IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.970 of 2008 (O&M)
Date of decision:02.04.2014

Commissioner of Income Tax, Faridabad

……Appellant

Vs.

M/s Lakhani Marketing Incl., Plot No.131, Sector 24, Faridabad

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Tejinder K.Joshi, Advocate for the appellant.

Ms. Radhika Suri, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos.884 and 970 of 2008 as learned counsel for the parties are agreed that the issue involved in both these appeals is identical. However, the facts are being extracted from ITA No.970 of 2008.

2. ITA No.970 of 2008 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 16.5.2008, Annexure A-III passed by the Income Tax Appellate Tribunal, Delhi Bench 'G' New Delhi (in short, "the Tribunal") in ITA No.3784/DEL/2004, for the assessment year 2001-02, proposing to raise following substantial questions of law for determination of this Court:-

> "i) Whether on the facts and circumstances of the case, the Hon'ble ITAT was right in law in upholding the order of the learned CIT(A) in deleting the disallowance of interest liability amounting to ₹ 46,91,684/- by invoking section 14A of the

Income Tax Act, 1961 particularly when the investment in shares of M/s Lakhani India Limited which yield dividend income are not forming part of the total income by virtue of section 10(33) of the Income Tax Act and hence since dividend does not form the part of total income and when the financial burden incurred by the assessee for acquiring shares should have been proportionately disallowed by invoking section 14A of the Income Tax Act?"

ii) Whether on the facts and circumstances of the case, the Hon'ble ITAT was right in law in upholding the order of the learned CIT(A) in deleting the disallowance of interest liability amounting to ₹ 46,91,684/- by invoking section 14A of the Income Tax Act, 1961 taking a view contrary to judgments pronounced by various courts (i) 105 ITD 669 (ITAT Mumbai-G Bench), (ii) 89 ITD 44 (ITAT Calcutta-C Bench), (iii) 97 ITJ 493 (ITAT Mumbai Bench), (iv) 91 ITD 311 (ITAT Hyderabad-B Bench)?

iii) Whether on the facts and circumstances of the case, the Hon'ble ITAT was right in law in upholding the order of the learned CIT(A) in deleting the disallowance of interest liability amounting to ₹ 46,91,684/- by invoking section 14A of the Income Tax Act, 1961 in contravention of Hon'ble Punjab and Haryana High Court judgment in the case reported in 286 ITR 1 (P&H) as per which no nexus is required to be proved?"

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No.970 of 2008 may be noticed. The assessee firm is engaged in handling marketing of footwears and launching publicity for the companies for which it charges 1% service fee from gross turnover of the respective companies.It filed its return declaring nil income on 30.10.2001 for the assessment year 2001-02. The assessment was completed under section 143(3) of the Act at ₹ 56,57,713/- making following additions to the total income shown by the assessee:-

a) ₹ 47,100/- Charity and Donation.

b) ₹ 3,50,000/- Disallowance of commission paid

c) ₹ 3,58,574/- On account of sales tax payment

d) ₹ 46,91,684/- Disallowance of interest under section 14A

e) ₹ 55,782/- On account of car expenses

Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 24.6.2004, Annexure A-II, the CIT(A) partly allowed the appeal, while deleting the additions of ₹ 3,50,000/-, ₹ 3,58,574/- and ₹ 46,91,684/- and upholding the addition of ₹ 55,782/- and directing to reconsider the matter by the Assessing Officer regarding deduction under section 80G of the Act amounting to ₹ 47,100/-. The revenue went in appeal against the order passed by the CIT(A). Vide order dated 16.5.2008, Annexure A.III, the Tribunal dismissed the appeal. Hence the present appeals by the revenue.

4. We have heard learned counsel for the parties and perused the record.

5. Learned counsel for the appellant submitted that the CIT(A) as well as the Tribunal were in error in deciding the issue in favour of the assessee without properly appreciating the provisions of section 14A of the Act. According to the learned counsel, the assessee had invested in shares of M/s Lakhani Marketing Incl. which had yielded dividend income and was not forming part of total income by virtue of Section 10(33) of the Act and hence interest liability claimed for deduction from the income was impermissible.

6. On the other hand, learned counsel for the assessee besides supporting the order passed by the CIT(A) and the Tribunal relied upon judgments of this Court in ***CIT vs. Hero Cycles Limited***, (2010) 323 ITR

518 and ***CIT vs. Winsome Textile Industries Limited,*** (2009) 319 ITR 204, to contend that finding has been recorded by the CIT(A) as well as the Tribunal that there was no dividend income and in such a situation, provisions of Section 14A of the Act had no applicability. According to the learned counsel, the CIT(A) and the Tribunal had held the assessee to be entitled to claim deduction on account of interest liability.

7. After hearing learned counsel for the parties, we do not find any merit in the appeals.

8. The primary issue that arises for consideration in these appeals is whether the CIT(A) as well as the Tribunal were right in allowing deduction of interest liability out of other income and the claim of the revenue to disallow the same under section 14A of the Act was justified.

9. The CIT(A) vide order dated 24.6.2004, Annexure A.II recorded as under:-

> "7.2 Keeping in view the above facts and circumstances of the case it is held that the AO was not correct in applying section 14A of the IT Act in disallowing the expenditure on account of interest amounting to ₹ 46,91,684/-. It was incumbent on the AO to establish a nexus between the expenditure incurred and the income which was exempt under the Act. Facts clearly do not support the action of the AO. Disallowance is accordingly deleted. The AO is directed to recompute the income accordingly."

10. Vide order dated 16.5.2008, Annexure A.III, the Tribunal on appeal by the revenue while upholding the finding recorded by the CIT(A) noticed as under:-

> "We have heard rival submissions and have perused the material on record. From the reading of section 14A of

the Act, it is clear that before making any disallowance the following conditions are to exist:-

a) That there must be income taxable under the Act, and
b) That this income must not form part of the total income under the Act, and
c) That there must be an expenditure incurred by the assessee, and
d) That the expenditure must have a relation to the income which does not form part of the total income under the Act.

9. Therefore, unless and until, there is receipt of exempted income for the concerned assessment years (dividend from shares), we are of the view, Section 14A of the Act cannot be invoked. In this appeal, the revenue has not dispelled the findings of the CIT(A), nor the statement of the assessee before AO that assessee is not in receipt of any dividend income and hence according to us, the Assessing Officer has erred in invoking Section 14A of the Act, to disallow various interest payments on capital account, security deposits and unsecured loans. This conclusion of ours finds support in the decision of Bombay Bench of the Tribunal in the case of ***Joint Commissioner of Income Tax v. Holland Equipment Co. B.V.***reported in (2005) 3 SOT 810 (Mumbai) and the relevant portion of the order of the Bombay Bench of the Tribunal is reproduced below:-

> 'Regarding application of Section 14A of the Act, the contention of the learned Department Representative has to be rejected on the face of it inasmuch as the entire income of the assessee is taxable under the Act. Section 14A is applicable only when any part of the income is not to be included in the total income of the assessee and the expenditure relating to that part of income is claimed by the assessee as deduction. In such cases only, the expenditure relating to the exempted income can be disallowed and not otherwise. Since in the present case,

> the entire income is found to be taxable, no disallowance can be made under section 14A of the Act.'
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> 10. Moreover, the AO has not established the nexus between invested funds and the interest bearing funds, since the investments in shares are in the years 1995-96, 1998-99 and 1999-2000 and the interest disallowance is for the assessment years 2000-01 and 2001-02. On the contrary perusal of the balance sheet for the year ending 31.3.1995, 31.3.1998 and 31.3.1999, it is clear that interest bearing funds have not been utilized for investment for purchase of shares.
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> 11. For the aforesaid reasons, we see no reason to interfere with the order of CIT(A) concerning assessment year 2000-01 and 2001-02 and hence the decision of CIT (A) in deleting the disallowance of interest by invoking section 14A of the Act is correct and in accordance with law."

11. In view of the aforesaid findings, which could not be shown to be erroneous, the plea of the revenue cannot be accepted. Further, this Court in ***Hero Cycles Limited's*** case (supra) recorded as under:-

> "5. In view of finding reproduced above, it is clear that the expenditure on interest was set off against the income from interest and the investments in the share and funds were out of the dividend proceeds. In view of this finding of fact, disallowance under section 14A was not sustainable. Whether, in a given situation, any expenditure was incurred which was to be disallowed, is a question of fact. The contention of the revenue that directly or indirectly some expenditure is always incurred which must be disallowed under section 14A and the impact of expenditure so incurred cannot be allowed to be set off against the business income which may nullify the mandate of section 14A, cannot be accepted. Disallowance under section 14A requires finding of incurring of expenditure; where it is found that for earning exempted income no expenditure

has been incurred, disallowance under section 14A cannot stand. In the present case finding on this aspect, against the revenue, is not shown to be perverse. Consequently, disallowance is not permissible. We have taken this view earlier also in IT Appeal No.504 of 2008, ***CIT vs. Winsome Textile Industries Limited,*** decided on 25th August, 2009 wherein it was observed as under:-

'6. The contention raised on behalf of the revenue is that even if the assessee had made investment in shares out of its own funds, the assessee had taken loans on which interest was paid and all the money available with the assessee was in common kitty, as held by this Court in ***CIT vs. Abhishek Industries Limited***, (2006) 205 CTR (P&H) 304 : (2006) 286 ITR 1 (P&H) and therefore, disallowance under section 14A was justified.

7. We do not find any merit in this submission. Judgment of this Court in ***Abhishek Industries*** (supra) was on the issue of allowability of interest paid on loans given to sister concerns, without interest. It was held that deduction for interest was permissible when loan was taken for business purpose and not for diverting the same to sister concern without having nexus with the business. Observations made therein have to be read in that context. In the present case, admittedly, the assessee did not make any claim for exemption. In such a situation, section 14A could have no application."

12. As a result, the substantial questions of law are answered against the revenue and in favour of the assessee. Consequently, finding no merit in the appeals, the same are hereby dismissed.

(Ajay Kumar MIttal)
Judge

April 02, 2014 **(Jaspal Singh)**
'gs' **Judge**