

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM

आयकर अपील सं./ITA Nos.319/CTK/2018

& ITA No.160/CTK/2019

(निर्धारण वर्ष / Assessment Year :2013-2014 & 2014-2015)

Sri Alok Agrawal, Rathor Colony, OCL Approach Road, Rajgangpur, District-Sundergarh	Vs.	Pr. CIT, Sambalpur
PAN No. : AFKPA 2367 R		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri S.S.Poddar, CA
राजस्व की ओर से /Revenue by	:	Shri M.K.Gautam, CIT-DR

सुनवाई की तारीख / Date of Hearing	:	04/08/2020
घोषणा की तारीख/Date of Pronouncement	:	11/08/2020

आदेश / ORDER

Per L.P.Sahu, AM:

These two appeals have been filed by the assessee against the order passed by the Pr. CIT, Sambalpur, dated 26.03.2018 & 26.03.2019 for the assessment years 2013-2014 & 2014-2015.

2. Similar issue has been raised in both the appeals, therefore, for the sake of convenience and brevity, we shall decide the appeal of the assessee for A.Y.2013-2014 in ITA No.319/CTK/2018 after taking into consideration the grounds and facts mentioned therein and the outcome of the same shall be applied *mutatis mutandis* to the appeal of the assessee for A.Y.2014-2015 also.

3. Grounds raised in ITA No.319/CTK/2018 for A.Y.2013-2014 are as under :-

1. *That the notice issued under section 263 by the Principal Commissioner of Income Tax, Sambalpur (hereinafter referred to as "Pr. CIT") and the order passed under section 263 is unjustified, arbitrary, excessive, contrary to evidences and bad in law.*
2. *That having regard to the facts and circumstances of the case, Pr. CIT has erred in law and on facts in assuming jurisdiction in passing the order u/s 263, more so when the assessment order passed under section 143(3) is neither erroneous nor prejudicial to the interest of Revenue.*
3. *That The Pr. CIT has failed to consider that the Assessing Officer had invoked section 14A of the Income Tax Act, 1961 and disallowed Rs.5,53,606/- towards interest paid, which shows that assessment was framed after application of mind and considering the replies of the assessee filed on different dates.*
4. *That The Pr. CIT has not provided sufficient opportunity to the assessee to present its case with all evidences.*
5. *That on the facts and in the circumstances of the case The Pr. CIT has erred in making disallowance of expenditure amounting to Rs.33,08,818/-towards interest paid U/s.14A of the Income Tax Act, 1961.*
6. *That The Pr. CIT would not have assumed jurisdiction in issuing notice and passing the order U/s.263, as the assessment order passed under section 143(3) is neither erroneous nor prejudicial to the interest of Revenue.*
7. *That The Pr. CIT would have provided sufficient opportunity to the assessee to explain its case with proper evidences.*
8. *That The Pr. CIT would not have made disallowance as mentioned above.*
9. *That the appellant craves leave to add, amend or alter the aforesaid grounds of appeal before or at the time of hearing of the appeal.*

4. Brief facts of the case are that the assessee is an individual deriving income from salary and other sources, filed return of income for the assessment year 2013-2014 on 13.03.2014 declaring income at

Rs.59,53,460/-. The case was selected for scrutiny and assessment was completed u/s.143(3) of the Act determining income of Rs.65,07,070/-. Thereafter the PCIT invoking powers vested u/s.263(1) of the Income Tax Act, 1961 on examination/verification of documents, noticed that the AO has disallowed a sum of Rs.5,53,606/-(Rs.59,37,756 – 53,84,150/-) which represents interest paid on overdraft in excess of interest received on fixed deposit. The assessee had taken bank overdraft against the FD deposited in the bank. He further noticed from the balance sheet that the assessee had taken bank overdraft facility from ICICI bank of Rs.5,15,00,000/- out of the above overdraft amount Rs.1,80,00,000/- was advanced as interest bearing loans to M/s Ayush Manufacturers & Finance Ltd. The balance amount of overdraft was utilised for investment in preference shares of Pro Mineral Pvt. Ltd. and M/s Jyotirmayee International Pvt. Ltd. against which he had received dividend income which was exempt. He further noticed that the assessee had paid interest of overdraft of Rs.59,37,756/- and interest received on fixed deposits of Rs.53,84,150/-. The assessee had also received interest from M/s Ayush Manufacturers & Finance Ltd. to the tune of Rs.20,99,729/-. The Pr.CIT noticed that the assessee had received exempt income and he set off the interest income received on FD against the interest paid on bank overdraft but suo motu the assessee had not disallowed any amount u/s.14A of the Act. The AO

while framing the assessment order overlooked the applicability of Section 14A of the Income Tax Act. Accordingly, the Pr. CIT calculated the disallowance u/s.14A of the Act to the tune of Rs.38,62,424/- and directed the AO to modify the assessment order already framed in which the AO has disallowed a sum of Rs.5,53,606/-. Accordingly, net disallowance u/s.14A of the Act was computed by the Pr. CIT of Rs.33,80,818/- (rs.38,62,424 - 5,53,606). Ld. Pr.CIT found that the assessment order was erroneous as well as prejudicial to the interest of revenue and relied many judgments which has been calculated in his revisionary order as under :-

- i) *CIT Vs. Walfort Stock Brokers Pvt. Ltd. (2010) 326 ITR 1 (SC);*
- ii) *CIT Vs. V.P.Gopinathan (2001) 248 ITR 449 (SC);*
- iii) *Malabar Industrial Co. Ltd. Vs. CIT (2000) 243 ITR 83 (SC); and*
- iv) *Dawjee Dadabhoy & Co. Vs. S.P.Jain (1957) 31 ITR 872 (Cal.)*

5. Against the above order passed by the Pr. CIT, the assessee is in appeal before the Income Tax Appellate Tribunal.

6. Ld. AR at the outset of hearing he did not press on the legal ground raised by the assessee regarding challenging the revisionary order passed by the Pr. CIT as per above quoted grounds of appeal. He further submitted on merits that the Pr.CIT can disallow the claim to the extent of exempt income received by the assessee. During the impugned year the assessee has received exempt income. To support his contention, ld.AR relied on the decision of Hon'ble Supreme Court in

the case of Pr. CIT Vs. State Bank of Patiala [2018] 99 taxmann.com 286 (SC), copy of which is placed on record.

7. On the other hand, ld. DR supported the findings of the Pr. CIT and submitted that the order of the Pr.CIT should be restored.

8. After hearing both the sides and perusing the entire material available on record, we noticed that the ld.authorised representative of the assessee did not press the legal grounds raised by him, therefore, all the legal grounds taken by him as per grounds of appeal noted (supra), are hereby dismissed.

9. Further, during the course of hearing, ld. AR drew our attention to Para III of the written submissions filed on 10.06.2020. For the sake of clarity, we would like to reproduce Para III of written submission of the assessee as under :-

“III. Without prejudice to our submission above it is respectfully submitted that provisions of section 14A of the Income Tax Act, 1961 are not applicable to the fact and circumstances of the case:

*a. Further, your honour's kind attention is drawn towards the fact that the capital of the assessee as on 31.03.2013 was Rs.9,93,63,437/- out of which Rs.6,16,88,634/- was invested in assets generating exempted income or NIL income. It would be crystal clear from the Statement of Capital enclosed as **Annexure-6** (Page No.20), that the capital of the appellant is much more than the investment in assets generating exempted income /Nil income.*

*b. That it has been held by different Hon'ble High Courts as well as Income Tax Appellate Tribunals that, if there were funds available both **capital** and overdraft / or loans taken, then presumption would arise that investment would be out of capital accumulated or available with the assessee.*

That in this regard it will be pertinent to take note of the recent landmark judgements of the Hon'ble Supreme Court :

- *Commissioner of Income Tax Vs. M/s. Reliance Industries Ltd., delivered on 02.01,2019.*

The relevant portion of the judgement is reproduced below;

"that the interest free funds available to the assessee were sufficient to meet its investment Hence, it could be presumed that the investments were made from the interest free funds available with the assessee."

*A photocopy of the judgement is enclosed as **Annexure-7** (Page No.21-27).*

PR. Commissioner of Income Tax-4 Vs. Sintex Industries Ltd.:

The Hon'ble High Court of Gujrat held as under:

"Considering the aforesaid facts and circumstances, more particularly the fact that the assessee was already having its own surplus fund and that too to the extent of Rs. 2319,17 Crores against which investment was made of Rs. 111.09 Crores, there was no question of making any disallowance of expenditure in respect of interest and administrative expenses under Section 14A of the Act. "

That SLP against the order filed with the Hon'ble Supreme Court was dismissed.

c. Moreover, the appellant has earned exempted income of Rs. 1,56,881/- only during the relevant assessment year, but an amount of Rs.38,62,424/-has been disallowed U/S.14A of the Income Tax Act, 1961. In this regard your honour's kind attention is drawn towards the decisions of Hon'ble Delhi High Court in the case of PCIT v. Caraf Builders & Constructions (P) Ltd (101 taxmann, com 167) and Joint Investments (P) Ltd v. CIT (372 ITR 694) wherein it was held that the amount of disallowance can not exceed the exempt income earned during the year. Similar view was taken by Hon'ble High Court of Punjab & Haryana in the case of PCIT v. State Bank ofPatiala (2018) 259 Taxman 315 (P& H) (HC), The SLP of Income Tax Department against the order has already been dismissed by the Apex Court.

That in light of aforesaid it is crystal clear that the assessee has rightly claimed the deduction of Rs.59,37,756/- towards interest on overdraft and the assessment order passed by the Ld. Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue and the present proceedings are nothing but change of opinion; hence, the order passed by the Ld. Pr. CIT, Sarnbalpur U/s.263 of the Income Tax Act, 1961 is bad in law and need to be quashed. Therefore, your honour is requested to kindly quash the order and for such act of your honour's kindness the appellant shall remain ever obliged.

Lastly, this is to state that the undersigned stays at Sambalpur and in current scenario of Covid-19, it is practically not possible to travel to Cuttack and attend the hearing; hence, in case your honour requires some more documents/clarification for deciding the matter, the hearing may kindly be adjourned to the next month of July, 2020, for which the appellant shall remain obliged"

Accordingly, the Id AR took an alternative plea that the matter should be considered/heard on merits of the case, therefore, we accept the contention of the assessee and matter is heard on merits. We observe that during the impugned year, the assessee received exempt income which is not part of the taxable income and it is clear from the computation of income incorporated in the Pr.CIT order. The assessee has invested money in two companies for acquisition of preference shares of Pro Mineral Pvt. Ltd. and Jyotirmayee International Pvt. Ltd. from which the dividend income is exempt from Section 10(34) of the Act. This issue has been settled by the Hon'ble Supreme Court in the case of State Bank of Patiala, [2018] 99 taxmann.com 286 (SC), wherein the Hon'ble Supreme Court has observed as under :-

"3. We have heard learned counsel for the appellant-revenue.

4. It is not disputed by the learned counsel for the appellant-revenue that the issue involved in the present case stands concluded against the revenue in ITA No. 270 of 2016, Pr. CIT v. State Bank of Patiala [2017] 393 ITR 476/88 taxmann.com 667 (Punj. & Har.) decided on 27.02.2017 wherein after considering the relevant provision and the case law on the point, it was recorded as under:—

"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) [(2017) 78 Taxman.com 3]. 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."

Similar decision was taken by this Court in ITA No. 193 of 2017, Pr. CIT v. State Bank of Patiala decided on 22.05.2017."

5. In view of the above, no substantial question of law arises in the present appeal and consequently, the appeal stands dismissed.

10. Same view has also been upheld by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT [2018] 91 taxmann.com 154 (SC), wherein the Hon'ble Supreme Court in para 40 has held as under :-

"40. We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove."

11. Respectfully following the above judgments of Hon'ble Supreme Court, we restrict the disallowance u/s.14A of the Act upto the exempt income received by the assessee during the impugned assessment year.

12. Now, we shall take up the appeal of the assessee for A.Y.2014-2015 in ITA No.160/CTK/2019, wherein the assessee has raised the following grounds of appeal :-

1. *That the notice issued under section 263 by the Principal Commissioner of Income Tax, Sambalpur (hereinafter referred to as "Pr. CIT") and the order passed under section 263 is unjustified, arbitrary, excessive, contrary to evidences and bad in law.*
2. *That having regards to the facts and circumstances of the case, Pr. CIT has erred in law and in facts in assuming jurisdiction in passing the order u/s 263, more so when the assessment order passed under section 143(3) is neither erroneous nor prejudicial to the interest of Revenue.*
3. *That the Pr. CIT has failed to consider that the Assessing Officer had invoked section 14A of the Income Tax Act, 1961 and disallowed Rs.7,79,433/- towards interest paid, which shows that assessment was framed after application of mind and considering the replies of the assessee filed on different dates.*
4. *That the Pr. CIT has not provided sufficient opportunity to the assessee to present its case with all evidences.*
5. *That on the facts and in the circumstances of the case The Pr. CIT has erred in making disallowance of expenditure amounting to Rs.39,88,199/-towards interest paid U/s. 14A of the Income Tax Act, 1961.*
6. *That the Pr. CIT would not have assumed jurisdiction in issuing notice and passing the order U/s.263, as the assessment order passed under section 143(3) is neither erroneous nor prejudicial to the interest of Revenue.*
7. *That the Pr. CIT would have provided sufficient opportunity to the assessee to explain its case with proper evidences.*
8. *That the Pr. CIT would not have directed the Ld.AO to disallow as mentioned above.*
9. *That the appellant craves leave to add, amend or alter the aforesaid grounds of appeal before or at the time of hearing of the appeal.*

13. Since similar grounds have been taken by the assessee in the appeal for assessment year 2014-2015, except different in figure, therefore, our observations made in the appeal of the assessee for assessment year 2013-2014 in ITA No.319/CTK/2018 shall apply mutatis mutandis to the appeal of the assessee for assessment year 2014-2015 i.e. ITA No.160/CTK/2019 also. Thus, the legal grounds raised by the assessee in both the appeals are dismissed and alternative plea of the assessee during the course of hearing is allowed.

14. In the result, both appeals of the assessee are partly allowed.

Order pronounced in the open court on 11/08/ 2020.

Sd/-
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 11/08/2020

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Sri Alok Agrawal,
Rathor Colony, OCL Approach Road,
Rajgangpur, District-Sundergarh
2. प्रत्यर्थी / The Respondent-
Pr. CIT, Sambalpur
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack