations and TDS on interest etc.

6. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A) and challenged the additions made by the Assessing Officer towards disallowance u/s 14A of the Act. The assessee had also challenged the computation of total income by the Assessing Officer by adopting net profit as per Profit & Loss Account for Rs.5,53,81,904/- as against net profit as per Profit & Loss Account considered by the assessee at Rs.3,87,28,089/-. The Ld.CIT(A), after considering relevant submissions of the assessee, sustained the additions made by the Assessing Officer towards disallowance u/s 14A and also upheld the computation of total income and tax liability by adopting net profit at Rs.5,53,81,904/-, instead of Rs.3,87,28,089/-.

7. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before the Tribunal.

8. The first issue that came up for consideration from ground No.2 and 5 of the assessee's appeal is computation of total income and consequent tax liability by adopting net profit as per Profit & Loss account at Rs.5,53,81,904/-, as against the net profit as considered by the assessee at Rs.3,87,23,089/-. The learned Counsel for the assessee, referring to financial statement of the appellant submitted that the assessee has taken net profit as per Profit & Loss account at Rs.3,87,23,089/- as per Sl.7 of Profit & Loss account for the year under consideration, which is after exceptional items, whereas, the Assessing Officer has considered net profit as per Profit & Loss account as per Sl.5, which is before exceptional

items, without any discussion as to how the net profit figure considered by the assessee is incorrect. The learned Counsel for the assessee, further referring to net profit as per Profit & Loss account considered by the assessee and adopted by the Assessing Officer, submitted that the appellant had claimed deduction towards exceptional items, being expenditure incurred for the purpose of business, which is crystalized during the financial year, whereas, the Assessing Officer has taken net profit as per Sl.No.7, even though the deduction claimed towards exceptional items is allowable as deduction. Therefore, he submitted that the Assessing Officer is completely erred in taking different figures, without any discussion in the assessment order and thus submitted that, the net profit as is considered by the assessee should be adopted for the purpose of computation of tax liability. Also, this issue has been raised before the CIT(A), but the Ld.CIT(A) has not considered the issue. Therefore, he submitted that a suitable direction may be given to the Assessing Officer to compute tax liability by adopting correct net profit as per Profit & Loss account.

9. The Ld.DR on the other hand, supporting the order of the Ld.CIT(A), submitted that for the purpose of computation of tax liability, net profit as per Profit & Loss account before taxes is to be adopted, however, the appellant has considered net profit after allowing deduction towards exceptional items, without explaining the nature of deduction claimed in the books of accounts. Therefore, the Assessing Officer rightly considered the net profit as per Profit & Loss account, without allowing

deduction towards exceptional items and the same needs to be upheld.

10. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. We have also carefully considered relevant financial statements filed by the assessee. There is no dispute with regard to the fact that as per Profit & Loss account for the year ending 31.03.2014, net profit before extraordinary and exceptional items was taken at Rs.5,53,81,904/-. Thereafter, the appellant has claimed deduction towards exceptional items for Rs.1,66,53,815/- and the nature of said expenditure has not been explained in the financial statements. The Assessing Officer has adopted net profit before exceptional and extraordinary items as per Sl.5. However, he has not given any reasons as to how net profit before tax considered by the assessee is incorrect. On the other hand, the appellant has not given any reason for allowing deduction towards exceptional items. No doubt, in ordinary course, deduction is not allowable towards exceptional and extraordinary items, unless the assessee proves with relevant evidences that said expenditure is deductible for the relevant assessment year. The Assessing Officer has also not given any reason for not considering net profit adopted by the assessee. Since, there is no clarity in the assessment order for adopting net profit as per Profit & Loss account at Sl.5, which is different from the net profit adopted by the assessee at Sl.7, in our considered view, the issue needs to go back to the file of the Assessing Officer for further verification. Thus, we set aside the order of the Ld.CIT(A) and restore the issue to the file of the

Assessing Officer to verify the facts, with regard to deduction claimed towards exceptional items at Rs.1,66,53,815/-. The Assessing Officer is directed to verify the claim of the assessee in light of any evidences that may be filed by the assessee to justify its claim and decide the issue in accordance with law.

11. The next issue that came up for consideration from Ground No.6 to 9 of assessee's appeal is disallowance u/s 14A of the Act. The Assessing Officer has disallowed a sum of Rs.2,30,96,970/- u/s 14A of the Act, by invoking Rule 8D of Income Tax Rules, 1962. The Assessing Officer disallowed Rs.1,76,20,650/- under Rule 8D(2)(ii) towards interest expenditure. Further, the Assessing Officer disallowed sum of Rs.54,76,320/- under Rule 8D(2)(iii). It was the argument of the assessee that the appellant has received exempt income being dividend from shares and securities of Rs.41,40,035/-, however, not claimed exemption u/s 10(34) of the Act. Once exemption is not claimed towards dividend income, then the question of disallowance of expenditure relatable to exempt income does not arise. Therefore, he submitted that the disallowance made by the AO and confirmed by the Ld.CIT(A) should be deleted.

12. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the appellant has received dividend income of Rs.41,40,035/- and the same has been offered to tax as income from other sources, without claiming any exemption u/s 10(34) of the Act. It is also an admitted fact that the Assessing Officer had disallowed

expenditure u/s 14A r.w.r.8D of Income Tax Rules, 1962 and disallowed interest expenditure of Rs.1,76,20,650/- and other expenditure of Rs.54,76,320/-. It is the argument of the Counsel for the assessee that when there is no exempt income or when the assessee has not claimed any deduction towards exempt income u/s 10(34) of the Act, then the question of disallowance of expenditure relatable to exempt income u/s 14A r.w.r.8D of Income Tax Rules, 1962 does not arise.

13. We do not find any merits in the arguments of the assessee for simple reason that expenditure relatable to exempt income needs to be disallowed, in case, the assessee earned any exempt income which is exempt under the provisions of law. Merely for the reason that the assessee has offered to tax the exempt income, it cannot be said that the provisions of section 14A r.w.r.8D of Income Tax Rules do not apply. Therefore, on this count, the argument of the assessee has been rejected. Be that as it may, but the fact remains, assuming for a moment that the assessee has offered the dividend to tax under the head 'income from other sources', but the same can be considered as suo moto disallowance of expenditure relatable to exempt income by the assessee. Because as per the said principle of law, by the decision of various courts including the decision of *Hon'ble Supreme Court in the case of CIT (Central)-1 Vs. Chettinad Logistics (P.) Ltd. [2018] 95 taxmann.com 250 (SC)*, when no exempt income is earned, no disallowance under section 14A r.w.r.8D of Income Tax Rules, 1962 can be made. However, the fact remains that the arguments of the assessee that the Assessing Officer has disallowed interest

expenditure u/s 14A r.w.r.8D (ii) even though the assessee has sufficient funds and share capital and reserve, which is sufficient to explain investment made in shares and securities. No doubt, if the assessee is able to explain sources for investments in shares and securities out of own funds and or mixed funds, then, the presumption goes in favour of the assessee, that investments made in shares and securities is out of own funds and this legal principle is supported by the decision of Hon'ble Bombay High Court in the case of *Reliance Utilities and Power Ltd.* 313 ITR 340. But, the fact remains that the assessee was not able to file relevant evidences including cash flow statement to prove the availability of own funds to explain the sources for investment in shares and securities. Therefore, we are of the considered view, to verify the facts with regard to the claim of the assessee and the source for investment in shares and securities, the matter needs to go back to the file of the AO. Thus, we set aside the order of the Ld.CIT(A) and restore the issue to the file of the Assessing Officer for fresh verification. The Assessing Officer is directed to verify in light of the arguments of the assessee, that it has sufficient own funds to explain the investment made in shares and securities, which yield exempt income. In case, the Assessing Officer finds that the assessee is able to explain the source for investment in shares and securities, out of own funds, then the Assessing Officer is directed to delete the additions made towards disallowance of interest expenditure under Rule 8D(2)(ii) of Income Tax Rules, 1962. In other words, total disallowance computed by the Assessing Officer u/s 14A r.w.s.8D of Income Tax Rules cannot exceed exempt income.

Since the appellant earned dividend income of Rs.41,40,035/-, the Assessing Officer is directed to compute disallowance u/s 14A r.w.r.8D of Income Tax Rule, 1962 and restrict such disallowance to the extent of exempt income only.

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

Order pronounced in the Open Court on 16<sup>th</sup> December, 2024.

Sd/- <b>(VIJAY PAL RAO)</b> <b>VICE PRESIDENT</b>	Sd/- <b>(MANJUNATHA G.)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad,  
dated 16<sup>th</sup> December, 2024  
**L.Rama, SPS**

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1	M/s SBPL Infrastructure Limited, Plot No.48-2-672, GS Plaza, Road No.1, Banjara Hills, Hyderabad
2	The Deputy Commissioner of Income Tax, Circle-3(1), Hyderabad
3	The Pr. CIT, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

*By Order*