

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA.No.3080/Del./2017
ITA.No.5408 & 5601/Del./2018
Assessment Years 2012-2013, 2013-2014 & 2014-2015

M/s. ATS Infrastructure Ltd., 711/92, Deepali, Nehru Place, New Delhi. PIN – 110 019. PAN AADCA0609B	vs.,	The ACIT, Central Circle, Noida.
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, Advocate And Ms. Surbhi Goyal, C.A.
For Revenue :	Shri Ved Prakash Mishra, Sr. DR

Date of Hearing :	08.01.2020
Date of Pronouncement :	15.01.2020

ORDER

PER BHAVNESH SAINI, J.M.

All the appeals by the Assessee are directed against the different Orders of the Ld. CIT(A)-4, Kanpur, Dated 31.03.2017, for the A.Y. 2012-2013 and 25.07.2018 for the A.Ys. 2013-2014 and 2014-2015.

2. We have heard the Learned Representatives of both the parties and perused the material on record. Since issues are common , therefore, all the appeals were heard together and we dispose of the same by this consolidated order. The appeals are decided year-wise as under :

A.Y. 2012-2013 :

3. On Ground Nos. 1 and 2, assessee challenged the disallowance of Rs.1,51,65,269/- made on account of interest under section 36(1)(iii) of the I.T. Act, 1961. The A.O. noted that assessee-company has given interest free loans and advances to related party. The disallowance of interest expenses against these loans have been discussed in the assessment order passed for preceding A.Y. 2011-2012. In the same manner, interest on loans/advances given to M/s. Prateek Resorts & Builders Pvt. Ltd., has been disallowed. The A.O, therefore, disallowed Rs.1,51,65,269/- under section 36(1)(iii) of the I.T. Act, 1961. The assessee made detailed written submissions before the Ld. CIT(A). However, the Ld. CIT(A) dismissed the appeal of assessee.

3.1. Learned Counsel for the Assessee submitted that addition has been made by the A.O. simply by relying on the Order passed in preceding A.Y. 2011-2012 in the case of the assessee. However, the said addition has been deleted by the Ld. CIT(A) and Department did not move any appeal against the said decision. Copy of the grounds of appeal for the A.Y. 2011-2012 is filed on record in support of this contention. The Order of the Ld. CIT(A) for the A.Y. 2011-2012 is filed at Pages 186 and 187 of the paper book. In addition to the above submissions, the Learned Counsel for the Assessee further submitted that detailed break-up of advances given to M/s. Prateek Resorts & Builders Pvt. Ltd., relating to assessment year under appeal as on 31.03.2012 was Rs.12,13,22,153/-. The opening balance as on 01.04.2011 was Rs.5,70,72,153/- relevant to A.Y. 2011-2012 which have been decided in favour of the assessee. Learned Counsel for the Assessee further submitted that advances were given for business purposes. The evidence for the same are filed at Pages 94, 95 and 98 of PB which is correspondence between the parties. He has, therefore,

submitted that since the amount in question have been given for commercial expediency, therefore, no addition could be made. He has relied upon Judgment of Hon'ble Supreme Court in the case of S.A. Builders 288 ITR 1 (SC). Learned Counsel for the Assessee further submitted that during the year under consideration, the assessee-company has sufficient own funds as well as interest free borrowing funds which have been used to make these advances and these advances have been shown in the balance-sheet, copy of which is filed at page-10 of the PB to show that assessee has total own surplus funds of Rs.35,57,47,999/-. It was, therefore, submitted that no disallowance of interest should be made out of the same. He has relied upon Judgment of Hon'ble Supreme Court in the case of Commissioner of Income Tax vs., Reliance Industries Ltd., 410 ITR 466 (SC) in which the Hon'ble Supreme Court has noted findings of Tribunal that *"the findings of the Tribunal that interest free funds available to the assessee were sufficient to him for its investment. Hence, it can be presumed that investments were made from the interest free funds available with the assessee"*.

4. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

5. We have considered the rival submissions and perused the material on record. The A.O. on this issue made the addition by following his Order for the A.Y. 2011-2012 without giving any independent findings. In A.Y. 2011-2012 the Ld. CIT(A) has allowed the claim of assessee and deleted the addition, copy of the Order is placed in the paper book. Though the Department has filed an appeal before the Tribunal, but, no ground have been raised on this issue. Copy of the grounds of appeal is also filed on record. These facts itself are sufficient to delete the addition. We may further note that assessee has own sufficient funds to give advance to M/s. Prateek Resorts & Builders Pvt. Ltd., out of own funds. There was also an opening balance as contended by the Learned Counsel for the Assessee in preceding year, on which, addition has already been deleted. The assessee has also placed on record the correspondence between the parties to show that advance have been given for commercial expediency. It is well settled Law that when

interest free funds are available to the assessee which were sufficient to made its investments, it would be presumed that the investments were made from the interest free funds available with the assessee. We rely upon the Judgment of the Hon'ble Bombay High Court in the case of Reliance Utility and Power Ltd., 313 ITR 340 (Bom.) (HC) and Judgment of Hon'ble Supreme Court in the case of Reliance Industries Ltd., 410 ITR 466 (SC) and Judgment of Hon'ble Supreme Court in the case of Munjal Sales Corporation 298 ITR 298 (SC). Considering the totality of the facts and circumstances of the case, we do not find any justification to sustain the addition. We, accordingly, set aside the Orders of the authorities below and delete the addition of Rs.1,51,65,269/-. Ground Nos. 1 and 2 of the appeal of assessee are allowed.

6. On Ground Nos.3 and 4, assessee challenged the disallowance of Rs.1,52,47,867/- under section 14A of the I.T. Act read with Rule 8D of the I.T. Rules, 1962.

6.1. The A.O. noted that assessee has received dividend income of Rs.64,59,304/- and has claimed the

same to be exempted. Since the assessee has not made disallowance of expenditure against the exempted income, therefore, the A.O. disallowed Rs.1,52,47,867/- under section 14A read with Rule 8D of the I.T. Rules. The Ld. CIT(A) confirmed the addition.

6.2. Learned Counsel for the Assessee submitted that the dividend earned by the assessee-company during the assessment year under appeal can be bifurcated that investment in M/s. ATS Town Ship Pvt. Ltd., yielded dividend of Rs.56,25,000/- and from the Reliance Mutual Funds dividend was earned of Rs.8,34,304/-. He has further submitted that value of investments from where dividend has been earned in the case of M/s. ATS Town Ship Pvt. Ltd., as on 31.03.2012 was Rs.9,000/-, which is supported by PB-17 which is the details of Note-12 Non-current investments and PB-60 which is balance-sheet of M/s. ATS Town Ship Pvt. Ltd. In the case of Reliance Mutual Fund, the investment was NIL in assessment year under appeal since purchase and sales were within the year. He has submitted that the average value of

investments comes to Rs.9,500/- only. He has submitted that provisions of Section 14A read with Rule 8D provide for disallowance of expenses which are incurred only in relation to the exempt income earned. It is well settled Law that while computing the disallowance under Rule 8D (iii), rate of 0.5% has to be applied to only those investments which actually have resulted in exempted dividend income rather than 0.5% of the average of total investments. Thus, in assessee's case also for the purpose of making disallowance under the above provision, only average value of investment as calculated at Rs.9,500/- shall be considered which would make disallowance of Rs.47.50 only. He has submitted that the issue is covered by the Judgment of Hon'ble Delhi High Court in the case of ACB India Ltd., vs., ACIT ITA.No.615/2014 Dated 24.03.2015 in which it was held that *"the A.O. instead of adopting the average value of investment of which income is not part of total income i.e., the value of tax exempt investment, chose to factor in the total investment itself. Even though the Ld. CIT(A) noticed the exact value of the investment which yielded taxable income, he did*

not correct the error to chose to apply his own equity. Given the record that it be done so to substitute the figure of Rs.38,61,09,287/- with the figure of Rs.3,53,26,800/- and thereafter, arrive at the exact details of .05%. In view of the above reasoning, the findings of the ITAT and lower authorities are hereby set aside. The appeal is allowed and the matter is remitted to work-out the tax effect to the A.O. who shall do so after giving due notice to the party.” Learned Counsel for the Assessee on the same proposition also relied upon other decision of the Hon’ble Delhi High Court. Learned Counsel for the Assessee further submitted that the A.O. has merely made the impugned addition by stating that since the assessee has earned exempt income, therefore, provisions of Section 14A are applicable. It is evident that in the assessment order there is no satisfaction recorded by the A.O. before making any disallowance, therefore, no addition could be made. He has relied upon Judgment of Hon’ble Delhi High Court in the case of Max Opp Investment Ltd., vs., Commissioner of Income Tax 347 ITR 272 (Del.) (HC), which is confirmed by the Hon’ble Supreme

Court. He has also relied upon Judgments of Hon'ble Delhi High Court on the same proposition in the case of Commissioner of Income Tax vs., Taikisha Engineering India Ltd., 370 ITR 338 (Del.) (HC).

7. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

8. We have considered the rival submissions and perused the material on record. The investments made by assessee as on 31.03.2012 as argued by the Learned Counsel for the Assessee is not in dispute that in case of M/s.ATS Township Pvt. Ltd., assessee made investment of Rs.9000/- only and in the case of Reliance Mutual Fund it was NIL because sales and purchases were within the year. Thus while computing the disallowance under the above provision, the rate of 0.5% has to be applied to only those investments which actually have resulted in exempt dividend income rather than .05% of the average of the total investments. The A.O. shall have to take average value of such investment. Further A.O. did not record any satisfaction before making the disallowance and merely

made the addition because assessee has earned dividend income. Thus, these are not sufficient to make any addition against the assessee. The Hon'ble Delhi High Court in the case of I.P. Support Services India Ltd., 378 ITR 240 9Del.) (HC) held that "*no disallowance be made in the absence of satisfaction as to why voluntary disclosure made by assessee was unreasonable and unsatisfactory.*" Similar view have been taken by the Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs., Taikisha Engineering India Ltd., 370 ITR 338 (Del.) (HC). The Hon'ble Punjab & Haryana High Court in the case of Abhishek Industries Ltd., 380 ITR 652 (P & H) (HC) held that "*onus is on A.O. to record satisfaction that interest bearing funds used for investment to earn tax free income.*" Considering the facts and circumstances of the case in the light of submissions of the Learned Counsel for the Assessee and in the absence of any satisfaction recorded by the A.O. for making disallowance under section 14A read with Rule 8D of the I.T. Act, no disallowance could be made in the case of the assessee. We, accordingly, set aside the Orders of the

authorities below and delete the entire addition. In the result, Ground Nos.3 and 4 of the appeal of the Assessee are allowed.

9. In the result, ITA.No.3080/Del./2017 for the A.Y. 2012-2013 of the Assessee is allowed.

A.Y. 2013-2014 :

10. On Ground Nos.1 to 4, the assessee challenged the disallowance of Rs.2,04,97,971/- under section 14A read with Rule 8D of the I.T. Rules, 1962.

11. The A.O. noted that in the balance-sheet filed along with the return of income, an investment of Rs.414.96 crores have been shown as non-current investment. In view of this, disallowance is to be made as per Section 14A read with Rule 8D. The assessee was asked to submit as to why disallowance under section 14A should not be made. The assessee submitted that during the year under consideration the assessee has not earned any income by way of dividend and that no expenditure is incurred in relation to any exempted income. The A.O. however, did not

accept the contention of assessee and made the disallowance of Rs.2,04,97,971/- under section 14A read with Rule 8D of I.T. Rules, 1962. On appeal, the Ld. CIT(A) dismissed the appeal of assessee.

12. Learned Counsel for the Assessee submitted that in assessment year under appeal assessee has not earned any exempt income. He has referred to PB-29 which is balance-sheet of the assessee to show that as on 31.03.2013 assessee has not earned any dividend income. He has submitted that the Hon'ble Supreme Court in the case of CIT vs., Chettinad Logistics (P.) Ltd., [2018] 95 taxmann.com 250 (SC) dismissed the SLP of the Revenue by confirming the Order of the Hon'ble Madras High Court holding that "*Section 14A of the Act cannot be invoked where no exempt income is earned by the assessee*". He has relied upon Judgment of Hon'ble Delhi High Court in the case of Cheminvest Ltd., vs., CIT 378 ITR 33 (Del.) in which the Hon'ble High Court similarly held that "*if assessee has not earned exempt income, no disallowance could be made.*" He

has, therefore, submitted that no disallowance could be made by the authorities below.

13. The Ld. D.R. relied upon the Orders of the authorities below.

14. We have considered the rival submissions. It is well settled Law that in the absence of any exempt income no addition can be made by the A.O. The above decisions squarely apply to the facts of the case. It is not in dispute that during the assessment year under appeal assessee has not earned any exempt income, therefore, no disallowance under section 14A read with Rule 8D could be made. Further no satisfaction as required under section 14A have been recorded by the A.O. in the assessment order. Therefore, the issue would also be squarely covered by reasoning given in A.Y. 2012-2013 (supra). In view of the above, we set aside the Orders of the authorities below and delete the addition. Ground Nos. 1 to 4 of the appeal of the Assessee are allowed.

15. On Ground Nos.5 and 6, assessee challenged disallowance of Rs.39,89,019/- made by A.O. on account of interest under section 36(1)(iii) of the I.T. Act, 1961.

16. The A.O. noted that in A.Y. 2011-2012 he has made disallowance of interest on loan and advances given to M/s. Prateek Resorts & Builders Pvt. Ltd., The A.O, therefore, disallowed the impugned amount.

17. After considering the rival submissions, we are of the view that the issue is same as have been considered in A.Y. 2012-2013 (supra). Both the parties have submitted that the Order in A.Y. 2012-2013 may be followed in this year. In this view of the matter, we set aside the Orders of the authorities below and delete the addition. In the result, Ground Nos.5 and 6 of the appeal of the Assessee are allowed.

18. In the result, ITA.No.5408/Del./2018 for the A.Y. 2013-2014 of the Assessee is allowed.

A.Y. 2014-2015 :

19. On Ground Nos. 1 to 6, the assessee challenged the disallowance of Rs.2,39,66,670/- made by A.O. invoking the provisions of section 14A read with Rule 8D of the I.T. Rules, 1962.

20. The A.O. noted that in assessment year under appeal assessee has shown investment of Rs.543.71 crores as non-current investment. The A.O. noted that disallowance have to be made under section 14A of the I.T. Act. The assessee submitted that in assessment year under appeal, assessee has earned dividend of Rs.1,97,449/- only for which no expenditure was incurred in relation to exempt income. The A.O. however under the above provisions disallowed the impugned amount. The Ld. CIT(A) confirmed the addition.

21. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has submitted that the assessee has received this dividend out of investment made in Reliance Mutual Funds whose

opening and closing balance during the year were NIL (PB-26). Thus, the average value of investment will be calculated as NIL as is evident from audited financial year statement of the assessee. Complete copies are placed at pages 7 to 43 of the PB. He has submitted that provisions of Section 14A read with Rule 8D provide for disallowance of expenses which are incurred only in relation to exempt income earned. He has relied upon the Judgment of Hon'ble Delhi High Court in the case of ACB India Ltd., (supra) and other decisions and submitted that the issue is same as has been considered in A.Y. 2012-2013. He has further submitted that no satisfaction have been recorded by A.O. in the assessment order before making any disallowance as required under section 14A of the I.T. act. In the alternate contention, he has submitted that since assessee earned only Rs.1,97,449/- as dividend income, therefore, impugned addition is unjustified and disallowance should restricted to the dividend income of Rs.1,97,499/- and relied upon Judgment of Hon'ble Delhi High Court in the case of Joint Investment Pvt. Ltd., [2015] 372 ITR 694 (Del.) (HC).

22. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

23. Considering the rival submissions, we are of the view that the issue is same as have been considered in A.Y. 2012-2013. Following the reasons for decision for the same and in the absence of any satisfaction recorded by the A.O. in the assessment order, we are of the view that no addition could be made in the matter. We, accordingly, set aside the Orders of the authorities below and delete the entire addition. In the result, Ground Nos.1 to 6 of the appeal of the Assessee are allowed.

24. In the result, ITA.No.5601/Del./2018 for the A.Y. 2014-2015 of the Assessee is allowed.

25. To sum-up, all the appeals of the Assessee are allowed.

Order pronounced in the open Court.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER
Delhi, Dated 15th January, 2020
VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "A" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.