

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF AUGUST 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MR.JUSTICE S.N.SATYANARAYANA

INCOME TAX APPEAL NO.16/2016(T-IT)

BETWEEN:

M/S. BHARATH BEEDI WORKS PVT LTD
15-17-366/1, BHARATH BAGH
KADRI ROAD, MANGALORE-575003
REPRESENTED BY ITS EXECUTIVE DIRECTOR
SRI ANANTH PAI
AGED ABOUT 42 YEARS
SON OF SRI G.GANAPATHI PAI

...APPELLANT

(BY SRI.S PARTHASARATHI, ADVOCATE)

AND:

THE ADDL. COMMISSIONER OF INCOME-TAX
RANGE-2
MANGALORE-575003

...RESPONDENT

(BY SRI.K V ARAVIND, ADVOCATE)

THIS APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:07/08/2015 PASSED IN ITA NO.752/BANG/2014, FOR THE ASSESSMENT YEAR 2010-11 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE, ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE ITAT DATED:07/08/2015 BEARING ITA NO.

752/BANG/2014 FOR THE ASSESSMENT YEAR 2010-11 AND PASS SUCH OTHER SUITABLE ORDERS AS THIS HON'BLE COURT DEEMS FIT TO GRANT ON THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY.

THIS ITA COMING ON FOR ADMISSION THIS DAY, **JAYANT PATEL J.**, DELIVERED THE FOLLOWING:

JUDGMENT

The appellant-assessee has preferred the present appeal by raising the following substantial questions of law:

“1. Whether on the facts and circumstances of the case, the Tribunal is justified in confirming the addition under Section 14A r.w.s. Rule 8D(2)(iii) of the Rules when no expenditure is incurred for earning the exempt income and assessing officer also not recorded satisfaction with regard to the correctness of the claim of the Appellant in respect of such expenditure?

2. Whether the provisions of Rule 8D read with Section 14A of the Act would apply to the relevant assessment year?”

2. We have heard Mr.Parthasarathi, learned counsel appearing for the appellant-assessee and Mr.K.V.Aravind, learned counsel for the respondent-revenue.

3. As such, we may not refer to the order of the Assessing Officer because the relevant portion of the reasoning of the assessing officer are already considered in the order of the CIT (Appeals). We may record that, the CIT (Appeals) has examined the rejection of the claim of the assessee for disallowance of the expenses to the extent of Rs.4 lakhs towards exempted income and has further observed at para.3.1(D) to 3.2(A) which reads as under:

“3.1(D) I have considered the rival contentions carefully. I find that the argument of the appellant is vague in as much as when the AO has asked to prove that the appellant has own funds to substantiate the investment as and when the investments are made the appellant is only trying to explain the opening and cl figures of the current year share capital and reserves and surplus. I find strength it the argument of the AO. Further, since the appellant could not explain the connected expenditure to the satisfaction of the AO is clearly forthcoming in arriving at the

estimation. Hence, I am inclined to confirm the addition and the grounds are dismissed.

3.2(ii). Prior Period expenses: It is noticed by the AO that the appellant has booked vehicle expenditure pertaining to earlier period during the previous year. When pointed out it was argued before the AO that these expenses are crystallized during the previous year and hence claimed accordingly. The appellant was asked to prove the same and the appellant filed letter from the recipient based on which the AO has duly allowed what was substantiated and added Rs.67,090/- which was not substantiated.

3.2(A). In appeal proceedings the appellant raised the following grounds

“II DISALLOWANCE OF RS.67,090/-:

- a) Is not justified in disallowing a sum of Rs.67,090 as prior period expenses even though the liability crystallized during the previous year.
- b) Has overlooked the following decisions, which are relied up on and applicable to the Appellant’s case.

- I). Marudhara Conductors (P) Ltd.v.Assistant CIT (2001) 21 DTC 502 (Jod-Trib) (2001) 70 TTJ (Jod-Trib) 661.
- II). CIT v. H.P. State Forest Corporation (2010) 33 (I) ITCL 31 (HP-HC) : (2010) 320 ITR 170 (HP) : (2010)
- III). Haryana Sanitaryware Inds. (P) Ltd. V. ITO : ITA No.2028 (Del) of 2008,
- IV). Apollo Textiles Agency (2006) 283 ITR 591 (All)
- V). Goetze (India) Ltd. V. Dy. CIT (2008) 115 ITD 119 (Del-Trib).
- VI). CIT v. Swadeshi Cotton & Floor Mills (P) Ltd. (1964) 53 ITR 134 (SC).

c) is not justified in law by overlooking the decisions in the following cases where it was held that the year of allowance is not material when the tax rate is the same.

- I). CIT v. Nagri Mills Co. Ltd. [1958] 33 ITR 681 (Bom.),
- II). CIT vs. Bilahari Investment (P.) Ltd (2010) 299 ITR 1 (SC).

III). CIT vs. Dinesh Kumar Goel (2011)
331 ITR 10 (Delhi H)

d) The Appellant craves leave to add, to amend and/or alter any of the foregoing grounds and such other grounds as may be urged at the time of hearing.

4. When the matter was carried before the Tribunal, the Tribunal, at paragraph.9 to 11 has observed thus:

“9. We have heard the submissions of the Id.Counsel for the assessee, who relied on the order of Tribunal in assessee’s own case for AYs 2008-09 & 2009-10 in ITA Nos.914 & 915/Bang/2014, order dated 22.3.2013. We have perused the said order and find that in that case the issue was remanded to the AO for fresh consideration for the reason that the claim of assessee that no amount should be disallowed u/s.14A of the Act was not considered and objectively rejected by the revenue authorities. The Revenue Authorities were directed to consider the claim of assessee and if the same is found to be not acceptable, then apply the provisions of Rule 8D(2)(iii) of the Rules.

10. In the present assessment year, the CIT(Appeals) after considering the order of Tribunal referred to above, called for a remand report and the AO in the remand report highlighted as to why the claim of assessee for disallowance of only Rs.4 lakhs is not acceptable. In our view, therefore, the earlier order of Tribunal will not be of any assistance to the plea of the assessee before us.

11. Even before us, the id.counsel for the assessee was unable to explain as to why only a sum of Rs.4 lakhs should be disallowed under Rule 8D(2)(iii) of the Rules as against a sum of Rs.14,00,530. In our view, therefore, the addition sustained by the CIT(A) has to be upheld. Accordingly ground No.II raised by the assessee is dismissed.”

5. In our view, when the quantification of the amount of expenses of Rs.4 lakhs is towards exempted income is not accepted by the assessing officer, he is required to follow the procedure and calculate the amount for the purpose of disallowance as per Rule-8D(2)(iii) and accordingly, the figure is arrived at Rs.14,00,530/-. Further out of the said amount, Rs.4 lakhs has been deducted and

the only the net additional amount is added for disallowance towards expenses of exempted income.

6. However, the learned counsel appearing for the appellant by relying upon the decision of this Court in ITA 471/2015 decided on 11.3.2016 contended that when the interest free fund exceeds the value of investment, it should be considered and the investment of fund and any disallowance under Section 14-A towards any interest expenditure can be made. He submitted that, in respect of the previous year i.e. assessment year 2008-09 and 2009-10, matters were remanded by the Tribunal vide order dated 22.3.2013 in ITA 914 & 915/BANG/2014 and therefore, in his submission, when the figures of interest free fund and investment was not finalized, the formula ought not to have been applied as available under Rule 8D(2)(iii) and hence, in his submission, substantial questions of law would arise for consideration by this Court.

7. In our view, the burden is upon the assessee to show and prove that interest free fund far exceeds the value of investment and thereafter, to justify the quantification of amount of Rs.4 lakhs towards disallowance for the exempted income. In the present case, the said burden has not been discharged satisfactorily and

thereafter, the assessing officer has proceeded to apply the formula provided under Section 8D(2)(iii) read with Section 14-A of the Act.

8. Discharge of the burden is essentially a question of fact. The authority up to the level of Tribunal has recorded finding of fact for non-discharge of burden by appellant-assessee. So far as applicability of Section 14-A read Rule 8D(2)(iii) is concerned when the assessee has failed to discharge the burden of proving quantification of the amount for disallowance towards exempted income, there would be hardly any scope for consideration of the matter as any substantial questions of law. The aforesaid is coupled with the aspects as referred by us hereinabove that the finding of fact for non-discharge of the burden which is upto the level of the Tribunal which is the ultimate fact finding authority, has remained final. The finding of fact in our view is outside the scope of judicial scrutiny in the present appeal.

9. Considering the facts and circumstances, we find that the decision upon which the reliance has been placed is of no help because the assessee in the present case has not been able to prove that the interest free fund far exceeded the value of investment and further if such was the position, there was no question of

disallowance but in the present case, even as per the assessee, the amount of Rs.4 lakhs was quantified. Hence, the decision in case of ITA 471/2015 is of no help to the learned counsel for the appellant.

10. In view of the above, we do not find that any substantial questions of law would arise for consideration.

11. Hence, the appeal is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Sk/-