आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

ITA No.195/Ind/2024
Assessment Year:2013-14

ACIT-1(1), Indore	**बनाम/** Vs.	M/s Flexituff Ventures International Limited, C-41-50, SEZ, Sector-3, Pithampur, Dhar
(Revenue/Appellant)		(Assessee/Respondent)
PAN: AAACN5986H		
Assessee by	Shri Manjeet Sachdeva AR	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of Hearing	08.01.2025	
Date of Pronouncement	30.01.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 30.01.2024 passed by learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 29.03.2016 passed by learned DCIT-1(1), Indore ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2013-14, the revenue has filed this appeal.

2. The background facts leading to present appeal are such that the assessee-company filed return of AY 2013-14 declaring a total income of Rs. Nil after claiming benefit of deduction u/s 10A and set off of losses. The case was selected under scrutiny and the AO framed assessment u/s 143(3) wherein the AO increased total income due to certain adjustments. Aggrieved, the assessee carried matter in first-appeal and succeeded. Now, the revenue has come in next appeal before us assailing the order of first-appeal passed by CIT(A).

3. The revenue has raised following grounds:

> *"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law in deleting the Addition of Rs. 51,09,148/- on account of disallowance made under section 14A made by AO without appreciating the facts and evidences mentioned in the assessment order by the AO.*
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> *2 Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law in allowing amount of Rs. 10,61,10,839/- in the form of carry forward loss without appreciating the facts and evidences mentioned in the assessment order by the AO."*

4. **Ground No. 1** relates to the disallowance of Rs. 51,09,148/- made by AO u/s 14A which is deleted by CIT(A). The AO has made impugned disallowance by making a working in terms of Rule 8D(2)(ii)/(iii) for the reason that the assessee made investment in shares of various companies yielding tax-exempt dividend income. The undisputed position is such that there was no dividend received by assessee from those companies during the year and as such the tax-exempt income was Nil. Before AO, the assessee made several arguments to contend that the disallowance of section 14A was not attracted including the pleas (i) that the impugned shares had to be

acquired by assessee in controlled subsidiary companies as part of "strategic investment", and (ii) that the provision of section 14A itself could not be applied when the tax-exempt income was absent. However, the AO turned down assessee's all submissions, invoked section 14A and made disallowance. During first-appeal, the CIT(A) accepted assessee's plea of "strategic investment" and accordingly deleted the disallowance.

5. We have heard learned representatives of both sides qua this issue and carefully examined the orders of lower-authorities. At first, we find that the CIT(A) is not correct in deleting the disallowance on the footing of "strategic investment" because the Hon'ble Supreme Court has already rejected such claim in ***Maxopp Investment Ltd. v. Commissioner of Income Tax (2018) 402 ITR 640 (SC)***, relevant para of the decision is re-produced below:

> "34) Having clarified the aforesaid position, the first and foremost issue that falls for consideration is as to whether the dominant purpose test, which is pressed into service by the assessees would apply while interpreting Section 14A of the Act or we have to go by the theory of apportionment. We are of the opinion that the dominant purpose for which the investment into shares is made by an assessee may not be relevant. No doubt, the assessee like Maxopp Investment Limited may have made the investment in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind Section14A of the Act in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in Section 14A of the Act… "

6. However, we also find that the AO is also not correct in making the impugned disallowance u/s 14A even when the assessee was not having any tax-exempt income during the year. This is so because the following Explanation inserted in section 14A through Finance Act, 2022, which prescribes making of disallowance even when no income is actually earned during the year, has been held to be prospectively applicable from AY 2022-23 by Hon'ble Delhi High Court in ***PCIT(Central)-2 Vs. M/s Era Infrastructure (India) Ltd., ITA No. 204/2022 & CM Appl. 31445/2022 dated 20.07.2022***:

> *"Explanation.—For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income."*

7. Therefore, respectfully following the decision of Hon'ble Delhi High Court, when the tax-exempt income was Nil during the year, the AO was not justified in making disallowance u/s 14A in AY 2013-14 as involved in present appeal. Accordingly, we hold that the disallowance made by AO is not sustainable. **The ground No. 1 raised by revenue is therefore dismissed.**

8. **Ground No. 2** relates to the denial of carry forward of loss to the assessee by AO but allowed by CIT(A). Basically, the controversy between assessee and revenue was qua the sequence of giving (i) deduction u/s 10A

and (ii) set off/carry forward of losses. While the assessee claimed that firstly the deduction u/s 10A shall be allowed and thereafter set off/carry forward of losses shall be determined. The AO was having just opposite view. The CIT(A) has passed following order accepting assessee's claim:

> ***"****5. Ground No 3 is raised against the disallowance of exemption u/s 10A of Rs. 10,61,10,839. The appellant company has shown gross total income of Rs. 13,05,22,031 from all the units. The assessee had claimed exemption of Rs.7,27,84,463 u/s 10A for unit located in SEZ. From remaining income of Rs.5,77,37,568, the assessee company set off brought forward unabsorbed depreciation/loss of Rs. 17,69,38,636 and claimed losses of Rs. 11,92,01,068 carried forward to the next year. The appellant company had claimed exemption u/s 10A before setting off losses of earlier years which according to AO was not correct as per law. Assessing officer relied on CBDT Circular No. 07/2013 wherein it has been clarified that losses if any, are required to be set-off against the profits of a STP/EOU/SEZ unit ('eligible unit'), before the deduction u/s 10A/10B of the IT Act, 1961 is allowed. It was further noticed that the assessee company has claimed exemption before setting off loss of earlier years i.e. AY 2009-10 to AY 2012-13 and also in subject year. The assessment for the AY 2009-10 and AY 2010-11 has been completed u/s 148 and the claim of assessee for 10A has been allowed after setting of brought forward losses. The assessment year 2011-12 was also set-aside by the Pr. CIT-I, Indore u/s 263 on the issue that the assessee has claimed exemption before set-off of losses from gross income and thereafter the losses was set off from remaining income.*
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> *6. Adjudication of ground no 3; In the case of* ***Yokogawa India Ltd (2017) 391 ITR 274 (SC)****, the supreme court has held that exemption u/s 10A of the Act should be allowed to the assessee independently prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving on the total income of the assessee from the gross total income. Hon'ble Court further held that though Section 10A of the Act as amended is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under chapter IV of the act and not at the stage of computation of the total income under Chapter VI. During appeal proceedings the appellant submitted the decision of* ***ITAT Indore bench in the appellant's own case (ITA No 282/Ind/2017 dated 14.05.2019) for assessment year 2012-13*** *wherein following the above decision of Supreme Court the tribunal has held that from perusal of the above judgments it is well established that in the instant case the assessee made correct claim by firstly taking the benefit of Section 10A of the Act for the profits earned from SEZ units and remaining profits of other units including SEZ unit were utilized for set off of current and brought forward losses. Respectfully following above judgements, it is held that disallowance of*

exemption u/s 10A is unwarranted in this case. As a result, ground no 3 is allowed."

9. Thus, the CIT(A) has passed order having regard to the interpretation taken by Hon'ble Supreme Court in ***Yokogawa India Ltd (2017) 391 ITR 274 (SC)*** as well as ITAT, Indore in assessee's own case for earlier year. Ld. DR for revenue could not point out any infirmity in the order of CIT(A). Therefore, the order passed by CIT(A) qua this issue is upheld. **Consequently, Ground No. 2 of revenue is also dismissed.**

10. Resultantly, this appeal is dismissed.

Order pronounced by putting on notice board as per Rule 34 of ITAT Rules, 1963 on 30/01/2025

Sd/- sd/-

(DINESH MOHAN SINHA) (B.M. BIYANI)
JUDICIAL MEMBER ACCOUNTANT MEMBER

Indore
दिनांक /Dated : 30/01/2025
Patel/Sr. PS

Copies to:
(1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore