

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” Bench, Mumbai
Before S/Shri B.R. Baskaran (AM) & Ramlal Negi (JM)

I.T.A. No. 6265/Mum/2014
(Assessment Year 2010-11)

DCIT 10(1) 453, Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Apex Realty Pvt.Ltd. Dheeraj Arma 6 th Floor, A.K. Marg Station Road, Bandra (E) Mumbai-400 051.
(Appellant)		(Respondent)

PAN No. AAGCA4700J

Assessee by	Shri Rajesh Kumar Yadav
Department by	Ms. Sailee Megharaj
Date of Hearing	9.5.2017
Date of Pronouncement	24.5.2017

ORDER

Per B.R. Baskaran (AM) :-

The revenue has filed this appeal challenging the relief granted by Ld CIT(A)-21, Mumbai by deleting the disallowance of interest expenditure u/s 14A of the Act made by the AO in AY 2010-11.

2. The assessee company is engaged in the business of investing in real estate ventures. The assessee has invested in a partnership firm named M/s G.K Developers by becoming a partner. The amount so invested stood at Rs.14.09 crores as at the year end. The assessee had incurred interest expenditure of Rs.1,24,82,713/- and claimed the same as deduction u/s 36(1)(iii). Since the borrowed funds were seen invested in the partnership firm cited above and since the share income from the partnership firm is exempt u/s 10(2A) of the Act, the AO took the view that the disallowance is required to be made u/s 14A of the Act. Accordingly the AO computed the disallowance as per Rule 8D at Rs.1,31,34,898/-, but restricted the same to Rs.1,25,02,891/-, i.e., to the extent

of aggregate expenses claimed in the Profit and Loss account. The Ld CIT(A) noticed that an identical addition made in the immediately preceding year has been deleted by his predecessor by following the decision rendered by Hon'ble Bombay High Court in the case of Delite Enterprises (ITA No.110 of 2009 dated 26-02-2009 and also the decision rendered by the co-ordinate bench in the case of Hitesh D Gajaria (ITA No.993/Mum/2007 and Shri Sudhir Kapadia (ITA No.7888/M/03). In the case before Hon'ble Bombay High Court, the assessee did not receive any share income and hence did not claim any exemption u/s 10(2A). Hence the Hon'ble Bombay High Court held that sec. 14A disallowance is not applicable when the appellant has not earned any income from the partnership firm. In the cases before the Tribunal, it was held that the salary and interest received by a partner of the partnership firm is in the nature special share in profits and when the salary & interest income is taxable, the interest expenditure can be deducted.

3. Accordingly the Id CIT(A) deleted the disallowance made by the AO and hence the revenue has filed this appeal.

4. We heard the parties and perused the record. We notice that the order passed by Ld CIT(A) in AY 2009-10 has since been upheld by the co-ordinate bench of Tribunal in ITA No.2855/Mum/2013 dated 31.08.2015. The Ld A.R submitted that the facts are identical in this year also and also furnished copies of income tax return filed by the partnership firm. In the assessee's own case, the co-ordinate bench has decided identical issue in favour of the assessee with the following observations:-

"3. In brief, the relevant facts are that the respondent assessee is a company incorporated under the provisions of Companies Act, 1956 and is, inter-alia, engaged in the business of making investments in real estate ventures. The Assessing Officer noticed that assessee had borrowed unsecured loans of Rs.11,99,37,000/-, which were invested in M/s. GK

Developers; a partnership firm, as partner's capital contribution. As per the Assessing Officer, assessee was entitled to the share of profits from the partnership firm as a partner, which was exempt in terms of section 10(2A) of the Act. Therefore, the Assessing Officer concluded that an amount of Rs.1,17,43,420/- being expenditure incurred in relation to the exempt income was liable to be disallowed in terms of section 14A of the Act. The aforesaid disallowance of Rs.1,17,43,420/- was inclusive of interest expenditure on loans amounting to Rs.1,17,10,935/-. The CIT(A) has deleted the disallowance, interalia, relying upon the judgement of the Hon'ble Bombay High Court in the case of CIT vs Delite Enterprises (ITA No.110 of 2009) dated 26th February, 2009 on the ground that since no exemption was claimed by the assessee under section 10(2A) of the Act as there was no tax free income, the provisions of section 14A of the Act would not be applicable. Against the aforesaid decision of the CIT(A), the Revenue is in appeal before us.

4. At the time of hearing, it was a common ground between the parties that the judgement of the Hon'ble Bombay High Court in the case of Delite Enterprises (supra), which has been relied upon by CIT(A), is squarely applicable to the facts of the present case. Quite clearly, in the instant year no exemption has been claimed by the assessee under section 10(2A) of the Act as there was no tax free income and, therefore, the provisions of section 14A of the Act are not applicable. Apart from the aforesaid, Ld. Representative for the assessee also referred to the following judgements to support the conclusion of CIT(A) that in case there was no exempt income received during the year, the recourse to section 14A of the Act is impermissible."

Since the Ld CIT(A) has followed his decision rendered in AY 2009-10, which has since been upheld by the Tribunal, we do not find any reason to interfere with his order passed for the year under consideration.

5. In the result, the appeal of the revenue is dismissed.

Order has been pronounced in the Court on 24.5.2017.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 24/5/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai