

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'FRIDY' NEW DLEHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**M.A. No. 770/Del/2018
(in ITA No. 3898/Del/2014)
AND
ITA No. 3898/Del/2014
Assessment Year: 2009-10**

**Dhanuka Labs Limited,
861-862, Joshi Road,
Karol Bagh, New Delhi.**

vs.

**DCIT, Central Circle-2,
New Delhi.**

**PAN : AAACD2877R
(Applicant)**

(Respondent)

Applicant by : Sh. S.S. Nagar, CA

Respondent by: Ms. Aman Preet, Sr. DR

Date of hearing: 23/07/2021

Date of order : 23/07/2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Assessee preferred this Miscellaneous Application to recall the order dated 18/08/2017 passed by this Tribunal in ITA No. 3898/Del/2014 for the assessment year 2009-10, stating that the Tribunal set aside the impugned order passed by the Ld. CIT(A) and restored the issue relating to section 14A of the Income Tax Act, 1961 (for short "the Act") read with Rule 8D of the Income Tax Rules 1962 ("the Rules") to the file of the learned Assessing Officer for fresh consideration, on the premise that during the relevant

financial year the assessee earned certain amount of dividend income claimed as exempt, whereas, as a matter of fact, the assessee did not earn any such income.

2. Our attention is drawn to para No. 3 of the order of the Ld. CIT(A) wherein learned Ld. CIT(A) noted that the assessee raised the contention that no exempt income was earned by them. It could be seen from the assessment order at paragraph No. 4 and at page No. 6 thereof that it was contended so before the Assessing Officer also. Both the authorities did not take note of the same. In the order dated 18/8/2017 at paragraph No. 3, this Tribunal also started with the exemption that the assessee earned a certain amount of dividend income during the relevant financial year which was claimed as exempt.

3. We have heard the Ld. DR also. There is no dispute on this fact. In the circumstances, we are of the considered opinion that there is a mistake apparent on the face of record and on this ground, ends of Justice would demand the recall of the order dated 18/8/2017. We accordingly, recall the said order and restore the appeal to file. Miscellaneous application, filed by the assessee, is accordingly allowed.

ITA No. 3898/Del/2014:

4. Now, we proceed to hear the counsel on either side as to the merits of the appeal, basing on the particular submission as to the assessee not earning any income which is exempt during the relevant financial year. Ld. AR submits that in terms of section 14A of the Act, no deduction is admissible in respect of expenditure, which has proximate nexus with income, which does not form part of total income under the Act or, in other

words, exempt income; whereas the Ld. DR, as against the contentions of the assessee, placed reliance on the assessment order. Our attention is further invited to the financials of the assessee company and at schedule "O" the dividend received is shown as nil for this particular year ended with 31/3/2009 whereas it was only Rs. 90/-for the year ended with 31/3/2008. As stated above, the fact of not receiving any exempt income was agitated before the Ld. CIT(A). The Ld. CIT(A), however, observed that while a lot of emphasis is placed by Ld. AR on the wording of section 14A (2) which refer to the need of assessing officer's satisfaction to the effect that the claim made by the assessee is incorrect, it simply overlooks the provision of section 14A(3) which states that a disallowance under section 14A(2) can also be made in a case in which assessee claims that no expenditure has been incurred for earning the tax exempt income.

5. There is no dispute that during the relevant previous year, the assessee did not earn any exempt dividend income from investments held in subsidiaries. When no exempt income is actually earned by an assessee from investments held during the year, no portion of expenses incurred during the year can be disallowed under section 14A of the Act.

6. Hon'ble Jurisdictional High Court in PCIT vs. IL & FS Energy Development Company Ltd. (2017) 99 CCH 0190 DelHC, (2017) 297 CTR 0452 (Del) decided on 16th August, 2017, after considering a catena of decisions, held the issue in favour of the assessee and observed that,-

9. Mr. Zoheb Hossain, learned Senior Standing Counsel for the Revenue, submitted that, in Cheminvest Ltd. (supra), this Court had no occasion to consider the CBDT Circular No. 5/2014 dated 11th February 2014 which clarified that Section 14A would apply even when exempt income was not earned in a particular AY. According to him, the other decisions of this Court

in CIT-IV v. Taikisha Engineering India Pvt. Ltd. [2015] 370 ITR 338 (Del) and CIT-IV v. Holcim India Pvt. Ltd. (2014) 272 CTR (Del) 282 did not actually discuss the above Circular of the CBDT and, therefore, would be distinguishable.

10. Mr. Hossain further submitted that there was nothing in Section 14A of the Act which suggested that exempt income had to necessarily be earned in the AY in question for the applicability of the said provision. He submitted that if the interpretation placed on Section 14 A of the Act by the above CBDT Circular was not accepted, the very purpose of Section 14A would be defeated. He referred to the decisions of the ITAT in ACIT v. Ratan Housing Development Ltd. (order dated 23rd May 2008 of ITAT Lucknow) Relaxo Footwear Ltd. v. Addl. CIT [2012] 50 SOT 102 (Del).

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19. In the considered view of the Court, this will be a truncated reading of Section 14 A and Rule 8D particularly when Rule 8D (1) uses the expression 'such previous year'. Further, it does not account for the concept of 'real income'. It does not note that under Section 5 of the Act, the question of taxation of 'notional income' does not arise. As explained in Commissioner of Income Tax v. Walfort Share and Stock Brokers Pvt. Ltd [2010] 326 ITR 1 (SC), the mandate of Section 14A of the Act is to curb the practice of claiming deduction of expenses incurred in relation to exempt income being taxable income and at the same time avail of the tax incentives by way of exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income. Consequently, the Court is not persuaded that in view of the Circular of the CBDT dated 11th May 2014, the decision of this Court in Cheminvest Ltd. (supra) requires reconsideration.

20. In M/s. Redington (India) Ltd. v. The Additional Commissioner of Income Tax, Company Range – V, Chennai (order dated 23rd December, 2016 of the High Court of Madras in TCA No. 520 of 2016), a similar contention of the Revenue was negated. The Court there declined to apply the CBDT Circular by explaining that Section 14A is "clearly relatable to the earning of the actual income and not notional income or anticipated income." It was further explained that,

"The computation of total income in terms of Rule 8D is by way of a determination involving direct as well as indirect attribution. Thus, accepting the submission of the Revenue would result in the

imposition of an artificial method of computation on notional and assumed income. We believe thus would be carrying the artifice too far.”

21. *The decisions in CIT v. M/s Lakhani Marketing Inc. 2014 SCC Online P&H 20357, CIT v. Winsome Textile Industries Limited [2009] 319 ITR 204 (P&H), CIT v. Shivam Motors (P) Ltd. (2014) 272 CTR (All) 277 have all taken a similar view. The decision in Taikisha Engineering India Pvt. Ltd. (supra) does not specifically deal with this issue.*

22. *It was suggested by Mr. Hossain that, in the context of Section 57(iii), the Supreme Court in Commissioner Of Income Tax, West v. Rajendra Prasad Moody [1978] 115 ITR 519 (SC) explained that deduction is allowable even where income was not actually earned in the AY in question. This aspect of the matter was dealt with by this Court in M/s Cheminvest Ltd. (supra) where it reversed the decision of the Special Bench of the ITAT by observing as under:*

“20. Since the Special Bench has relied upon the decision of the Supreme Court in Rajendra Prasad Moody (supra), it is considered necessary to discuss the true purport of the said decision. It is noticed to begin with that the issue before the Supreme Court in the said case was whether the expenditure under Section 57 (iii) of the Act could be allowed as a deduction against dividend income assessable under the head “income from other sources”. Under Section 57 (iii) of the Act deduction is allowed in respect of any expenditure laid out or expended wholly or exclusively for the purpose of making or earning such income. The Supreme Court explained that the expression “incurred for making or earning such income”, did not mean that any income should in fact have been earned as a condition precedent for claiming the expenditure. The Court explained:

“What s. 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that is relevant in determining the applicability of s. 57(iii) and that purpose must be making or earning of income. s. 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of s. 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain natural construction of the language of s. 57(iii) irresistibly leads to the conclusion that to bring

a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure."

21. There is merit in the contention of Mr. Vohra that the decision of the Supreme Court in Rajendra Prasad Moody (supra) was rendered in the context of allowability of deduction under Section 57(iii) of the Act, where the expression used is "for the purpose of making or earning such income." Section 14A of the Act on the other hand contains the expression "in relation to income which does not form part of the total income." The decision in Rajendra Prasad Moody (supra) cannot be used in the reverse to contend that even if no income has been received, the expenditure incurred can be disallowed under Section 14A of the Act."

23. The decisions of the ITAT in ACIT v. Ratan Housing Development Ltd. (supra) and Relaxo Footwear Ltd. v. Addl. CIT (supra), to the extent that they are inconsistent with what has been held hereinbefore do not merit acceptance. Further, the mere fact that in the audit report for the AY in question, the auditors may have suggested that there should be a disallowance cannot be determinative of the legal position. That would not preclude the Assessee from taking a stand that no disallowance under Section 14 A of the Act was called for in the AY in question because no exempt income was earned.

7. In view of the above position of law, we are of the considered opinion that where there is no dispute of fact that no dividend has been earned by the assessee during the year, no disallowance is called for under section 14A of the Act. We, therefore, direct the learned Assessing Officer to delete the addition made by invoking 14A of the Act read with Rule 8D of the Rules, inasmuch as the assessee did not earn any exempt income in the relevant financial year.

8. In the result, miscellaneous application as well as the appeal of the assessee is allowed.

Order pronounced in the open court on the 23RD day of July, 2021.

Sd/-

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Dated: 23/07/2021