

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'A', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 33/CHD/2021

निर्धारण वर्ष / Assessment Year: 2011-12

The DCIT, Central Circle-III, Ludhiana	Vs. बनाम	M/s Laxmi Energy & Foods Ltd., SCO 18-19, Sector 9-D, Ludhiana
स्थायी लेखा सं./PAN No: AAACL3147J		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

(HYBRID MODE)

निर्धारिती की ओर से/Assessee by : Sh. Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR

सुनवाई की तारीख/Date of Hearing : 06.06.2024

उदघोषणा की तारीख/Date of Pronouncement : 10.07.2024

आदेश/Order

Per Dr. Krinwant Sahay, A.M.:

Appeal in this case has been filed by the Assessee against the order dated 28.01.2021 of the Id. Commissioner of Income Tax (Appeals)-3, Gurgaon [herein referred to as 'CIT(A)'] on the following Grounds :

1. *Whether the Ld. CIT(A) was justified in allowing depreciation when under the relevant provision of Income Tax Act, 1961 the initial burden of proof to prove*

that the asset, on which depreciation has been claimed, has been put to use is upon the assessee or it is for the revenue to disprove the user of asset?

2. *Whether the Ld. CIT(A) has erred in law in allowing depreciation when the assessee has not discharged its initial burden in view of the facts that there was enough evidence on record showing the possibility of non-user of the asset?*
3. *Whether on the facts and in the circumstances of the user and in law, the Ld. CIT(A) is justified in holding total tax exempt income earned by the assessee, thereby implicitly holding CB.D.T Circular No. 5/2014 dated 11.02.2014 to be illegal whereas Circular No. 5 of 2014 propounds that section 14A is triggered for disallowance of expenditure incurred which is relatable to tax exempt income even though no tax exempt income under the Act has been earned during a particular year?"*
4. *The Appellant craves leave to add or amend the grounds of appeal on or before is heard and disposed off.*

2. Appeal on Ground Nos. 1 and 2 are against the allowing of depreciation by the CIT(A). On this issue, the ld. CIT(A) in his order has given findings as under: _

"6.1 The AO in the assessment order has referred to the assessments made in the case of the appellant in the AY 2008-09, 2009-10 where the AO did not accept the claim of the appellant for putting into use plant during the year and therefore disallowed depreciation of Rs. 72,21,35,592/- (50% of the total claim). On the same asset the AO has not allowed depreciation in subsequent AYs 2010-11 and 2011-12. During the appellate proceedings it has been

represented by the learned AR that Hon'ble ITAT in the case of the appellant for AY 2008-09 has accepted claim of depreciation for AY 2008-09 (relevant page 87 of the order of the Hon'ble ITAT). On such basis it was argued by the learned AR that there was no merit in the disallowance of depreciation made by the AO for the year under consideration.]

6.2 On going through the facts of the case and material on record it is observed from "the order of the Hon'ble ITAT for AY 2008-09 in the case of the appellant (ITA no. 250-251, 372/CHD/2013 dated 26.2.2014) wherein it was held that the appellant was eligible for depreciation on the plant installed during the year at the rate of 40% (50% of eligible rate of 80% as the plant was found put to use in the second half of the year]. Respectfully following the decision of Hon'ble ITAT (supra), the AO is directed to allow the depreciation on the said plant for assessment year 2011-12 after making the computation for the allowable amount as per the provisions of the Income Tax Act, 1961. In view of these facts and discussions this ground of appeal is disposed off with the directions to the AO as above."

3. The ld. DR, during the proceedings before us, argued that in order to allow depreciation, the initial burden is on Assessee to prove or to bring evidence on record showing the use of plant and machinery on which depreciation has been claimed. The Ld. counsel of the Assessee filed a written submission on this issue which is as under:

*"Disallowance of Depreciation to the tune of Rs.
5,06,00,068/-*

1. *The Assessing Officer has summarily disallowed the depreciation on Plant & Machinery to the tune of Rs.5,06,00,068/- by giving reference to the order of the CIT (A) for AY 2008-09 and AY 2009-10.*
2. *It is submitted that there was no issue of disallowance of depreciation for AY 2008-09 and AY 2009-10, rather the Hon'ble ITAT has held that the Assessee had installed the "mega Projects" in AY 2006-07.*
3. *Therefore, the existence of the plant has even been accepted by the Hon'ble ITAT in the AY 2008-09, so claim of depreciation cannot be disallowed.*
4. *In AY 2008-09, the depreciation on power plant was disallowed, but the same had been allowed by the Hon'ble ITAT.*
5. *Therefore, by placing reliance upon the judgement of ITAT for the A.Y 2008-09, the Worthy CIT(A) allowed the claim depreciation on the said plant for the A.Y 2011 -12.*

4. We have considered the findings of the ld. CIT(A) and the arguments of the ld. DR as well as the written submission filed by the Counsel of the Assessee on this issue and we find that the Commissioner (Appeals) has relied upon the order of the ITAT Chandigarh Bench in the Assessee's own case in ITA No. 250-251, 372/Chd/2013 dated 26.2.2014 wherein, the Chandigarh Bench of the ITAT had allowed the depreciation on the said plant and machinery. In our view, once the company is an ongoing concern and the plant and

machinery are used for the purpose of production, there is hardly anything left for the Assessee to produce as evidence that such plant and machinery is in use. No contrary findings have been given by the Assessing Officer on this issue, therefore, in our view, the Id. CIT(A)'s reliance on the order of the Chandigarh Bench of the ITAT in Assessee's own case for A.Y. 2008-09 is justified. Accordingly, appeal of Revenue on this issue is dismissed.

5. Appeal on Ground No.3 is against the action of the Id. CIT(A) in restricting the disallowance made u/s 14A to Rs. 2,96,317/- and deletion of remaining amount added by the A.O. The Id. CIT(A) on this issue has given his findings as under:-

“5.1 The facts of the case as emanating from the assessment order are as under :

The appellant in its balance sheet as on 31.3.2011 has shown investments of Rs. 61,32,54,169/-. In its ITR the appellant has shown exempt income u/s 10 (34) of the Act of Rs. 2,96,317/- from dividend. The appellant has not shown any disallowance u/s 14A of the Act from such exempt income. The AO confronted the appellant regarding disallowance u/s 14A of the Act. It was explained by the appellant that such investments have been made in the previous years out of non-interest-bearing funds and therefore no disallowance was called for. The AO after making reliance upon the provision of section 14A r.w.r. 8D of Income Tax Rules, 1962 made the disallowance for Rs. 3,79,55,179/- u/s 14A of the Act.

5.2 During the appellate proceedings, it was argued by the learned AR that the appellant was having sufficient capital along-with reserve and surplus which have been utilised in earlier years for the purpose of making above investments with group concerns and there was no nexus between the borrowed funds and investments so made. The gist of arguments made by the learned AR through the written submissions is as under:

- I. That the AO has not recorded his satisfaction anywhere to show how the claim made by the appellant was not acceptable. The AO has applied Rule 8D mechanically. In such circumstances recording of satisfaction is a must as held by Hon'ble Punjab and Haryana High court in the case of CIT vs Deepak Mittal (2013)36 CCH 51(P&H), CIT vs Kapson Associate 381 ITR 204.
- II. That the majority of investments were made in the share capital of sister concerns under the same management for the growth of business of the group as a whole which would ultimately help the business of the assessee company. These investments are strategic in nature and no direct or indirect expenditure has been incurred to make such investments. Therefore, such investments have been made for the purpose of commercial expediency and therefore expenditure upon the same is allowable business expenditure. The reliance was placed upon the decision of Hon'ble Punjab and Haryana High court in the case of Bright Enterprises Pvt. Ltd. vs CIT, Jalandhar.
- III. That the investments have been made in earlier AYs out of interest free funds available with the appellant in the form of share capital and reserve

and surplus. Therefore, there was assumption in favour of appellant that interest free sources have been used to make such investments and accordingly no disallowance was called for u/s 14A of the Act. Reliance was placed upon the decision of Hon'ble Bombay High Court in the case of HDFC Bank Ltd.

- IV. That disallowance u/s 14A of the Act cannot exceed the amount of exempt income. Reliance was placed upon the decision Hon'ble Apex Court in the case of PCIT vs. State Bank of Patiala 99 axmann.com 286.*
- V. That the disallowance under Rule 8D should be made only on investments generating tax free income.*

5.3 The facts of the case and material on record have been gone through. It is noted from the record that the appellant in its balance sheet as on 31.3.2011 has shown investments of Rs. 61,32,54,169. In its ITR the appellant has shown exempt income u/s 10 (34) of the Act of Rs. 2,96,317 from dividend. The appellant has not shown any disallowance u/s 14A of the Act for such exempt income.

It has been held by Hon'ble Supreme Court in the case Maxopp Investment Ltd. 402 ITR 640 that when the shares are held by the assessee not to earn exempt income but to retain controlling stake in the group companies, the dominant purpose test cannot be said to be relevant for the purpose of section 14A and disallowance u/s 14A can be made. Therefore, there is no merit in such argument made by the learned AR that as the said investments were made in the group companies for the business purposes, therefore, no disallowance u/s 14A could have been made. In the

circumstance there is merit in invoking Rule 8D by the AO to make disallowance u/s 14A of the Act.

However, it has been held by the Hon'ble Delhi High Court in the case Caraf Builders and Construction Pvt. Ltd. (2019) 101 taxmann.com 167 (Delhi) that disallowance u/s 14A cannot exceed the quantum of exempt income. Departmental SLP against the said decision has been dismissed by the Hon'ble Supreme Court on 30.8.2019. Further reliance is placed upon the decision of Hon'ble Delhi High Court in the case of India Bulls Capital Services Ltd. (2020) 114 taxmann.com 646 where it has been held that disallowance u/s 14A cannot exceed amount of tax free income. SLP of the Department against the said decision has been dismissed by Hon'ble Supreme Court (2020) 114 taxmann.com 647.

Further reliance is placed upon the decision of Hon'ble jurisdictional High Court in the case of PCIT vs State Bank of Patiala (2017) 88 taxmann.com 667, [2018] 99 taxmann.com 285 (P&H) where similar view has been taken. The SLP of the Department against the derision of Hon'ble High Court has been dismissed by Hon'ble Apex Court (2018) 99 taxmann.com 286. The relevant part of the judgement of Hon'ble Punjab and Haryana High Court is re-produced as under:

"At the outset, learned counsel for the assessee submitted that the CIT while issuing notice under Section 263 of the Act exercising revisional jurisdiction had primarily sought to make the disallowance under Section 14A of the Act to the extent of the income earned irrespective of the amount of exempt dividend income. Learned counsel relied upon decision of a Division Bench of this Court in Pr. CIT v. State Bank of Patiala [2017] 78 taxmann.com 3, in the case of the

assessee relating to the assessment year 2008-09 wherein the issue on merits has been answered in favour of the assessee and against the revenue. The appeal in the said case was accordingly dismissed. It was urged that on merits, the issue is required to be answered in favour of the assessee. Once that was so, the exercise of revisional jurisdiction under Section 263 of the Act was improper.

5. *However, learned counsel for the appellant-revenue urged that though the issue has been decided in favour of the assessee, yet invoking the provisions of Section 263 of the Act cannot said to be inappropriate in the facts and circumstances of the case.*

6. *After hearing learned counsel for the parties, we notice that the issue on merits has been decided in favour of the assessee in State Bank of Patiala's case(supra). The amount of disallowance under Section 14A was restricted to the amount of exempt income only and not at a higher figure. Once that was so, we do not consider it appropriate to discuss the scope of Section 263 of the Act as the same has been rendered academic in view of the issue being answered in favour of the assessee on merits. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed."*

6. The ld. DR vehemently argued and emphasized that the Circular No.5 of 2014 dated 11.2.2014 issued by the CBDT should be applied in letter and spirit.

7. On the other hand, the ld. Counsel of the Assessee has filed a written submission on this issue which is as under:-

“Disallowance as per provisions of Section 14A of the Act.

1. Total investments made amounting to Rs.61,32,54,169/- .
2. The Assessing Officer has made total addition of Rs.3,79,55,179/- by applying the provisions of Section 14A of the Act.
3. The Worthy CIT(A) has restricted the disallowance to the tune of Rs.2,96,317/- i.e. to the amount of the exempt income.
4. The disallowance in the case of the assessee u/s 14A of the Act is not tenable due to the following reasons:
 - a) The Investments have been made out of interest free funds and no satisfaction recorded:
 - i) The Assessee Company has sufficient interest free funds to invest and it is justified from the Balance Sheet. Furthermore, no satisfaction have been recorded by the Ld. AO before making the said addition and it is not clear as to how the amount of disallowed expenses have been alleged to be utilized for earning of the said exempt income.
 - ii) The Hon'ble ITAT order in the case of the Assessee's group case in M/s Ganeshay Overseas Industries Ltd. for AY 2010-11 in ITA No. 186/Chd/2015 order dated 19.10.2015 has duly held that the no disallowance on account of interest expenditure and on account of expenses u/sec 14A of the Act can be made in this regard. Applying the same, no addition can be made as per the provisions of section 14A of the Act.
 - b) Disallowance to the extent of exempt income only:

- (i) *Exempt income of Rs. 2,96,317/- has been earned from earlier Investment made in IDBI Shares.*
- (ii) *Notwithstanding the above, The Worthy CIT(A) has rightly restricted the disallowance to the tune of Rs. 296317 and reliance in this regard its placed on the judgment of the Hon'ble Chandigarh Bench of ITAT in the case of one of the group of the assessee namely Lakshmi Energy and Foods Ltd. Vs. The DCIT, Central Circle-III, Ludhiana vide ITA Nos. 133 & 134/Chd/2019 and order dated 05.09.2019.*
- (iii) *Along with the same reliance is also placed on the following judgments: -*
- (a) *Joint Investment Pvt. Ltd. vs CIT (Del. HC) as reported in ITA 117/2015 -*

"By no stretch of imagination can section 14A or Rule 8D be interpreted so as to mean that the entire tax exempt income is be disallowed. The window for disallowance is indicated in Section 14A, and is only to be extent of disallowing expenditure "incurred by the assessee in related 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".

(b) *Sahara India Financial Corpn. Ltd. vs DCIT, ITA No. 3512/Del/2013*

(c) *DCIT vs Anant Raj Limited (ITAT Mumbai), ITA No. 625 & 626/Mum/2023*

"Hon'ble Supreme Court in the case of State Bank of Patiala (2018) 99 taxmann. com 286 (SC) and Hon'ble Delhi High Court in the case of CIT Vs. Joint Investment Pvt. Ltd. (2015) 372 ITR 69 (Delhi) held

that disallowance is to be restricted to the extent of exempt income earned by the assessee. Therefore, following the decision of Hon'ble Apex Court and High Court, we direct the A.O to restrict the disallowance to the extent of exempt income earned by the assessee. Therefore, we don't find any infirmity in the decision of Id. CIT(A). Accordingly, the ground of appeal of the revenue stand dismissed."

Therefore, the disallowance u/s 14A cannot exceed the exempt income earned by the assessee.

c) *Newly amended provisions are applicable retrospectively*

It is submitted that the amended provision u/s 14A, in which a non-obstante clause and an explanation after the proviso has been added, is applicable from A.Y 2022-23 onwards and the same is not applicable to the relevant assessment year. The said law has been settled by the Delhi High Court in the case of Principal Commissioner of Income-tax (Central) Vs. Era Infrastructure (India) Ltd, reported in [2022] 141 taxmann. Com 289 (Delhi).

Reliance is also placed on the judgment of the Mumbai Bench of ITAT in the case of ACIT vs Bajaj Capital Venture Pvt. Ltd. Reported in 140 taxmann.com 1 wherein it has been again held that the newly inserted explanation to section 14A is applicable from 01.04.2022 onwards."

8. We have considered the findings of the A.O. and the arguments made by the ld. Counsel on this issue. We have also considered the findings given by the ld. CIT(A) and the written submission filed by the Counsel of the Assessee. We find that the ld. CIT(A) is justified in

accepting the ratio decided by the Hon'ble Supreme Court in the case of 'State Bank of Patiala' (supra) and Hon'ble Delhi High Court in the case of 'CIT Vs. Joint Investment Pvt. Ltd.', (supra), wherein it has been held that the amount of disallowance u/s 14A of the Act is to be restricted to the amount of exempt income earned only and not to a higher figure. Accordingly, appeal of Revenue on Ground No. 3 is also dismissed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 10.07.2024

Sd/-
(A.D. JAIN)
Vice President

Sd/-
(DR KRINWANT SAHAY)
Accountant Member

"rkk"

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar