

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

**BEFORE SHRI SHAMIM YAHYA, AM AND
SHRI PAVAN KUMAR GADALE, JM**

ITA No. 497/Mum/2019
(Assessment Year: 2013-14)

ITO – 2(1)(3) Room Ni. 553, 5 th Floor, Aaykar Bhavan, M. K. Road, Mumbai-400 020	Vs.	Centrum Capital Limited 2 nd Floor, Bombay Mutual Building, Dr. D. N. Road, Fort, Mumbai-400 001
PAN/GIR No. AAACC 5099 G		
(Revenue)	:	(Assessee)

and

CO No. 12/Mum/2020
(Arising out of ITA No. 497/Mum/2019)
(Assessment Year: 2013-14)

Centrum Capital Limited 2 nd Floor, Bombay Mutual Building, Dr. D. N. Road, Fort, Mumbai-400 001	Vs.	ITO – 2(1)(3) Room Ni. 553, 5 th Floor, Aaykar Bhavan, M. K. Road, Mumbai-400 020
PAN/GIR No. AAACC 5099 G		
(Assessee)	:	(Revenue)

Revenue by	:	Shri Lalit Dehiya
Assessee by	:	Shri Jitendra Jain
Date of Hearing	:	01.10.2020
Date of Pronouncement	:	05.10.2020

ORDER

Per Shamim Yahya, A. M.:

This is an appeal by the Revenue and cross objection by the assessee arising out of orders of the learned Commissioner of Income Tax (Appeals)-4, Mumbai ('Id.CIT(A) for short) dated 05.11.2018 and pertains to the assessment year (A.Y.) 2013-14.

2. The Revenue's grievance is that the Id. CIT(A) has erred in restricting the disallowance u/s.14(A) of the Income Tax Act, 1961 ('the Act' for short) to Rs.22,82,187/- being the suomotu disallowance done by the assessee itself.

3. Brief facts of the case are that the Assessing Officer (A.O. for short) in this case has made a disallowance of Rs.10,91,61,614/- u/s.14A of the Act.

4. Upon the assessee's appeal, the Id. CIT(A) has referred to the Hon'ble Delhi High Court decision in the case of Joint Investment P. Ltd. vs. CIT 59 taxmann.com 295 for the proposition that disallowance u/s. 14A cannot exceed the exempt income. In this view of the matter, he held that the disallowance in this case will not exceed the suomotu disallowance done by the assessee which was more than the exempt income. We may gainfully refer to the concluding portion of the Id.CIT(A)'s order in this regard as under:

6.2 *Appellant also placed reliance of the judgement of Hon'ble High Court of Delhi in the case of Joint Investments (P). Ltd V/s Commissioner of Inconne-tax [2015] 59 taxmann.com 295 (Delhi) in ITA No. 117 of 2015 wherein the Hon'ble High Court has held as under:*

"9. In the present case, the AO has not firstly disclosed why the appellant/assessee's claim for attributing Rs.2,97,440/- as a disallowance u/s 14A had to be rejected. Taikisha Engg. India Ltd. (supra) says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assessee's claim or explanation. The second aspect is there appears to have been no scrutiny of the accounts by the AO - an aspect which is completely unnoticed by the CIT(A) and the Tribunal. The third, and in the opinion of this Court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is Rs.48,90,000/-, the disallowance ultimately directed works out to nearly 110 per cent of that sum i.e. Rs.52,56,197/-. By no stretch of imagination can Sec. 14A or r.8Dbe interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in Sec. 14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case.

10. For the above reasons, the impugned order of the Tribunal is set aside. The question of law is answered in favour of the assessee. Consequently, order of the Assessing Officer is set aside. The initiation of penalty proceedings also is set aside. The matter is remitted to the Assessing Officer for fresh consideration in accordance with the above directions. The appeal is partly allowed".

6.3 *Since the total exempt income earned by the Appellant was only Rs.44,250/-, therefore, respectfully following the judgement of Hon'ble ITAT, Mumbai-'F¹ Bench in the case of Future Corporate Resources Ltd (supra), the disallowance u/s 14A r.w. Rule*

8D is restricted upto Rs.44,250/- only. Since while filing return of income, the Appellant had itself disallowed a sum of Rs.22,82,187/- which is more than the tax free income earned by the Appellant, therefore no further disallowance can be made. Hence, disallowance of Rs.10,91,61,614/- made by the AO u/s 14A r.w, Rule 8D is deleted and appeal of the assessee on this ground is allowed.

5. Against this order, the Revenue is in appeal before us.
6. We have heard both the Counsel and perused the records. The learned departmental representative fairly agreed that the order of learned CIT appeals need not be interfered with, as the departmental appeal against the proposition relied upon by the learned CIT appeals has been dismissed by the Hon'ble Supreme Court. In this view of the matter, in our considered opinion, there is no infirmity in the order of ld.CIT appeals which is duly supported by the order of Hon'ble Delhi High Court referred above. We may also refer held that Hon'ble jurisdictional High Court in the case of *CIT vs. Delight Enterprises* (in ITA No. 110/2009) has expounded similar proposition. Accordingly, the Revenue's appeal stands dismissed.
7. In the cross objection, the assessee had submitted that the learned CIT appeals ought to have restricted the disallowance to the exempt income of Rs.44,250/- instead of observing that the disallowance should be restricted to Rs.44,250/- being the suomotu disallowance done by the assessee.
8. In this regard, the learned counsel of the assessee relied upon the decision of this tribunal in the case of *Tata Industries Ltd. v. ITO* (2016) 181 TTJ 600 (Mum.), wherein the ITAT has upheld similar proposition by the assessee by referring to Article 265 of the Constitution of India for the proposition that no tax can be collected except through the authority of law.

9. The Id. Departmental Representative (Id. DR for short) on the other hand objected to the ground taken by the assessee in the cross objection.

10. We have carefully considered the submissions. We find that the Id. DR does not have any objection to the proposition that disallowance u/s.14A should be restricted to the exempt income earned. However, he is seeking to object to the ground being taken in the cross objection which was not even before the learned CIT appeals. In this regard, he referred to order 9 rule 13 of CPC. We find that the order 9 rule 13 of CPC deals with setting aside decree ex-parte as under:

“In any case in which the decree is passed ex-parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside, and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was call on for hearing, the Court shall make an order setting aside the decree as against him upon the said terms as to cost, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.”

We fail to understand how the reference helps the Id. DR in objecting to the cross objection. Be as it may, the objection may be regarding ground in cross objection raised for the first time before ITAT without any revised return of income.

11. In this regard, we note that as rightly observed by the ITAT bench in the aforesaid case of Tata Industries (supra), no tax can be collected except as per the mandate of the law. If the assessee has erroneously offered more income for taxation, the same cannot be a bar to the assessee in seeking remedy before the appellate forum. In this regard, we refer to the decision of Hon’ble Supreme Court in the case of *Goetze (India) Ltd. v. CIT* (2006) 284 ITR 323 (SC), where the Hon’ble Supreme Court has held that nothing in that order would prevent the ITAT in admitting an additional claim

which was raised for the first time without a revised return. Furthermore, we also note here the decision of Hon'ble Supreme Court in the case of Firm [1965] 56 ITR 67(SC) for the proposition that if a particular income is not taxable under the Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. The Hon'ble Supreme Court's decision in the case of Shelly Products 129 taxman 271 (SC), supports the proposition that if the assessee has erroneously paid more tax than he was legally required to do, he is entitled to claim the refund, as otherwise it would be violative of Article 265. It may not be out of place to mention that CBDT Circular 14 (XL-35) of 1953 dated 11.04.1955 which states that officers of department must not take advantage of the ignorance of the assessee as to his rights.

12. In the background of the aforesaid Hon'ble Supreme Court decisions, we do not find any merit whatsoever in the objection of learned CIT DR in accepting and adjudicating the ground raised by a cross objection by the assessee.

13. As regards the merits of the issue raised in the cross objection it is clear that the same stands covered by the very decisions relied upon by the learned CIT appeals himself as referred above that the disallowance u/s. 14A cannot exceed the exempt income. In the aforesaid paragraph of learned CIT appeals referred by us above, the amount of exempt income earned being Rs.44,250/- is also recorded. In this view of the matter, we have no hesitation whatsoever in holding that the disallowance in this case should not exceed the exempt income earned as referred above. In view of the CBDT Circular No.14 as referred above, the ground raised by the assessee is cogent. The assessing officer is directed to grant the necessary relief to the assessee.

14. In the result, this appeal by the revenue stands dismissed and the cross objection by the assessee stands allowed.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board on 05.10.2010

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Shamim Yahya)
Accountant Member

Mumbai; Dated : 05.10.2010

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai