

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.1130/Kol/2023
Assessment Year : 2012-13

Soyuz Trading Co. Ltd
(now merged with Concenate Advest Advisory (P) Ltd).....Appellant
C/o Subash Agarwal &
Associates, Advocates,
Siddha Gibson,
1, Gibson Lane, Suite 213,
2nd Floor, Kolkata – 700069.
[PAN: AAGCS3371K]

vs.

DCIT, Circle-7(1), Kolkata..... Respondent

Appearances by:

Shri Siddharth Agarwal, Advocate, appeared on behalf of the appellant.
Shri S. Datta, CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 01, 2024

Date of pronouncing the order : February 05, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 22.09.2023 of the National Faceless Appeal Centre [hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that the Ld. CIT(A) was not justified in confirming the disallowance of Rs.68,65,91 7/- made by the A.O. by invoking the provisions of sec. 14A r.w. Rule 8D which is over and above the suo-moto disallowance of Rs.9,39,667/- made by the assessee itself.

2. Without prejudice to the above, Ld. CIT(A) ought to have restricted the disallowance to the extent of Rs.26,63,953/-, being calculated on the basis of the average value of investment after considering only those investments which had yielded dividend income during the relevant year.

3. For that the Ld. CIT(A) ought to have considered that Amendment brought in by the Finance Act, 2022 in relation to disallowance u/s. 14A r.w. Rule 8D is applicable prospectively w.e.f. AY 2022-23.

4. Without prejudice to the above grounds, the Ld. CIT(A) ought to have considered that the disallowance u/s. 14A r.w. Rule 8D should not exceed the administrative expenditures debited in the Profit & Loss Account.

5. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”

3. At the time of hearing, the ld. Counsel for the assessee has harped upon only on Ground No.2 of the appeal stating that while making the disallowance of administration expenses u/s 14A of the Act r.w.r. 8D(2)(iii) of the Income Tax Rules 1962, the Assessing Officer while calculating the disallowance has taken the average value of all the investments including those investments which did not yield any tax exempt dividend income. That, however, as per the decision of the Hon'ble Delhi High Court in the case of “Joint Investments Private Ltd. vs. CIT” ITA No.117/2015 dated 25.02.2015, the Assessing Officer was supposed to calculate the disallowance u/s 14A r.w.r 8D(2)(iii) of the Income Tax Rules taking the average value only those investments which have yielded dividend income during the relevant year. He has further submitted that the Amendment brought in by the Finance Act, 2022 in relation to disallowance u/s. 14A r.w. Rule 8D is applicable prospectively w.e.f. AY 2022-23.

4. The ld. DR, however, has submitted that the newly inserted Explanation to section 14A being clarificatory is retrospectively applicable. He, in this respect, has also relied upon the decision of the Coordinate Guwahati Bench of the Tribunal in the case of ‘ACIT vs.

Williamson Financial Services Ltd. reported in [2022] 140 taxmann.com 164 (Guwahati-Trib.)

5. We have heard the rival contentions and gone through the record. It has to be observed that earlier as per decisions of the various High Courts of the country, the proposition was laid down that where the assessee has not derived any tax exempt income from investments, then no disallowance is attracted u/s 14A of the Act. Reliance in this respect can be placed on the following case laws:

Cheminvest Ltd. vs. CIT 378 ITR 33 (Del).

CIT vs. M/s. Holcim India Pvt. Ltd. (2015) 57 taxmann.com 28(Delhi)

CIT v. Shivam Motors (P.) Ltd. [2015] 230 Taxman 63(Allahabad)

PCIT vs. Reliance Chemotex Industries Ltd. (2022) 138 taxmann.com 199 (Calcutta)

5.1 Further devolving upon the aforesaid proposition in relation to the disallowance of administration expenditure u/s 14A of the Act r.w.r 8D(2)(iii) of the Income Tax Rules, 1962, the Hon'ble Delhi High Court in the case of "Joint Investments Private Ltd. vs. CIT" ITA No.117/2015 dated 25.02.2015 and further in the case of 'ACB India Limited vs. ACIT' ITA No.615/2014 dated 24.03.2015 has held that for computing the disallowance u/s 14A of the Act r.w.r. 8D(2)(iii) of the Income Tax Rules, 1962, the average value of only the investments yielding non-taxable income have to be considered and not the entire investment.

5.2 However, an Amendment has been brought to section 14A of the Act by Finance Act 2022, whereby, an Explanation to section 14A has been inserted, wherein, it has been clarified that notwithstanding anything to the contrary contained in the Act, the provisions to section 14A of the Act shall apply and shall be deemed to have always applied for the purpose of making disallowance in respect of expenditure

incurred in relation to earning of tax exempt income irrespective of the fact that any tax exempt income has not actually accrued or received during the relevant year. For the sake of ready reference the newly inserted Explanation to section 14A of the Act, is extracted as under:

“14A. [(1)] [Notwithstanding anything to the contrary contained in this Act, 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 this Act.]

[Explanation.—For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income.]”

The Coordinate Guwahati Bench of the Tribunal in the case of ‘ACIT vs. Williamson Financial Services Ltd. (supra) (Judicial Member herein being author of the said decision) while deliberating upon the said Explanation to section 14A of the Act has held that the said Explanation being clarificatory is retrospectively applicable and that in view of the said Explanation, the disallowance u/s 14A will be attracted in respect of expenditure incurred for earning of tax exempt income irrespective of the fact that any tax exempt income has been yielded or not on such expenditure.

6. However, the ld. A/R, has relied upon the recent decision of the Hon’ble Delhi High Court in the case of *PCIT Vs. Era Infrastructure (India) Ltd. (ITA 204/2022)* judgment dt. 20/07/2022, wherein, it has

been held that the aforesaid explanation inserted to Section 14A of the Act is applicable prospectively.

6. Respectfully abiding by the principle of judicial hierarchy, the Hon'ble Delhi High Court being a Higher Court, and as no decision of the Hon'ble Jurisdictional High Court or Hon'ble Supreme Court is available on this issue as yet, hence applying the said decision of the Hon'ble Delhi High Court, we allow the appeal of the assessee. In view of this, the Assessing Officer is accordingly directed to consider only the investments yielding tax exempt income for computation of disallowance under Rule 8D(2)(iii) of the Income Tax Rules 1962.

7. No other contention raised or pressed.

8. In the result, the appeal of the assessee stands partly allowed.

Kolkata, the 5th February, 2024.

Sd/-

[गिरीश अग्रवाल /**Girish Agrawal**]
लेखा सदस्य/**Accountant Member**

Sd/-

[संजय गर्ग /**Sanjay Garg**]
न्यायिक सदस्य/**Judicial Member**

Dated: 05.02.2024.

RS

Copy of the order forwarded to:

1. Soyuz Trading Co. Ltd
(now merged with Concenate Advest Advisory (P) Ltd)
2. DCIT, Circle-7(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches