

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

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.2001/Bang/2016 : Asst.Year 2010-2011

ITA No.2004/Bang/2016 : Asst.Year 2013-2014

M/s.Brindavan Beverages Pvt.Ltd. C/o.S.Venkatesan & Co., CAs 31-33, II Floor, SNS Plaza Kumarakrupa Road Bangalore – 560 001. PAN : AAACB7390R.	v.	The Dy.Commissioner of Income-tax, Central Circle 2(3) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.V.Srinivasan, Advocate

Respondent by : Sri.Dilip, Junior Standing Counsel for Dept.

Date of Hearing : 20.10.2020	Date of Pronouncement : 20.10.2020
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ORDER

Per George George K, JM :

These appeals at the instance of the assessee are directed against two orders of the CIT(A), both dated 26.09.2016. The relevant assessment years are 2010-2011 and 2013-2014.

2. The solitary issue argued by the learned AR is that disallowance u/s 14A of the I.T.Act ought to be restricted to the exempt income received for the relevant assessment years.

3. The brief facts of the case are as follow:

For the assessment years 2010-2011 and 2013-2014, the Assessing Officer made disallowance of Rs.1,10,78,850 and Rs.15,68,144 by invoking the provisions of section 14A of the I.T.Act r.w.Rule 8D of the Income Tax Rules.

4. Aggrieved by the assessment orders for the assessment years 2010-2011 and 2013-2014, the assessee filed appeals

before the first appellate authority. The CIT(A) partly allowed the appeals of the assessee. The CIT(A) had also passed order u/s 154 of the I.T.Act. Subsequently, giving effect to the order u/s 154 of the I.T.Act, disallowance u/s 14A of the I.T.Act was restricted to Rs.35,50,533 and Rs.9,32,845 for the assessment years 2010-2011 and 2013-2014, respectively.

5. Aggrieved by the order of the CIT(A), the assessee has filed these appeals before the Tribunal. The assessee has filed a paper book *inter alia* enclosing the computation of total income with the financial statement for the assessment years 2010-2011 and 2013-2014, judicial pronouncements relied on, etc.

6. The learned Departmental Representative, on the other hand, supported the orders of the Income Tax Authorities.

7. We have heard the rival submissions and perused the material on record. The primary contention of the assessee before the first appellate authority was that no disallowance u/s 14A of the I.T.Act is required since the assessee has not incurred any expenditure to earn the exempt income. Secondly, it was contended before the first appellate authority that disallowance u/s 14A of the I.T.Act cannot exceed the amount of exempt income earned by the assessee for the relevant assessment years. In this context, the assessee relied on the judgment of the Hon'ble Delhi High Court in the case of Joint Investments Pvt. Ltd. reported in 372 ITR 694 (Del.). The contentions of the assessee that disallowance u/s 14A of the

I.T.Act is to be restricted to exempt income earned was noted by the CIT(A) in the impugned appellate orders.

7.1 The learned AR submitted that the assessee was in receipt of exempt income of RS.43,969 and Rs.91,507 for the assessment years 2010-2011 and 2013-2014, respectively. In support of the above contention, the assessee has placed on record the computation of total income along with the financial statements for the assessment years 2010-2011 and 2013-2014 (for the assessment year 2010-2011, pages 138 to 171 of the paper book, for the assessment year 2013-2014, pages 172 to 212 of the paper book). On perusal of the financial statements and the computation of income for the assessment years 2010-2011 and 2013-2014, it is clear that the assessee has earned exempt income only to the extent of Rs.43,969 and Rs.91,507 for the assessment years 2010-2011 and 2013-2014, respectively.

7.2 The recent order of the Bangalore Benches of the Tribunal in the case of M/s.Century Real Estate Holdings Pvt. Ltd. v. ACIT [ITA No.284/Bang/2020 – order dated 24.06.2020] had held disallowance u/s 14A of the I.T.Act cannot exceed the exempt income. The Bangalore Benches of the Tribunal had relied on the judgment of the Hon'ble Delhi High Court in the case of PCIT v. Caraf Builders & Constructions (P) Ltd. [(2019) 101 Taxmann.com 167 (Delhi)] and the order of the Mumbai Benches of the Tribunal in the case of Future Corporate Resources Limited v. DCIT [ITA No.4658/Mum/2015 – order dated 26.07.2017]. The relevant finding of the Bangalore

Benches of the Tribunal in the case of M/s.Century Real Estate Holdings Pvt. Ltd. v. ACIT (supra), reads as follow:-

“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 dis allowance 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.”

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.

7.3 In the light of the order of the Bangalore Benches of the Tribunal in the case of M/s.Century Real Estate Holdings Pvt. Ltd. v. ACIT (supra), we hold that the disallowance u/s 14A of the I.T.Act cannot exceed the exempt income earned during the relevant assessment years. Accordingly, we restrict the disallowance for assessment years 2010-2011 and 2013-2014 to the exempt income earned for the assessment years, viz., Rs.43,969 and Rs.91,507, respectively. It is ordered accordingly.

8. In the result, the appeals filed by the assessee are partly allowed.

Order pronounced on this day of 20th October, 2020.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 20th October, 2020.
Devadas G*

Copy to :

1. The Appellant.
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