

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.2961/Bang/2018
Assessment year : 2012-13

Deputy Commissioner of Income Tax, Circle – 1(1)(1), Bangalore.	Vs.	M/s. Avesthagen Ltd., Discoverer, 9 <sup>th</sup> Floor, International Tech Park, Whitefield, Bangalore – 560 066. <b>PAN : AABCA 7217 K</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Revenue by	:	Shri. C. H. Sundar Rao, CIT
Assessee by	:	None

Date of hearing	:	11.07.2019
Date of Pronouncement	:	02.08.2019

**ORDER**

***Per Jason P. Boaz, Accountant Member:***

This appeal by Revenue is directed against the order of CIT(A)-1, Bangalore, dated 12.07.2018 for Assessment Year 2012-13.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee, a company engaged in Research and Development in Biotechnology and Bioinformatics, filed its return of income for Assessment Year 2012-13 on 29.09.2012 declaring loss of Rs. (-)22,21,27,291/- and agricultural income of Rs.12,96,931/-. The case was taken up for scrutiny for this Assessment Year and the assessment was concluded under section 143(3) of

the Income Tax Act, 1961 (in short 'the Act') vide order dated 23.03.2015, wherein the assessee's loss was determined at Rs.(-)14,59,12,190/- in view of the following additions / disallowances:-

- (i) Excess remuneration to Directors disallowed – Rs.4,45,14,569/-
- (ii) Disallowance under section 14A r.w.Rule 8D - Rs.2,27,68,618/-
- (iii) Amortization expenses disallowed - Rs. 86,08,342/-
- (iv) Income reflected in 26AS not offered to tax - Rs. 3,23,567/-

2.2 Aggrieved by the order of assessment dated 23.03.2015 for Assessment Year 2012-13, the assessee preferred an appeal before CIT(A)-1, Bangalore; which was disposed off by way of the impugned order dated 12.07.2018 allowing the assessee partial relief.

3.1 Revenue, being aggrieved by the order of the CIT(A)-1, Bangalore, dated 12.07.2018, has preferred this appeal before the Tribunal wherein it has raised the following grounds:-

1. *The order of the Learned CIT (Appeals), in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.*
2. *The Ld. CIT (A) erred in allowing the assessee's appeal on the issue of disallowance made u/s 14A r. w. Rule 8D as the said matter has not reached finality due to pendency of revenue's appeal before the Hon'ble High Court of Karnataka against the decision of Jurisdictional ITAT in the case of M/s Ambuthirtha Power Pvt. Ltd and an SLP is pending before the Hon'ble Apex Court against the decision of Hon'ble High Court of Delhi in the case of M/s Cheminvest Ltd., (378 ITR 33(Del)).*
3. *For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the Ld. CIT (A) be reversed and that of the Assessing Officer be restored.*

4. *The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of appeal.*

The only issue of dispute on this appeal is with regard to the order of CIT(A) in deleting the disallowance under section 14A r.w.Rule 8D.

3.2.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record. It is a matter of record that the assessee had not earned any exempt income in the year under consideration and this fact is recorded by the learned CIT(A) at para 4.2 of the impugned order. The applicability of the provisions of section 14A of the Act is in respect of expenditure incurred in relation to the earning of income not includible in total income. A plain reading of the provisions of section 14A of the Act envisages that there should be an actual receipt of income which is not includible in the total income. Therefore, the provisions of section 14A of the Act will not apply where no exempt income is received or receivable by the assessee during the relevant previous year. This proposition was upheld by the Hon'ble Delhi High Court in the case of Chemninvest Ltd. vs. CIT [(2015) 61 taxmann.com 118] (Del) / (378 ITR 33) (Del. HC) vide order dated 02.09.2015; wherein at para 23 thereof their Lordships have held as under:-

*“23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression ‘does not form part of the total income’ in Section 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 of the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income*

*is received or receivable during the relevant previous year.”*

3.2.2 In the case on hand admittedly, the factual position was that the assessee had not earned or received any exempt income in the previous year relevant to assessment year 2012-13. In these circumstances, in our considered view, the ratio of the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. (supra) would apply squarely in the case on hand. The Hon'ble High Court in the aforesaid judgement held that no disallowance under section 14A of the Act could be made in a year in which no exempt income had been earned or received by the assessee. It was held that the expression 'does not form part of the total income' in section 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 years for the purpose of disallowing any expenditure incurred in relation to the said exempt income. A similar view has been taken by a co-ordinate bench of this Tribunal in the case of Tanglin Retail Reality Developments Private Limited v DCIT in ITA No. 265/Bang/2016 dated 31.03.2017, considering the decisions of the Hon'ble Karnataka High Court in the case of CCI Ltd. (supra) and of ITAT, Mumbai in Fair Exports (India) P. Ltd.(supra). Therefore, in the factual matrix of the case on hand, as discussed above, we, respectfully following the decisions of the Hon'ble Delhi High Court in the case Cheminvest Ltd. (supra) and the co-ordinate bench in Tanglin Retail Reality Developments Private Limited (supra), hold that no disallowance under section 14A of the Act can be made in the case on hand for the assessment year 2012-13 since the assessee had not earned or received any exempt income in this year and therefore uphold the action of the CIT(A) in directing the AO to delete the disallowance of expenditure made under section 14A of the Act. Consequently, the assessee's grounds at Sl. Nos. 1 to 4 are allowed.

4. In the result, the assessee's appeal for Assessment Year 2012-13 is allowed.

*Order pronounced in the open court on this 02<sup>nd</sup> day of August, 2019.*

Sd/-  
**(N. V. VASUDEVAN)**  
**Vice President**

Sd/-  
**(JASON P BOAZ)**  
**Accountant Member**

Bangalore.

Dated: 02<sup>nd</sup> August, 2019.

/NS/\*

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.