

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1583/Bang/2017
AssessmentYear:2009-10

ACIT Central Circle-2(2) Bangalore	Vs.	M/s. Century Real Estate Holdings Pvt. Ltd. J.P. Technopark 4 th Floor, No.3/1 Millers Road Bengaluru 560 052. PAN NO : AADCC0651M
APPELLANT		RESPONDENT

C.O. No.32/Bang/2019 (Arising out of ITA No.1583/Bang/2017) Assessment Year:2009-10

M/s. Century Real Estate Holdings Pvt. Ltd. J.P. Technopark 4 th Floor, No.3/1 Millers Road Bengaluru 560 052.	Vs.	ACIT Central Circle-2(2) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Ms. Neera Malhotra, D.R.
Respondent by	:	Shri Ramakrishnan, A.R.

Date of Hearing	:	15.04.2021
Date of Pronouncement	:	28.06.2021

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

This appeal filed by the revenue and the cross objection filed by the assessee are directed against the order dated 27.4.2017 passed by Ld. CIT(A)-11, Bengaluru and they relate to the assessment year 2009-10. The issues urged in these appeals relate to disallowance made u/s 14A of the Income-tax Act, 1961 [the Act' for short].

2. The facts relating to the issue are stated in brief. The assessee is engaged in the business of property development. During the year under consideration, the assessee received share income from partnership firm and dividend from mutual funds aggregating to Rs.2,64,40,765/-. The assessee claimed the above said amount as exempt. However, the assessee did not make any disallowance u/s 14A of the Act. It contended before the A.O. that it did not incur any expenditure to earn the exempt income. The A.O. rejected the said contention and computed the disallowance under Rule 8D consisting of interest disallowance of Rs.1,64,302/- under Rule 8D(2)(ii) of the Act and expenses disallowance of Rs.1,49,73,084/- under Rule 8D(2)(iii) of the Act, both aggregating to Rs.1,51,37,386/-.

3. Before Ld. CIT(A), the assessee contended that the interest expenditure was incurred in respect of term loan and bank overdraft. Further, it was contended that the own funds available with the assessee is in excess of the value of investment. Hence, interest disallowance under rule 8D(2)(ii) of the Act is not called for. With regard to the expenses disallowance, it was submitted that the assessee has cross charged an amount of Rs.1,19,59,384/- out of operating and other expenses to the partnership firms and only net

expenses has been claimed. Accordingly, it was submitted that no disallowance under rule 8D(2)(iii) of the Act is also called for. The Ld. CIT(A) was convinced with the contentions of the assessee and accordingly, directed the A.O. to delete the disallowance of Rs.1,51,37,386/-. Aggrieved, the revenue has filed this appeal. The assessee has also filed cross objection belatedly raising certain legal contentions.

4. We heard the parties and perused the record. The Ld. D.R. placed her reliance on the decision rendered by Hon'ble High Court of Karnataka in the case of CIT Vs. Kingfisher Finvest India Ltd. (2020) 121 Taxmann.com 233. We have gone through the said decision and the same relate to a case where no dividend income was received. In this case, the assessee has earned dividend income and hence, in our view the said decision is not applicable to the facts of the present case.

5. We notice that the own funds available with the assessee was Rs.355.57 crores while the value of investment in partnership firm mutual funds and shares aggregated to Rs.251.82 crores. In view of the decision rendered by Hon'ble Karnataka High Court in the case of CIT Vs. Micro Labs Ltd. (2016) 383 ITR 490, no disallowance out of interest expenditure is called for. For the sake of convenience, we extract below the observations made by Hon'ble Karnataka High Court in the above said case.

“40. We have heard the rival submissions. A copy of the availability of funds and investments made was filed before us which is at pages 38 to 42 of the assessee's paper book and the same is enclosed as ANNEXURE-III to this order. It is clear from the said statement that the availability of profit, share capital and reserves & surplus was much more than investments made by the assessee which could yield tax free income.

41. *The Hon'ble Bombay High Court in Reliance Utilities & Power Ltd. 313 ITR 340 (Bom) has held that where the interest free funds far exceed the value of investments, it should be considered that investments have been made out of interest free funds and no disallowance u/s. 14A towards any interest expenditure can be made. This view was again confirmed by the Hon'ble Bombay High Court in CIT v. HDFC Bank Ltd., ITA No.330 of 2012, judgment dated 23.7.14, wherein it was held that when investments are made out of common pool of funds and non-interest bearing funds were more than the investments in tax free securities, no disallowance of interest expenditure u/s. 14A can be made.*

42. *In the light of above said decisions, we are of the view that disallowance of interest expenses in the present case of Rs.49,42,473 made under Rule 8D(2)(ii) of the I.T. Rules should be deleted. We order accordingly."*

Thereafter, it was held by Hon'ble Karnataka High Court as under:-

"The aforesaid shows that the Tribunal has followed a decision of the Bombay High Court in the case of CIT v. HDFC Bank Ltd. [2014] 366 ITR 505/226 Taxman 132 (Mag.)/49 taxmann.com 335. When the issue is already covered by a decision of the High Court of Bombay with which we concur, we do not find any substantial question of law would arise for consideration as canvassed."

Accordingly, we confirm the deletion of disallowance of interest expenses of 8D(2)(ii) of IT Rules

6. The next issue relates to disallowance out of expenditure under rule 8D(2)(iii). We notice that the Ld. CIT(A) has deleted the disallowance by accepting the submissions of the assessee that the assessee has cross charged a sum of Rs.1.19 crores out of operating and other expenses to the respective partnership firms. We are unable to agree with the view of Ld CIT(A) on this aspect. The cross charging of expenses is normally made in respect of services/facilities availed by one concern from another concern,

Accordingly, the amount of Rs.1.19 crores cross charged by the assessee to other concerns, would represent facilities/services availed by the partnership firms from the assessee.

7. The object of provisions of section 14A of the Act is to disallow expenses relatable to exempt income, i.e., it is required to segregate the expenses debited to the Profit and Loss account as relatable to “taxable income” and “exempted income”. Hence, what is required to be considered for the purpose of section 14A of the Act is the amount finally debited to profit & loss account. The actual expenses incurred by the assessee would have been reduced by the amount cross charged to the partnership firms and the net amount would have been charged to the profit & loss account. The disallowance u/s 14A of the Act is called for out of the above said net amount.

8. We notice that the assessee has earned exempt income as detailed below:

Share profit from partnership firms	-	Rs.2,46,49,618/-
Dividend from mutual funds	-	<u>Rs. 17,91,146/-</u>
		<u>Rs.2,64,40,765/-</u>

The dividend received from mutual funds also does not require much expenditure for the assessee. In respect of partnership firms, we have earlier noticed that the services rendered in respect of partnership firms have been cross charged by the assessee. Hence over all supervision may be relevant for the purposes of sec.14A of the Act. Under these set of facts, we are of the view that the provisions of rule 8D need not be applied for computing the disallowance out of general expenditure. Accordingly, we are of the view that a lumpsum disallowance of Rs.15 lakhs may be made out of general expenditure and the same, in our view would meet the requirements of section 14A of the Act. Accordingly, we set aside

the order passed by Ld. CIT(A) on this issue and direct the A.O. to restrict the disallowance under 14A of the Act to Rs.15 lakhs.

9. The Ld. A.R. submitted that he will not press cross objection, if disallowance u/s 14A of the Act is made on a reasonable figure. However, we notice that the cross objection filed by the assessee is delayed by more than a year. We notice that the assessee has not filed any petition for condoning the delay. Hence, the cross objection filed by the assessee is liable to be dismissed in limine. Accordingly, we decline to admit the cross objection filed by the assessee.

10. In the result, the appeal filed by the revenue is partly allowed and the cross objection of the assessee is dismissed.

Order pronounced in the open court on 28th June, 2021

Sd/-
(George George K.)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 28th June, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.