

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'B', HYDERABAD**

**SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

ITA No. 1978/Hyd/2018
Assessment Year: 2013-14

BBR Projects Pvt. Ltd., vs. Income-tax Officer,
Hyderabad. Ward – 1(3),
Hyderabad.

PAN – AACCB 7153J

Appellant

Respondent

Assessee by: Shri P. Murali Mohana
Rao

Revenue by: Shri Sunil Kumar Pandey

Date of hearing: 02/03/2020

Date of pronouncement: 24/07/2020

ORDER

PER SHRI A. MOHAN ALANKAMONY, A.M.:

This appeal is filed by the assessee against the order of the Ld. CIT (A)-1, Hyderabad in appeal No. 0022/CIT (A)-1, Hyd/2016-17/2018-19, dated 23/08/2018 passed U/s. 143(3) r.w.s 250(6) of the Act for the AY 2013-14.

2. The assessee has raised 17 grounds in its appeal however, the cruxes of the issues are as follows: -

“(i) the Ld. CIT (A) has erred in confirming the order of the Ld. AO who had fallibly invoked the provisions of section 14A of the Act and thereby made an addition of Rs. 1,28,31,825/-.

“(ii) the Ld. CIT (A) has erred in confirming the order of the Ld. AO who had wrongly invoked the provisions of section 40(a)(ia) of the Act towards payment made on account of interest without deducting tax at source.”

3. The brief facts of the case are that the assessee is a Private Limited Company engaged in construction business, filed its return of income for the relevant AY 2013-14 on 30/09/2013 declaring loss of Rs. 1,60,46,557/- under normal provisions and loss of Rs. 1,17,55,313/- U/s. 115JB of the Act. Initially, the return was processed U/s. 143(1) of the Act and subsequently the case was selected for scrutiny and the assessment was completed on 30/3/2016 wherein the Ld. AO made the aforementioned additions.

4. During the course of scrutiny assessment proceedings, it was observed by the Ld. AO that the assessee company had made investments in equity shares amounting to Rs. 18,17,36,44/- as on 31/3/2013. It was further observed by the Ld. AO that the assessee company had incurred expenditure of Rs.1,70,07,450/- towards interest and finance charges. Therefore, the Ld. AO opined that the provisions of section 14A would be applicable in the case of the assessee because the assessee had incurred expenditure towards earning exempt income. On query, the assessee had made the following submissions before the Ld. AO in order to drive the point that in

the case of the assessee company provisions of section 14A of the Act are not applicable: -

- (i) The investments in shares during the FY 2012-13 for Rs. 6,36,12,448/- were met out from the interest free funds available with the assessee company.
- (ii) The interest expenditure incurred for Rs. 1,75,07,450/- during the relevant FY is not related to investment made in shares but it was towards improvement of the business activities of the assessee company.
- (iii) The assessee company had not claimed deduction U/s. 10 of the Act towards the dividend income earned by it for Rs. 55,35,534/- from the investment in shares

4.1 However, the Ld. AO relying on the decision in the case of Godrej Boyce Mfg. Co. Ltd vs. DCIT reported in 328 ITR 81 and Board Circular No. 5/2014 dated 11/2/2014 invoked Rule 8D of the IT Rules r.w.s 14A of the Act and thereby computed the disallowance of expenditure as Rs. 1,28,31,825/-. On appeal, the Ld. CIT (A) confirmed the order of the Ld. AO by agreeing with his views and by further observing as follows: -

“(i) From the balance sheet it was apparent that the assessee company has obtained huge unsecured loans from banks and individuals. During the relevant previous year there is also an increase in unsecured loans. Further, during the appellate proceedings the assessee company could not justify that the investments were from surplus non-interest-bearing funds of the company.

(ii) The submission of the assessee company that the investment made in equity shares of other companies was

in order to promote the business of the assessee company has not been established.

(iii) It is an admitted fact that the assessee company had received dividend income which is exempt from tax.”

5. Before us, the Ld. AR made the following submissions and vehemently argued stating that addition cannot be made in the hands of the assessee invoking the provisions of section 14A of the Act:-

(i) For the year under consideration the dividend income earned by the assessee for Rs. 55,35,534/- was offered as income and not claimed as income exempt from tax U/s. 10 of the Act. Therefore, the provisions of section 14A of the Act will not be applicable in the case of the assessee.

(ii) The entire investment in equity shares were made in the assessee's own subsidiary company, therefore, no expenditure is incurred for making such investments.

6. The Ld. DR on the hand argued in support of the orders of the Ld.Revenue Authorities and requested for confirming their orders.

7. We have heard the rival submissions and carefully perused the materials on record. On the first instance, the Ld. AR has submitted that the assessee had not claimed deduction U/s. 10 of the Act towards the dividend income of Rs. 55,35,534/- earned by it and therefore the provisions of section 14A cannot be invoked. We do not find this submission of the assessee to be appropriate. Provisions of section 10 of the Act mandates that any income falling in any of the clauses mentioned U/s 10 of the Act shall not be included in computing the total income of a

previous year of any person. Therefore, the assessee cannot insist for including such income while computing the total income when the Act itself provides otherwise. It is pertinent to mention that tax cannot be imposed or collected from the assessee unless it is charged or specified by the provisions of the Act. Therefore, the assessee cannot claim any relief based on the aforesaid argument that provisions of section 14A cannot be invoked because the assessee has surrendered its right over claiming deduction U/s. 10(34) of the Act towards earning dividend income. On the other argument advanced, the assessee has submitted that it has not incurred any expenditure towards interest relating to the investment made in equity shares of the assessee's own subsidiary companies. However, the Ld. CIT (A) has categorically mentioned in his order that the investment made by the assessee Company in its own subsidiary company out of non-interest-bearing funds is not established. This fact is required to be verified. Further, when the assessee company makes investment in equity shares of its own subsidiary company factually there cannot be any expenditure relating to the same unless such investments are made out of interest-bearing funds. When the assessee company makes investments in its own subsidiary company towards equity share it is synonymous to the situation where an individual invests in his own company. For the process of making investment in one's own company, factually it is not possible to incur any expenditure unless the investments are made out of interest-bearing funds. When a company is formed it is obvious that all the expenditure related to its management, formation etc., are

met out by the newly formed company itself out of its capital and not by the individual or the assessee company who promotes such subsidiary company. Further, the Ld. Revenue Authorities have not pointed out any expenditure incurred by the assessee company towards such investment other than the apprehension of interest expenditure incurred, from the statement of accounts and the books of accounts produced by the assessee before them. Since, the assessee company has claimed that it had invested in its 100% subsidiary company out of its non-interest bearing funds and has not incurred any expenditure towards such investment earning exempt income, We are of the considered view that these factual aspects must be examined by the Ld. AO and if the submission of the assessee company is found to be correct, then delete the addition made by invoking the provisions of section 14A r.w. Rule 8D of the Rules, and if found otherwise pass appropriate order in accordance with law and merit. It is ordered accordingly.

8. With respect to the other ground raised by the assessee towards invoking provisions of section 40(a)(ia) of the Act, the Ld. AR had submitted that the assessee has not been treated as an assessee in default U/s. 201(1) of the Act, further no proceedings have been initiated on this regard for the relevant AY, therefore, disallowance U/s. 40(a)(ia) of the Act is not warranted. On perusing the facts of the case, it is evident that the assessee has not deducted tax at source for the payment made towards interest for Rs. 4,94,956/-. Therefore, it is apparent that the provisions of section 40(a)(ia) of the Act will

come into play. However, the second proviso to section 40(a)(ia) of the Act has come into effect from 1/4/2012 by virtue of Finance Act, 2012 wherein it is stated that *“where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the taxes on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso”*. On perusing the facts of the case, we find that the Ld. AO has not verified that the assessee is treated as an assessee in default U/s. 201 of the Act or otherwise. Hence, We hereby remit this issue also back to the file of the Ld. AO to decide the matter in accordance with the provisos of section 40(a)(ia) of the Act cited herein above.

9. Before parting, it is worthwhile to mention that this order is pronounced after 90 days of hearing the appeal, which is though against the usual norms, We find it appropriate, taking into consideration of the extra-ordinary situation in the light of the lock-down due to Covid-19 pandemic. While doing so, We have relied in the decision of Mumbai Bench of the Tribunal in the case of DCIT Vs. JSW Ltd. In ITA No.6264/M/2018 and 6103/M/2018 for AY 2013-14 order dated 14th May 2020.

10. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

Pronounced in the open court on the 24th July, 2020.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, dated 24th July, 2020.

okk

Copy forwarded to:

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2. *ITO, Ward – 1(3), Hyderabad.*
3. *CIT(A) – 1, Hyderabad.*
4. *Pr. CIT - 1, Hyderabad.*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*