

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH ' A ', NEW DELHI)

BEFORE SHRI I. C. SUDHIR, JUDICIAL MEMBER AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

I.T.A. No.4959/Del/2012 & 5401 /Del/2013

Assessment year : 2009-10 & 2010-11 respectively

ACIT, Circle 2(1),
New Delhi

Vs.

M/s. Bharat Hotels Ltd.,
Barakhamba Lane,
New Delhi.

GIR / PAN:AAACB1298E
(Appellant)

(Respondent)

Appellant by : Shri Y Kakkar, DR

Respondent by : Shri Ajay Vohra, Sr. Adv.
Shri Gaurav Jain, Adv.

ORDER

PER T.S. KAPOOR, AM:

These are two appeals filed by Revenue against the order of Ld. CIT(A) dated 30.07.2012 and dated 19.07.2013 respectively. Similar issues are involved in these two appeals. One of the grounds of Revenue is the action of Ld. CIT(A) by which he had deleted disallowance made u/s 14A of the Act and the 2nd grievance is the action of Ld. CIT(A) by which he had allowed depreciation on world trade centre and world trade tower which was disallowed by A.O. Though these appeals were filed by Revenue but Ld. A.R. at the outset, submitted that the disallowance u/s 14A is now fully covered in favour of the assessee as various High Courts have held that where dividend is not received, disallowance u/s 14A cannot be made. In support, Ld. A.R. relied on the following case laws:

CIT Vs Holcim India Pvt. Ltd. I.T.A.No. 486 and 299/2014 decided by Hon'ble Delhi High Court placed in paper book pages 9A-9M.

CIT Vs Shivam Motors (P) Ltd. I.T.A.No. 88 of 2014 placed at paper book pages 10-16.

CIT Vs Corrttech Energy Pvt. Ltd. I.T.A.No. 239/2014 placed at paper book pages 17-21

CIT Vs M/s. Lakhani Marketing Incl. I.T.A.No. 970/2008 placed at paper book pages 22-28

CITVs Delite Enterprises its 110/2009 placed at paper book pages 29-30

CIT Vs Mr. M. Baskaran I.T.A.No. 1717/Mds.2013 paper book pages 31-41.

2. Ld. A.R. submitted that admittedly, no dividend was received by the assessee in the present year and, therefore, disallowance u/s14A was not warranted as held in the above mentioned decisions.

3. Regarding the 2nd issue, Ld. A.R. submitted that this issue is also covered in favour of the assessee and in this respect; he invited our attention to page 7 para 16 of the tribunal order in the case of the assessee itself in Assessment Year 2008-09.

4. Ld. D.R. on the other hand submitted that there is a Kerala High Court decision in the case of South Indian Bank Vs CIT 49 Taxman.Com 100 wherein, it has been held that for making disallowance u/s 14A earning of dividend is not relevant and further submitted that the case law relied upon by Ld. A.R. are distinguishable from the facts and circumstances of the present case in view of the fact that in the present case, the investment has been made in the subsidiary companies and therefore, subsidiary companies were under control of assessee company and they might have manipulated to dodge revenue in not declaring and receiving dividend income from investments. Ld. A.R. submitted that without prejudice to the first

argument, even otherwise, the dividend which could have been received from these subsidiary companies, was not exempt as the subsidiary companies are situated outside India and dividend received from foreign companies was not tax free. Moreover, he submitted that investment by assessee was in subsidiary companies, which was for strategic purposes and dividend received from strategic investments was not taxable as held by Delhi Tribunal in the case of Holcim India Pvt. Ltd. The copy of Tribunal order was stated to be placed at paper book pages 53-54. Ld. A.R. further relied upon the case law of Interglobe Enterprises Ltd. Vs DCIT in I.T.A. No. 1362 and 1032/Del/2013 placed at paper book pages 54-65.

5. We have heard rival parties and have gone through the material placed on record. We find from the facts of the present cases that following are the undisputed facts:

- i) The assessee did not receive dividend during the year under consideration.
- ii) The investment was made by Assessee Company in subsidiary companies for strategic Purposes.
- iii) The investment during the year was made in a subsidiary company which was situated outside India and, therefore the dividend income if any received from foreign companies was not exempt.

5.1 We find that various High Courts have dealt with the issue of disallowance u/s 14A where there is no receipt of dividend. The Hon'ble Jurisdictional High Court of Delhi in the case of Holcim India Pvt. Ltd. (supra) vide para 14 to 17 has held as under:

“14. On the issue whether the respondent-assessee could have earned dividend income and even if no dividend income was earned, yet Section 14A can be invoked and disallowance of expenditure can be made, there are three decisions of the different High Courts

directly on the issue and against the appellant-Revenue. No contrary decision of a High Court has been shown to us. The Punjab and Haryana High Court in Commissioner of Income Tax, Faridabad Vs. M/s. Lakhani Marketing Incl., ITA No. 970/2008, decided on 02.04.2014, made reference to two earlier decisions of the same Court in CIT Vs. Hero Cycles Limited, [2010] 323 ITR 518 and CIT Vs. Winsome Textile Industries Limited, [2009] 319 ITR 204 to hold that Section 14A cannot be invoked when no exempt income was earned. The second decision is of the Gujarat High Court in Commissioner of Income Tax-I Vs. Corrttech Energy (P.) Ltd. [2014] 223 Taxmann 130 (Guj.). The third decision is of the Allahabad High Court in Income Tax Appeal No. 88 of 2014, Commissioner of Income Tax (Ii) Kanpur, Vs. M/s. Shivam Motors (P) Ltd. decided on 05.05.2014. In the said decision it has been held:

"As regards the second question, Section 14A of the Act provides that for the purposes of computing the total income under the 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. Hence, what Section 14A provides is that if there is any income which does not form part of the income under the Act, the expenditure which is incurred for earning the income is not an allowable deduction. For the year in question, the finding of fact is that the assessee had not earned any tax free income. Hence; in the absence of any tax free income, the corresponding expenditure could not be worked out for disallowance. The view of the CIT(A), which has been affirmed by the Tribunal, hence does not give rise to any substantial question of law. Hence, the deletion of the disallowance of Rs.2,03,7521- made by the Assessing Officer was in order" .

15. Income exempt under Section 10 in a particular assessment year, may not have been exempt earlier and can become taxable in future years. Further, whether income earned in a subsequent year would or would not be taxable, may depend upon the nature of transaction entered into in the subsequent assessment year. For example, long term capital gain on sale of shares is presently not taxable where security transaction tax has been paid, but a private sale of shares in an off market transaction attracts capital gains tax. It is an undisputed

position that respondent assessee is an investment company and had invested by purchasing a substantial number of shares and thereby securing right to management. Possibility of sale of shares by private placement etc. cannot be ruled out and is not an improbability. Dividend may or may not be declared. Dividend is declared by the company and strictly in legal sense, a shareholder has no control and cannot insist on payment of dividend. When declared, it is subjected to dividend distribution tax.

16. What is also noticeable is that the entire or whole expenditure has been' disallowed as if there was no expenditure incurred by the respondent-assessee for conducting business. The CIT(A) has positively held that the business was set up and had commenced. The said finding is accepted. The respondent-assessee, therefore, had to incur expenditure for the business in the form of investment in shares of cement companies and to further expand and consolidate their business. Expenditure had to be also incurred to protect the investment made. The genuineness of the said expenditure and the fact that it was incurred for business activities was not doubted by the Assessing Officer and has also not been doubted by the CIT(A).

17. In these circumstances, we do not find any merit in the present appeals. The same are dismissed in limine.”

5.2 Similarly, Hon'ble Allahabad High Court in the case of Shivam Motors in I.T.A.No. 88/2014 has held as under:

“15 As regards the second question, Section 14A of the Act provides that for the purposes of computing the total income under the 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. Hence, what Section 14A provides is that if there is any income which does not form part of the income under the Act, the expenditure which is incurred for earning the income is not an allowable deduction. For the year in question, the finding of fact is that the assessee had not earned any tax free income. Hence, in the absence of any tax - free income, the corresponding expenditure could not be worked out for disallowance. The view of the CIT(A), which has been affirmed by the Tribunal, hence does not give rise to any substantial question of law. Hence, the

deletion of the disallowance of Rs.2,03,752/- made by the Assessing Officer was in order.”

5.3 From the above decision of Hon'ble Delhi High Court we find that Hon'ble High Court has considered various case laws for arriving at the conclusion that in case the dividend income is not received by an assessee, the disallowance u/s 14A cannot be made. Reliance was placed by Ld. D.R. on the case law of Hon'ble Kerala High Court cannot be considered as the issue is squarely covered by Hon'ble Jurisdictional High Court. Moreover, we find that investments were for strategic purposes and such investment cannot be said to have been made for earning of dividend as held by various courts which has been relied upon by Ld.A.R. as detailed below:

- “ i) 216 Taxman 92 CIT vs Oriental Structural Engineers Pvt. Ltd.
- ii) 147 ITD 678 VA Tech Escher Wyss Flovel (P) Ltd. Vs ACIT
- iii) I.T.A.No. 5123 & 5124/Del/2012 Holcim (India) P.Ltd. (Del.)
- iv) 1362 & 1032/Del/2013 Interglobe Enterprises Ltd. VS DCIT
- v) I.T.A.No. 5408/2012 Garware Wall Ropes Ltd. vs Addl. CIT
- vi) I.T.A.No. 1021/Cjd.2011 Spray Engg. Devices Ltd.vs Addl. CIT
- vii) I.T.A.No. 4521/Mum/2012 J M Financial Ltd. VsACIT
- viii) 215 Taxman 8 CIT Vs CUTI Bank Ltd.
- ix) S.C. decision in Civil appeal 4678/2014 dismissing SLP filed by Deptt. Against Guj. High Court order.
- x) 215 Taxman 272 CIT Vs Suzlon Energy Ltd. (Guj.)

5.4 The Hon'ble Tribunal in the case of Holcim (India) Pvt. Ltd. (supra) held as under:

“15. Even on merits, we note that disallowances made u/s 14A were unwarranted as assessee has not invested in shares for earning of dividend but acquired the controlling interest in t~e respective companies for doing the business. Ld. CIT(A) himself has admitted that assessee is doing the business and the business of the assessee company has been set up, therefore, there is no question that assessee has invested the funds for earning of dividend.

16:- Similar issue came up before the Chandigarh Bench of the Tribunal in the case of M/s Spray Engineering Devices Ltd. (*supra). In this case also the disallowances were made u/s 14A by the assessing officer by observing that-assessee has purchased shares of Rs. 3.01 crores of M/s Shri Sai Baba Sugar Mills Ltd. for earning exempt income. This action of the assessing officer was confirmed by CIT(A). On second appeal before the Tribunal, the Tribunal held that, "we find merit in the plea of the assessee that where a business strategy had been adopted by the assessee by way of investment in shares of sick company in order to make over the said company for widening its operation of business, cannot be held to be investment per se. The decision making of a business man by way of strategy planning in allied line of business is a decision made in the course of carrying on the business and the Assessing officer cannot sit in judgment seat to comment upon the same. Once the assessee has been found to have made a business investment by way, of shares in related line of business, the said investment though held by way of shares in the said company cannot be subjected to disallowance under section 14A of the Act, which in any case is relatable to disallowance of the expenditure out of the exempt income earned by the assessee, by way of its investment in shares of other company. In the facts of the present case the investment was purely of business nature as the company in which the amount was invested was a loss making company and there was no question of earning any dividend income from such investment. In the totality of the facts and circumstances of the case we find no merit in the order of the authorities below in disallowing any expenditure under the garb of section 14A of the Act".

17. Identical facts are involved in the present case in hand, as in this case also the assessee has invested in the companies which were not showing any profits. The assessee acquired controlling interest in those companies just to run these companies properly. Ld. AR has stated that till date no dividend has been earned by the assessee as assessee is doing the business in these companies from the amounts invested through shares. Therefore, in our considered view this is not a case of disallowance u/s 14A of the Act.

Accordingly, we delete the disallowance made by ld. CIT(A) U/s 14A of the for both the years in question.

18. In the result, the appeals of the assessee are allowed.”

5.3 In the present cases also, we note that assessee had made strategic investments in subsidiary companies and the purpose was to run hotels and the investments were not made for the purpose of earning dividend. Therefore, on the basis of case laws relied upon by Ld. A.R. under such circumstances disallowance u/s 14A cannot be made.

5.3 Further, we find that the subsidiary company in which the investment was made during the years were situated outside India, thus dividend if any received from them would not have been exempted. Therefore, keeping in view all facts and circumstances, the ground No.1 in both the appeals are dismissed.

6. As regards ground No.2, the same is also covered in favour of the assessee by Tribunal order in the case of assessee itself. The Tribunal in Assessment Year 2008-09 following earlier year order had decided the issue in favour of the assessee by holding as under:

“16. Ground No.3 is against the deletion of disallowance of depreciation of World Trade Centre New Delhi World Trade Towers amounting to Rs.77,186/-. Both parties agreed that similar issue has come up before the Tribunal in the assessee’s own case for the earlier Assessment Years 1995-96 to 2006-07. The first appellate authority has followed these decisions. We find no infirmity in the same.”

7. The facts being similar, therefore, following the above, we do not find any infirmity in the order of Led. CIT(A) and, therefore, ground No.2 is also dismissed.
8. In view of above, both the appeals filed by Revenue are dismissed.
9. Order pronounced in the open court on 29th Dec., 2014.

Sd/-
(I. C. SUDHIR)
JUDICIAL MEMBER
Date: 29.12.2014

Sd/-
(T.S. KAPOOR)
ACCOUNTANT MEMBER

Sp

Copy forwarded to:-

The appellant

The respondent

The CIT

The CIT (A)-, New Delhi.

The DR, ITAT, Loknaya Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi).