IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.1590/Bang/2017: Asst.Year 2010-2011
ITA No.1589/Bang/2017: Asst.Year 2011-2012
&
CO No.34/Bang/2019 : Asst.Year 2011-2012

M/s.Century Real Estate Holdings Private Limited, JP Technopark 4th Floor, No.3/1 Millers Road Bangalore – 560 052. **PAN : AADCC0651M.**	v.	The Dy.Commissioner of Income-tax, Central Circle 2(2) Bangalore.
(Appellant)		(Respondent)

ITA No.1592/Bang/2017: Asst.Year 2011-2012

The Dy.Commissioner of Income-tax, Central Circle 2(2) Bangalore.	v.	M/s.Century Real Estate Holdings Private Limited, JP Technopark 4th Floor, No.3/1 Millers Road Bangalore – 560 052.
(Appellant)		(Respondent)

Revenue by : Ms.Neera Malhotra, CIT-DR
Assessee by : Sri.R.Ramakrishnan, CA

Date of Hearing : 21.09.2021		**Date of Pronouncement : 22.09.2021**

O R D E R

Per Bench :

Appeal in ITA No.1590/Bang/2017 and ITA No.1589/Bang/2017 are filed by the assessee, and it relate to assessment years 2010-2011 and 2011-2012. Appeal in ITA No.1592/Bang/2017 is filed by the Revenue for the assessment year 2011-2012. The assessee has also preferred a Cross Objection in CO No.34/Bang/2019 for assessment year 2011-2012, which is supportive of the issues decided by the CIT(A) in favour of the assessee. These appeals and cross objection are arise out of two separate orders of the CIT(A), both dated 27.04.2017.

2. At the time of hearing before us, the learned AR submitted that he is not pressing appeal in ITA No.1590/Bang/2017 for Asst.Year 2010-2011. Accordingly, this appeal is dismissed as not pressed.

3. The grounds raised by the Revenue in ITA No.1592/Bang/2017 for Asst.Year 2011-2012, read as follows:-

> *"1. Whether on facts and in circumstances of the case and in law, the CIT(A) was justified in not applying the provisions of Rule 8D2(ii) after upholding the applicability of section 14A.*
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> *2. Whether on facts and in circumstances of the case and in law, the CIT(A) was justified in partly allowing the disallowance made by the AO without arriving at the reconciliation of interest to be considered for the purpose of disallowance u/s 14A.*
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> *3. Whether the CIT(A) is justified in modifying the disallowance made u/s 14A of the I.T.Act, 1961 when assessee has deficit of own funds for application towards investments in income exempt from tax.*
>
> *4. Any other grounds which may by urged at the time of hearing."*

4. The grounds raised by the assessee in ITA No.1589/ Bang/2017 for Asst. Year 2011-2012, read as follows:-

> *1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, fact and circumstances of the case.*
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> *2. The assessment order passed u/s 153A rws 143(3) dated 24/02/2015 is bad in law and without requisite jurisdiction and also against the materials and facts of the case of the appellant.*
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> *ON LEGAL POINTS:-*
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> *3. The notice u/s 153A of the ITA Act, 1961 dated 13/01/2012 issued by the learned AO is invalid since no*

incriminating materials found during the search to make an assessment u/s 153A rws 143(3).

4. The Hon'ble CIT(A) has erred in overlooking the legal objections of the appellant regarding the non-issuing of notice u/s 143(2) of the IT Act, 1961 to the appellant before concluding the assessment u/s 153A rws 143(3) of the IT Act, 1961 without adducing the evidence on the legal objections made by the appellant.

5. The learned AO and the Hon'ble CIT(A) erred in ignoring the basic tenets of the provisions of Section 14A which states "(1) for the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act."

6. The investments made by the appellant company in subsidiaries/SPVs are to promote its core business on account of business expediency and not for investment per se to earn capital gains, and the strategic investments made by the appellant in its subsidiary/SPVs is not to be reckoned for disallowance u/s 14A

ON FACTS
7. The Authorities below failed to note that the provisions of Section 14A rwr 8D can be invoked ONLY when some expenditure incurred in relation to income not includible in total income whereas in the case of the appellant herein the Authorities below failed to note the cross charges amounting to Rs.14,27,40,154 made to the related parties on a cost reimbursement basis in the financial statements for the above AY 2011-12. Hence the additions made u/s 14A rwr 8D is wrong and beyond the jurisdiction of the learned AO.

8. The huge additions made u/s 14A rwr 8D by the learned AO and modified by the Hon'ble CIT[A) is without application of mind and the both the orders passed by the learned AO u/s 153A rws 143(3) and that of the Hon'ble CIT[A), without going into the details of cross charging of expenses in respect of the entities in whom the investments have been made and the income from which is claimed as exempt u/s 10 of the IT Act as clearly stated in the financial statements of the appellant for the concerned AY 2010-11, are prejudicial against the appellant to raise huge demand.

9. The learned AO and the Hon'ble CIT[A) failed to note the cross charges of expenditure made by the appellant in the financial statements in respect of the entitles in which investments are made by the appellant. Hence the question of invoking the provisions of Section 14A DOES NOT ARISE because heading of the section 14A states "Expenditure

incurred in relation to income not includible in total income."

10. In respect of the question of validity of the proceedings u/s 153A, the Hon'ble CIT[A) in his order has taken cognisance of the decision of the Hon'ble Karnataka High Court in an earlier case "Canara Housing Development Co - 62 Taxmann.com 250 [Kar)"

11. The above cited case law was pertaining to the orders passed by the CIT u/s 263 in respect of one of the Group entities of the appellant and not with regard to proceedings u/s 153A.

12. The Hon'ble CIT[A) has IGNORED the orders of the Hon'ble Karnataka High Court subsequent decision in Lancy Constructions Case which stated [and as quoted by the Hon'ble CIT[A) in his order) that " ... if assessment is allowed o be reopened on the basis of search, in which no incriminating materials had been found, and merely on the basis of further investigating the books of accounts which had already been submitted by the assessee and accepted by the AO at the time of regular assessment, the same would amount to the Revenue getting a second opportunity to reopen the concluded assessment, which is not permissible in law. Merely because a search was conducted in the premises of the assessee, would not entitle the Revenue to initiate the process of reassessment, for which there is a separate procedure prescribed in the statute. It is only when the conditions prescribed for reassessment are fulfilled that a concluded assessment can be reopened. The very same accounts which were submitted by the assessee, on the basis of which assessment has been concluded, cannot be reappreciated by the AO merely because a search had been conducted on the premises of the assessee."

13. For the above and any other grounds that may be urged and presented at the time of hearing of the appeal, the appellant humbly prays that the appeal may be allowed and justice rendered.

PRAYER
The appellant prays before the Hon'ble Tribunal that the order of the learned CIT (A) upholding the Order of the Assessing Officer and that of the learned AO be set aside and the impugned additions made thereof be deleted."

5. At the time of hearing, the legal grounds Nos.1, 2, 3, 4, 10, 11 and 12, with regard to the validity of proceedings u/s 153 of the I.T.Act for making addition on the seized material,

though there was no seized material, were not pressed. Accordingly, these grounds are dismissed as not pressed.

6. Ground Nos.5, 6 to 9 are with regard to the sustaining of addition u/s 14A of the Act r.w.s. 8D of the I.T.Rules. The assessee is having following investments:-

Partnership Firms	Rs.924.79 crore
Mutual Funds	Rs.4.07 crore
Shares in Indian Companies	Rs.46.69 crore

Total	Rs.975.55 crore
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6.1 The total fund available with the assessee is at Rs.1141.66 crore. The assessee has used Rs.975.55 crore towards various investments as shown above, the income from which are not liable for tax. As such the Assessing Officer invoked the provisions of section 14A r.w. Rule 8D and computed the disallowance as follows:-

Rule 8D(2)(i)	Nil
Rule 8D(2)(ii)	Rs.36,38,84,940
Rule 8D(2)(iii)	Rs.3,57,62,950

7. On appeal, the CIT(A) sustained the above amount, by observing as under:-

Non convertible debenture-I Kotak	Rs.8,49,86,300
Non convertible debenture-II Kotak	Rs.2,07,94,640
Kotak Mahindra Term loan	Rs.1,60,80,833
ICICI Bank term loan	Rs.4,74,18,684
Saraswat Bank term loan	Rs.21,73,43,110
Reliance Capital vehicle loan	Rs.3,222
SBI vehicle loan	Rs.72,607
Kotak Mahindra Vehicle loan	Rs.1,06,517
Saraswat Bank OD	Rs.33,46,534
Total	Rs.39,01,50,234

"As seen above, the term loans (project specific loans), vehicle loans are clearly for the purpose of business and hence should not be considered for computation of disallowance u/s 14A r.w.r 8D(2)(ii). Only the interest paid on Non convertible debenture (Kotak) and Bank OD interest should be considered for the computation of disallowance u/s 14A r.w.r 8D(2)(ii) as there is no clear nexus with business. There is a jump in investment in shares from Rs.453,61,66,811 to Rs.975,55,12,549 and it has already been noticed that the total investments exceed non interest bearing own funds of the assessee by Rs.371,76l,42,812. Thus, the interest paid on non convertible debenture (Kotak) and Bank OD interest should be considered for the computation of disallowance u/s 14A r.w.r 8D(2)(ii). However, the average of investments for the computation of disallowance u/s 14A r.w.r 8D(2)(ii), should not include following investments as interest is earned from them which has been offered to tax."

8. Against the above, both the assessee and Revenue are in appeal before us.

9. We have heard both the parties and perused the material on record. The learned Departmental Representative submitted that in earlier assessment year, i.e., A.Y. 2009-2010 in ITA No.1583/Bang/2017, similar issue came up for consideration before the Tribunal and the Tribunal vide order dated 28.06.2021 held as under:-

"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.
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> 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.
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> 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 - Rs. 17,91,146/-

Rs.2,64,40,765/-
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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.

9.1 Further, in assessment year 2014-2015, similar issue came up for consideration before the Tribunal in ITA No.284/ Bang/2020 and the Tribunal vide order dated 24.06.2020, held as under:-

6. We have heard the rival contentions and perused the records. The ground nos. 1, 2, 3, 5, 8 and 9 are general in nature. Ground no.4 is related to non-recording of dissatisfaction. As rightly pointed out that the Ld CIT(A), we notice that the AO has issued show cause notice to the assessee on due examination of financial statements of the assessee, since the assessee did not make any disallowance u/s 14A of the Act, even though it had earned exempt income. Hence the dissatisfaction of the AO

has been demonstrated in the assessment order and it is not a case of mechanical invoking of provisions of Rule 8D. Accordingly we reject ground no.4 of the assessee.

7. In ground no.6, the assessee is contending that the assessee has got sufficient own funds and hence disallowance u/s 14A is not warranted. Before us, the Ld. A.R. submitted that the own funds available with the assessee is in excess of the value of investment made in shares and hence the A.O. should not have disallowed any expenditure out of interest expenses under Rule 8D(2)(ii) of I T Rules. In this connection, Ld. A.R. invited our attention to the copies of Balance Sheet placed in the paper book. On a perusal of the same, we notice that the Ld. A.R. has considered only the value of investments made in shares for advancing this argument and did not consider the value of investments made in partnership firm. We have noticed earlier that the exempt income earned by the assessee included "share income from partnership firm", which is exempt u/s 10(2A) of the Act. Hence, we are of the view that the investments made in partnership firm are also required to be considered for comparing the value of investments with the available own funds. We notice that the value of investments held by the assessee as at the year end is Rs.1,444.46 crores, whereas the own funds available with the assessee was Rs.585.21 crores only. Hence, it cannot be said that the own funds available with the assessee was more than the value of investments. Hence, this argument of the assessee also fails on the above said facts.

8. Before addressing ground no.7, we prefer to adjudicate two more contentions urged orally by Ld A.R. The first contention of Ld A.R was that the share income from partnership firm should not be considered as exempt income, since the profits of partnership firm have already suffered tax in the hands of the partnership firm. We notice that the very same issue was considered by Ahmedabad Special bench of ITAT in the case of Shri Vishnu Anand Mahajan (ITA No.3002/Ahd/2009 dated 25-05-2012) and identical contentions made by the assessee were rejected by holding that, once the share income is excluded from the total income u/s 10(2A) of the Act, the provisions of section 14A of the Act would apply to it. Hence, this contention of the assessee would fail.

9. The next contention urged by the assessee is a partner in many firms. Some firms have earned profit and other firms have incurred loss. She submitted that the A.O. has considered only "share of profit received from partnership firm" for the purposes of sec.14A and did not consider "share of loss divided to the assessee". The Ld A.R submitted that the share of profit/loss from partnership firms should be cumulated and in that case, net result would be only loss from the partnership firms. Hence the AO should have ignored the share of profit received from some of the firms for the purposes of computing disallowance under sec.14A of the Act. We do not find any merit in this contention of the assessee, since what is exempted under the Act is share income received from the partnership firm u/s 10(2A) of the Act, meaning thereby, the profit or loss received from the partnership firm does not enter into computation of income at all. Hence the question of setting off income from partnership firm inter se does not arise. Accordingly, once a particular income does not enter into the computation on the ground the same is exempt, as held

by special bench in the case of Sri Vishnu Anand Mahajan (supra), provisions of section 14A of the Act would apply. In this case, there is no dispute that the share income from partnership firm to the tune of Rs.1,02,01,474/- has been claimed as exempt u/s 10(2A) of the Act. Hence the provisions of sec.14A shall apply to the above said exempt income.

10. In ground no.7, the assessee is contending that the disallowance made by the tax authorities u/s 14A of the Act is much more than exempt income. Before us, the Ld. A.R. submitted that the quantum of disallowance u/s 14A of the Act should not exceed the amount of exempt income. In support of this proposition, the Ld. A.R. placed reliance on the decision rendered by Hon'ble High Court of Delhi in the case of Joint Investment Private Limited Vs. CIT 372 ITR 694 and also the decision rendered by Mumbai bench of Tribunal in the case of Future Corporate Resources Limited Vs. DCIT (ITA No.4658/Mum/2015 dated 26.7.2017).

11. The Hon'ble Delhi High Court has considered an identical issue in the case of PCIT vs. Caraf Builders & Construction (P) Ltd (2019)(101 taxmann.com 167) and has held as under:-

> "25. Total exempt income earned by the respondent-assessee in this year was Rs. 19 lakhs. In these circumstances, we are not required to consider the case of the Revenue that the disallowance should be enhanced from Rs. 75.89 crores to Rs. 144.52 crores. Upper disallowance as held in Pr. CIT v. McDonalds India (P.) Ltd. ITA 725/2018 decided on 22nd October, 2018 cannot exceed the exempt income of that year."

The Mumbai bench of Tribunal has also taken an identical view in the case of Future Corporate Resources Ltd (supra) and the relevant observations made by the Tribunal in the above said case are extracted below:-

> "10. Coming to the second argument of the assessee, the assessee argued that it had earned meager dividend income of Rs. 24,138 as against which, the assessing officer disallowed a sum of Rs. 3,36,28,000 which is more than the exempt income. The assessee further argued that dis-allowance under section 14A cannot exceed amount of exempt income. The assessee relied upon case laws in support of its arguments. We find that the Hon'ble Delhi High Court in the case of Joint Investments (P.) Ltd. (supra) held that the window for dis allowance is indicated in section 14A and is only to the extent of disallowing expenditure incurred by the assessee in relation to tax exempt income. This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case. We further notice that the Hon'ble Delhi High Court in the case of CIT v. Holcim India (P.) Ltd. (2014) 272 CTR 282 (Delhi) has held that there can be no dis allowance under section 14A in the absence of exempt income. The rationale behind these judgments is that the amount of disallowance cannot exceed exempt income. In this case, on perusal of the facts, we find that the assessee has earned exempt income of Rs. 24,138, whereas the assessing officer disallowed an

> amount of Rs. 3,36,28,000. Therefore, considering the facts and circumstances of the case and also following the ratios of the case laws discussed above, we are of the view that dis allowance under section 14A cannot exceed the exempt income. Hence, we direct the assessing officer to restrict dis allowance under section 14A to the extent of exempt income earned by the assessee."
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> *The above said decisions would support the contention of the assessee on this point. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to restrict the disallowance u/a 14A to the amount of exempt income.*
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> *12. Since appeal itself is disposed of, the stay petition shall become infructuous.*
> *13. In the result, the appeal of the assessee is partly allowed."*

9.2 Further, the Hon'ble jurisdictional High Court in the case of *Biocon Limited v. DCIT (2021) 431 ITR 326 (Kar.)*, wherein it was held that when there is exempt income, there cannot be any disallowance u/s 14A of the Act. In other words, it means that disallowance u/s 14A of the Act should be limited to the exempt income.

9.3 In view of the above judgment of the Hon'ble jurisdictional High Court, we direct the A.O. to disallow the amount made u/s 14A of the Act to the extent of exempted income only as decided by the Tribunal in assessment year 2014-2015.

10. In view of our above finding, the appeal of the Revenue as well as the C.O. by the assessee, have become infructuous, which are disposed of accordingly.

11. In the result, the appeal filed by the assessee for Asst.Year 2011-2012 (ITA No.1589/Bang/2017) is partly allowed and assessee's appeal for Asst.Year 2010-2011 (ITA No.1590/Bang/2017), Revenue's appeal for 2011-2012 (ITA

No.1592/Bang/2017) and C.O. by the assessee are dismissed.

Order pronounced on this 22nd day of September, 2021.

Sd/-	**Sd/-**
(George George K)	**(Chandra Poojari)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Bangalore; Dated : 22nd September, 2021.
Devadas G*

Copy to :
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2. The Respondent.
3. The CIT(A)-11, Bengaluru
4. The Pr.CIT (Central), Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore