

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1069/Bang/2019
Assessment Year : 2015-16

M/s. United Telelinks (Bangalore) Ltd., 39/13, 7 th Main, HAL 2 nd Stage, Appareddypalya, Indiranagar, Bangalore – 560 038. PAN : AAACU 1901 H	Vs.	The Deputy Commissioner of Income Tax, Circle – 7(1)(1), Bangalore – 560 095.
APPELLANT		RESPONDENT

Appellant by	:	Shri. Ganesh S, Advocate
Respondent by	:	Shri. Pradeep Kumar, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	6.1.2021
Date of Pronouncement	:	7.1.2021

ORDER

Per N.V. Vasudevan, Vice President

This is an appeal by the assessee against the order dated 18.3.2019 of CIT(A)-7, Bangalore, relating to Assessment Year 2015-16.

2. The first issue that needs to be adjudicated is the disallowance of rental expenses of Rs.60,89,900/- under section 40A(2)(b) of the Income Tax Act, 1961 ('Act'). As far as this issue is concerned, the facts are that the assessee is a wholesale dealer in mobile phones. In the course of assessment proceedings, the AO noticed that the assessee had paid rent of Rs.77,41,600/- to Ms. Esha Hasija who happens to be the daughter of the Managing Director of the assessee company. Under the provisions of section 40A(2)(b) of the Act, if the assessee incurs any expenditure in respect of which payment is made to a

related person referred to in section 40A(2)(b) of the Act and if the AO is of the opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods/services or facilities for which the payment is made, then the expenditure to the extent considered excessive shall not be allowed as a deduction. It is not in dispute in this case that Ms. Esha Hasija was a relative and the AO was well within his powers to question the reasonableness of the rent paid to Ms. Esha. The AO noticed that the building for which rent was paid was in a busy locality in Wind tunnel road (Old Airport Road, Indiranagar, Bangalore), and the total built up area of 20,000 sq.ft. has been let out to the assessee on a monthly rent of Rs.50/- per square feet w.e.f. September, 2014. The AO obtained copy of the municipal tax valuation by the BBMP and the said valuation showed the annual rental value of Rs.33,30,140/-. The AO was of the view that the monthly rent based on the annual rental value adopted by the BBMP cannot be more than 2,10,000/- per month and therefore for the period of 7 months for which rent was paid during the previous year relevant to Assessment Year 2015-16, only a sum of Rs.16,51,700/- can be regarded as reasonable. The AO, therefore, added a sum of Rs.60,89,900/- under section 40A(2)(b) of the Act (77,41,600-16,51,700).

3. In the proceedings before CIT(A), the assessee filed a certificate from real estate agent certifying the rental value for furnished office space at Old Airport Road at Rs.80/- to Rs.100/- per Sq.Ft. The CIT(A) was of the view that this was a self-serving document apart from being an additional evidence which was not filed before the AO. According to the CIT(A), the additional evidence can be filed only if the conditions laid down in Rule 46A of the Income Tax Rules, 1961 are satisfied. Since the assessee did not adduce any sufficient cause for not filing this evidence before the AO, the CIT(A) refused

to admit the additional evidence. CIT(A) accordingly confirmed the action of the AO.

4. Before the Tribunal, the first submission of the learned Counsel of the assessee was that the annual rental value determined by the BBMP cannot be the basis to arrive at the fair market value of the rent for the building in question. In this regard, the learned Counsel filed before us a copy of the circular and method of assessment by BBMP. A copy of which is placed at pages 70 and 86 of the assessee's Paper Book. It was submitted by him that the Wind Tunnel Road is an upmarket non-residential area and the rental values are highest. According to him, the annual rental value adopted by BBMP is for the purpose of levy of property tax and has nothing to do with fair market value. His submission was that under section 40A(2)(b) of the Act, what is important is only the fair market value of the rent. Learned Counsel also drew our attention to the circular No.6-P dated 6.7.1968 wherein at paragraph 74, the CBDT has directed the Income Tax authorities to examine the reasonableness of the expenditure on the basis of criteria mentioned in the section in a reasonable and fair manner. The CBDT has opined that the relevant provisions were to check evasion of tax and should not be applied in a manner which will cause hardship in the bonafide case. Learned Counsel also submitted that the CIT(A) failed into an error in not accepting the certificate of a real estate consultant produced by the assessee before him. Learned DR relied on the order of the CIT(A).

5. We have carefully considered the rival submissions. The first aspect which we notice is that the basis of making the disallowance under section 40A(2)(b) of the Act by adopting the annual rental value fixed by the BBMP is not be correct in the context of the provisions of section 40A(2)(b) of the Act.

What is important under the relevant provision is the excessiveness of expenditure having regard to the fair market value. Since neither the AO nor the CIT(A) has examined the fair market value of rent of the building in question, we are of the view that the issue needs to be remanded to the AO for consideration afresh. The assessee will furnish evidence to establish the fair market value of the rent for the building in question and the AO will examine the claim in accordance with law, after affording assessee opportunity of being heard. This issue is accordingly set aside to the AO for fresh consideration.

6. The next issue that arises for consideration is the disallowance of expenses under section 14A of the Act. As far as this issue is concerned, the factual details are that the exempt income earned by the assessee is only Rs.2,10,898/-. The assessee on his own has made the disallowance of Rs.72,000/- as expenditure incurred in earning exempt income. The AO, without rejecting the basis of disallowance made by the AO, applied the provisions of Rule 8D(2) and made a disallowance under section 14A of the Act of a sum of Rs.10,02,522/- as follows:

“5.10 Computation of Disallowance u/s 14A:

Average Value of Investment from which exempt income is earned

	AY: 15-16	AY: 14-15
<i>Investment in companies</i>	40,06,01,966	4,08,869
<i>Average Investment 0.5%</i>	20,05,04,418	10,02,522/-
<i>of Average Investment</i>		10,02,522/-
<i>Disallowance u/s 14A</i>		

5.11 Therefore, an amount of Rs. 10,02,522/- requires to be disallowed. Considering the addition of Rs.72,000/- which was already disallowed by the assessee, a further sum of Rs.9,30,522/- is added back to the returned income. Accordingly, this amount is added back to the total income of the assessee.

(Addition: Rs. 930,522/-)”

7. On appeal by the assessee, the CIT confirmed the order of the AO.

8. We have heard the rival submission. Under section 14A(2) of the Act, the AO has recorded the satisfaction that the disallowance of expenses made by assessee suo-moto under section 14A of the Act is not correct. Without recording such a finding, he cannot make disallowance under section 14A of the Act by resorting to Rule 8D of the Income Tax Rules, 1962. Learned Counsel in this regard has placed reliance on the decision of the Hon'ble Bombay High Court in the case of Pr.CIT Vs. Radha Madhav Investments Ltd., 2019 TaxPub(DT) 1230 (Bom-HC). In the light of the decision cited by the learned Counsel for the assessee and the relevant statutory provisions, we are of the view that the disallowance under section 14A of the Act should be restricted to a sum of Rs.72,000/- as claimed by the assessee and the addition made by the Revenue authorities is directed to be deleted.

9. In the result, the appeal of the assessee is partly allowed to the extent indicated above.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(B. R. BASKARAN)
Accountant Member

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore,

Dated: 7.1.2021.

/NS/*

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|-------------------------|---------------|---------------|-----------|
| 1. Appellant | 2. Respondent | 3. CIT | 4. CIT(A) |
| 5. DR, ITAT, Bangalore. | | 6. Guard file | |

By order

Assistant Registrar
ITAT, Bangalore.