

आयकर अपीलिय न्यायाधिकरण में, हैदराबाद 'बी' बेंच, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री मधुसूदन सावडिया, माननीय लेखा सदस्य
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.27/Hyd/2025
(निर्धारण वर्ष/ Assessment Year:2017-18)

Income Tax Officer, Ward – 16(1), Hyderabad.		NSL Nagapatnam Power Ventures Private Limited, Hyderabad. PAN : AADCP9603L
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri A.V. Raghuram, Advocate.
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr.Sachin Kumar, Sr.DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	17.04.2025
घोषणा की तारीख/Date of Pronouncement	:	23.04.2025

ORDER

प्रति रवीश सूद, जे.एम./PER RAVISH SOOD, J.M.

The present appeal filed by the Revenue is directed against the order passed by the Addl/JCIT(A)-8, Delhi dated 21.11.2024, which in turn arises from the order passed by the Assessing

Officer (for short "A.O.") u/s 143(3) of the Income Tax Act, 1961 (for short "the Act") dated 12.12.2019 for A.Y. 2017-18. The Revenue has assailed the impugned order on the following grounds of appeal before us :

- “1. The learned CIT(A) erred both in law and facts of the case.
2. The learned CIT(A) erred in deleting the addition of Rs.3.60 Cr made by the AO u/s 14A when the AO can make disallowance based on facts and which is permissible as per CBDT Circular No.05/2014 dt. 11.02.2014.
3. The learned CIT(A) ought to have sensed there is an income in the nature of dividend earned from strategic investments made in the subsidiary companies.”

2. Succinctly stated, the assessee company had filed its return of income for A.Y. 2017-18 on 27.10.2017 declaring a loss of Rs.1,28,69,984/-. Subsequently, the case of the assessee company was selected for scrutiny assessment through CASS and a notice u/s 143(2) of the Act was issued by the A.O.

3. During the course of assessment proceedings, it was observed by the A.O. that the assessee company during the subject year had invested Rs.369,69,63,500/- towards equity of 3 different companies. On a perusal of the Profit and Loss account, the A.O. observed that the assessee company had claimed a deduction of interest payment along with certain other expenses. As the

assessee company had not attributed and therein disallowed any part of the expenditure towards earning of the exempt income on its aforesaid investment in equity shares; therefore, the A.O. called upon it to put forth an explanation as to why the disallowance u/s 14A of the Act may not be worked out in its case. In reply, the assessee company claimed that no disallowance u/s 14A was called for in its case for two-fold reasons, viz., (i) that the investment in the equity shares of its subsidiary companies which were engaged in the business of power generation was made as a part of its business development and furtherance of its objects; and (ii) that as the assessee company had during the subject year not derived any exempt income from its aforesaid exempt income yielding investments, therefore, no disallowance was called for u/s 14A of the Act. However, the aforesaid explanation of the assessee company did not find favour with the A.O. The A.O. drawing support from the CBDT Circular No.5 of 2014 dated 11.02.2014, held a conviction that for invoking disallowance u/s 14A of the Act, it was not material that the assessee should have earned any exempt income during the subject year. Accordingly, the A.O. backed by his aforesaid deliberations worked out the disallowance u/s 14A read with Rule 8D(ii) of the Income Tax Rules, 1962 at an

amount of Rs.3,60,86,885/-. Resultantly, the A.O. after making the aforesaid disallowance u/s 14A of the Act, determined the income of the assessee company vide his order passed u/s 143(3) dated 12.12.2019 at Rs.2,32,16,901/-

4. Aggrieved, the assessee company carried the matter in appeal before the CIT(A). The CIT(A) finding favour with the claim of the assessee company that as it had not earned any exempt income during the subject year, therefore, no disallowance u/s 14A was called for in its case, vacated the disallowance of Rs.3.60 crores (approx.) made by the A.O. u/s 14A read with Rule 8D. For the sake of clarity, the observations of the CIT(A) are culled out as under :

8.3 The one and only issue involved in this case is disallowance of Rs 3,60,86,885/- made by the AO u/s 14A of the Act read with Rule 8D of the Income Tax Rules, 1962. As per AO's examination, the appellant made an investment of Rs 3,69,69,63,500/- as equity in three different companies. The AO's contention is that since there was certain amount debited towards interest payment in Profit & Loss Account and also as the investment on equity results in accrual of exempted income, i.e. dividend, the expenditure relating to this investment cannot be allowed

as expenditure to the company. Quoting the provisions u/s 14A r.w.s. 8D, introduced by the Finance Act, 2001 with retrospective effect from 01.04 1962. The purpose of introduction of sec 14A was clarified vide Circular No. 14 of 2001 as under-

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Certain incomes are not includible while computing the total income as these are exempt under various provisions of the Act There have been cases where deductions have been claimed in respect of such exempt income. This in effect means that the tax incentive given by way of exemptions to certain categories of income is being used to reduce also the tax payable on the non-exempt income by debiting the expenses incurred to earn the exempt income against taxable income. This is against the basic principles of taxation whereby only the net income, i.e. gross income minus the expenditure, is taxed. On the same analogy, the exemption is also in respect of the net income. Expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income.

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Thus, legislative intent is to allow only that expenditure which is relatable to earning of income and it therefore follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance, respective of the fact whether any such income has been earned during the financial year or not.

The above position is further clarified by the usage of term 'includible' in the Heading to sec 14A of the Act and also the heading to Rule 8D of the Income Tax Rules, 1962 which indicates that it is not necessary that exempt income should necessarily be included in a particular year's income for disallowance to be triggered. Also, sec 14A of the Act does not use the word "income of the year but income under the Act. This also indicates that for invoking disallowance u/s 14A is not material that assessee should have earned such exempt income during the financial year under consideration.

The above position is further substantiated by the language used in Rule 8D(2)(ii) and 8D(2)(iii) of I.T. Rules which are extracted as under:

(ii) In a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt an amount computed in accordance with the following formula, namely...

B = the average of value of investment income from which does not or shall not form part of the total income as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year

....

(iii) an amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day of and the last day of the previous year"

6. Thus, in light of above, Central Board of Direct Taxes in exercise of its powers under section 119 of the Act here by clarifies that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.

8.4. Based on the above and also in support of case law of PradeepKarVs ACIT (2000) 319 ITR 416 (Kar), wherein it was held that as Dividend Income is not taxable and exempted from tax, the expenditure related to such exempted income is also not allowable u/s 14A, and the expenditure cannot be claimed as Income from Other Sources, the AO being satisfied that the facts of the case attract sec 14A r.w.s. Rule 8D(iii) of the Act, worked out the quantum of disallowance 15% of Annual average value of investments which does not form part of income, and arrived at Rs3,60,86,885/- and added to the total income of appellant-company.

8.5 As per the contention of the AR on the said issue, since the appellant company has significant interest in the business of its subsidiary companies/Associate Companies and utilized the funds for furthering its business connections either by investment in shares or advances to subsidiary/associate companies under the same management and who were engaged in similar nature of business, i.e. power generation. These investments/advances were made as part of the corporate/business

strategy of the appellant company to expand the business operations. Moreover, the appellant has not derived any exempt income from investments made in subsidiary/associate companies, hence no question of disallowance u/s 14A of the Act. The AR has relied upon the following case laws-

(i) Decision of the Hon'ble ITAT, Hyderabad in the case of Prathista Industries Limited vs DCIT wherein it was held that where there is no exempted Income, there is no disallowance of interest under section 14A.

(ii) Decision of the Hon'ble High Court of Madras in the case of M/s Redington (India) Limited vs The Addl. Commissioner of Income Tax, Company Range-V, vide TCA 520 of 2016 where it was held that the provisions of Section 14Ar.w.r. 8D cannot be made applicable in a vacuum.

(iii) Decision of the Hon'ble High Court of Delhi in M/s Cheminvest Limited Vs. CIT in ITA No. 749/2014 wherein the "does not form part of the total income" u/s 14A of the Act envisages that there should be an actual receipt of income, which is not includible in the total income during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income i.e. Sec 14A will not apply if no exempt income is received or receivable during the relevant previous year.

(iv) Decision of the Hon'ble High Court of Delhi in Pr.CIT VS. IL&FS Energy Development Company Ltd in ITA No.520/2017, the revenue appeal was dismissed in the light of the CBDT's Circular dated 11 May, 2014, dismissed the revenue appeal.

8.6 I have carefully examined the assessment order, submissions of the AR and the provisions of sec 14A r.w.r8D and CBDT Circular in No 5/2014 in F. No.225/182/2013-ITA.II dated 11.02.2014 in detail. Keeping in view of the above provisions, and respectfully following the above decisions, I am of the considered view, the said allowance made by the AO u/s 14A read with Rule 8D is not justified and hence, directed to be deleted. As a result, the grounds raised in this regard are allowed.

9. In the result, appeal of the appellant is allowed.

5. The Revenue, being aggrieved with the order of CIT(A) has carried out the matter in appeal before us.

6. We have heard the learned Authorized Representatives of both parties, perused the orders of lower authorities and the material available on record as well as considered the judicial pronouncements that have been pressed into service by the learned authorized representatives of both the parties to drive home their respective contentions.

7. Shri A.V. Raghuram, Advocate, the learned Authorized Representative (for short the "Ld. AR") for the assessee company, at the threshold of hearing of the appeal, submitted that as the assessee company during the subject year had not earned any exempt income, therefore, as per the pre-amended Section 14A of the Act no disallowance u/s 14A of the Act was called for in its case. The Ld. AR to buttress his aforesaid claim, has relied upon the decision of **Hon'ble Apex Court** in the case of **CIT Vs. Chettinad Logistics (P) Ltd (2018) 95 Taxmann.com 250 (SC)**. It was the ld. AR's claim that as the assessee company had admittedly not received any exempt income during the subject

year, therefore, no infirmity arises from the order of CIT(A), who by drawing support from a host of judicial pronouncements had rightly observed that in absence of any exempt income no disallowance u/s 14A of the Act was called for in its case.

8. Per contra, Dr. Sachin Kumar, the learned Departmental Representative (for short 'ld. DR") relied on the orders of the lower authorities.

9. We have given our thoughtful consideration to the aforesaid issue, and find substance in the claim of the Ld. AR. As stated by the Ld. AR, and rightly so, as per the pre-amended Section 14A of the Act i.e., as was available on the statute prior to its amendment vide the Finance Act, 2022 w.e.f 01.04.2022, in the absence of any exempt income no disallowance u/s.14A of the Act could have been made in the hands of the assessee company. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Madras** in the case of **Commissioner of Income Tax Vs. Chettinad Logistics Pvt. Ltd. (2017) 248 TAXMAN 55 (Mad.)**. The Special Leave Petition (SLP) (Civil) No.16194 of 2018 filed by the department before the Hon'ble Apex Court against the aforesaid order of the Hon'ble High Court of Madras in the case of

Chettinad Logistics Pvt. Ltd. (supra), had thereafter been dismissed by the **Hon'ble Apex Court** in **CIT Vs. Chettinad Logistics (P) Ltd. (2018) 95 taxmann.com 250 (SC)**. Rather, we find that even the review petition filed by the revenue had also been dismissed by the **Hon'ble Apex Court** vide its order passed in **Commissioner of Income Tax (Central) Vs. M/s. Chettinad Logistics Pvt. Ltd. (2019) 105 CCH 226 (SC)**. Also, we find that the Hon'ble Apex Court had taken same view in the case of **Principal Commissioner of Income Tax Vs. Oil Industry Development Board (2019) 262 Taxman 102 (SC)**, wherein the order of the Hon'ble High Court of Delhi in the case of Principal Commissioner of Income Tax Vs. Oil Industries Development Board (2018) 101 CCH 452 (Del. HC) was approved.

10. Considering the fact that the issue involved in the present appeal is no more *res-integra* pursuant to the aforesaid judgments of the Hon'ble Supreme Court, the claim of the Ld. AR that the CIT(A) had rightly observed that no disallowance u/s.14A of the Act in the absence of any exempt income could have been made in the case of the assessee company, merits acceptance.

11. Before parting, we may herein observe, that though the legislature vide its amendment made available on the statute by the Finance Act, 2022 had inserted an “Explanation” to Section 14A of the Act, as per which, notwithstanding anything to the contrary contained in the Act, the provisions of Section 14A shall apply in a case where the income, not forming part of the total income under the Act, has not accrued or arisen or has not been received during the subject year and the expenditure has been incurred during the said previous year in relation to such exempt income, but the same is effective from April 1, 2022 and cannot be presumed to have retrospective effect. Our aforesaid view is fortified by the judgment of **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Era Infrastructure (India) Ltd. (2022) 114 CCH 219 (Delhi)** and the **Hon'ble High Court of Madhya Pradesh** in **Pr. CIT Vs. Keti Constructions (2024) 162 taxmann.com278 (MP)**, wherein the Hon'ble High Courts have held that the amendment made available on the statute vide the Finance Act, 2022 in Section 14A is effective from 01.04.2022 and cannot be permitted with retrospective effect. Accordingly, we are of the view that as the assessee company before us, had during the subject

year i.e. A.Y. 2017-18 not received any exempt income, therefore, no infirmity arises from the view taken by the CIT(A), wherein the disallowance made by the A.O. u/s 14A of the Act had rightly been vacated by him.

12. In the result, the appeal filed by the Revenue being devoid of any substance is dismissed.

Order pronounced in the Open Court on 23rd April, 2025.

Sd/- (श्री मधुसूदन सावडिया) (MADHUSUDAN SAWDIA) लेखा सदस्य/ACCOUNTANT MEMBER	Sd/- (श्री रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER
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Hyderabad, dated 23.04.2025.

**TYNM/sps*

आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/The Assessee	:	NSL Nagapatnam Power Ventures Private Limited, 8-2-684/2/A, 4 th Floor, NSL Icon Road No.12, Khairatabad, Banjara Hills, S.O., Hyderabad – 500034, Telangana.
2.	राजस्व/ The Revenue	:	The Income Tax Officer, Ward – 16(1), Hyderabad.
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Hyderabad