Mumbai ITAT

members
Mahavir Singh
G. Manjunatha

Lawyers (Assessee)
M. P. Lohia

Lawyers (Revenue)
Pankaj Kumar

Timeline

ITAT MUMBAI

13 Dec 2016
Case filed

09 Nov 2017
Hearing

29 Nov 2018
Listed for hearing

28 Mar 2019
Judgement

ASIANET NEWS NETWORK P.LTD MUMBAI vs ASST CIT CIR 16(1) MUMBAI

28.03.2019 Income Tax 7318-Mum-2016

Text Highlight

Issues & Grounds of appeal | Arguments | Holding & Outcome

Chandariya

These cross appeals filed by the assessee as well as the revenue and cross objection filed by the assessee are directed against order of the CIT(A)-4, Mumbai dated 19/09/2016 for the A.Y.2012-13. Since the facts are identical and issues are common, for the sake of convenience these appeals were heard together and are disposed off by this consolidated order.

2. The revenue has raised the following grounds of appeal :-

"1) Whether on the facts and circumstances of the case and as per law, the Ld. CIT(A) has erred in directing to delete the disallowance u/s. 40(a)(ia) rws 194J in respect of 'Carriage Fees/Channel Placements fees' and failing to appreciate that the payments made for use/right to use of 'process' are 'royalty' as per Explanation 6 to section 9(1)(vi) hence such payments are covered u/s. 194J of the Income Tax Act, 1961.

2) Whether on the facts, in the circumstances of the case and as per law, the Ld. CIT(A) has erred in directing to delete the disallowance u/s.

40(a)(ia) rws 194J of 'Carriage Fees/Channel Placement Fees.

3) Whether on the facts, in the circumstances of the case and as per law, the Ld. CIT(A) has erred in relying on the order of Hon'ble Delhi High Court in the case of CIT v/s Prasar Bharti (292 ITR 580) without realizing that the said decision applies to an entity making, payments to outside producers for making certain programs for it whereas in the instant case the payment was made by the assessee who is broadcaster to various MSOs or Cable Operators for placing its channel on a particular frequency/ bandwidth.

4) Whether on the facts, in the circumstances of the case and as per law, the Ld. CIT(A) has erred in directing to delete the disallowance u/s. 40(a)(ia) placing reliance on the decision of Calcutta High Court dated 10.12.2012 in CIT vs S.K. Tekriwal [2014] without appreciating that the Hon'ble Kerala High Court in its judgement dated 20.07.2015 in the case of CIT-1, Kochi vs PVS Memorial Hospital Ltd. [2015] 60 taxmann.com 69

Law Referred

Income Tax Act, 1961
Section 11, Section 14A, Section 194C, Section 194H, Section 194J, Section 195, Section 40(a)(i), Section 40(a)(ia), Section 9(1)(vi), Section 9(i)(vi), Section 9(l)(vi)

Case Map

This case refers to:

Commissioner Of Income Tax Vs Prasar Bharti (Broadcasting Corpn. Of India)

Commissioner Of Income Tax Vs Cello Plast

View more

You might also like to see:

Acit (Tds) 3(1) Mumbai Vs Utv News Ltd Mumbai

Acit 16(1) Mumbai Vs Asianet News Network P. Ltd Mumbai

View more

Tekriwal (supra).

5) The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing officer be restored.

6) The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. The brief facts of the case are that the assessee is an Indian company engaged in the business of broadcasting. The assessee is running two current affairs and news channels being Asianet News Channel in Malayalam and Suvarna News channel in Kannada. The assessee has filed its return of income for the A.Y.2012-13 on 30/09/2012 declaring total income of Rs.1,60,29,420/-. Subsequently, a revised return of income has been filed on 04/09/2013 declaring total loss of Rs.9,32,94,502/-. The case has been selected for scrutiny and the assessment has been completed u/s.143(3) of the Income Tax Act, 1961 on 09/03/2015 by making various additions, including additions towards disallowance of agency commission, transponder hire charges and channel placement fees u/s.40(a)(ia) for failure to deduct tax at source u/s.194J of the Income Tax Act, 1961. Similarly, the AO has also made additions towards disallowance of expenses incurred in relation to exempt income u/s.14A of the Act r.w.r. 8D of Income Tax Rules, 1962.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A).

4.1. Before the CIT(A), the assessee has filed an elaborate return submissions on all additions made by the AO which has been reproduced at para 2 of page 2 & 3 of ld. CIT(A) order. The CIT(A) after considering submissions of the assessee and also by following the decision of Hon'ble Allahabad High Court in the case of Jagran Prakashan Ltd., 345 ITR 288 deleted the additions made by the AO towards disallowance of agency commission and transponder fees. However, confirmed additions made by the AO towards disallowance of expenditure incurred relating to exempt income by following the decision of Hon'ble Karnataka High Court in the case of United Bewerages Ltd., vs. DCIT 72 Taxman.com 102 (2016).

The relevant observations of the CIT(A) are as under:-

4.2. I have considered carefully the findings of the assessing officer and the rival submissions of the appellant. The advertisement agencies are appointed by the advertiser and not by the appellant company. Since the advertisers appoint the advertisement agencies, they release the advertisement to be broadcast on the television channel through the advertisement agency. The advertisement agency erefore is the agent of the advertiser and not an agent of the appellant. The relationship between the appellant and the advertisement agency is therefore only on a principal to principal basis. The discount

gives to the television channel and not for any services that is rendered to the appellant by the advertisement agency. In the circumstances, the provisions of Section 194H are not attracted. This proposition has been laid down by the Hon'ble Allahabad High Court in the case of Jagran Prakashan (345 ITR 288). This has also been accepted by the CBDT in their recent circular No.05/2016 dated 29th February 2016. After referring to the judicial pronouncements in the case of Jagran Prakashan and Living Media Pvt. Ltd on the subject, in Para 4 & 5 of its Circular, the CBDT has observed as follows:- "I, The issue has been examined by the Allahabad High Court in the case of Jagran Prakashan Lid. and Delhi High Cowl in ihe matter of Living Media Limited and it was held in both the cases thai the relationship between themedia company and the advertising agency is that of a 'principal to principal' and therefore, not liable for TDS under section !94H. The SLPs filed by the Department in the matter of Living Media Ltd. and Jagran Prakashan Lid. have been dismissed by the Supreme Court vide order dated 11.12.2009 and order dated 05.05.2014, respectively. Though, these decisions are in respect of print media, the ratio is also applicable to electronic media/television advertising as the broad nature of the activities involved is similar.

2. In view of the above, it is hereby clarified that no TDS is attracted on payments made by television channels/newspaper companies to the advertising agency for booking or procuring afar canvassing for advertisements. It is also further clarified that "commission" referred to in Question No 27 of the Board's Circular No 715 dated 8.8.95 does no! refer lo payments by media companies to advertising companies for booking of advertisements bur lo payments for engagement of models, artists, photographers, sportspersons, etc and. therefore, is not relevant lo the issue of TDS referred to in this Circular. "

4.3. In view of the above, the addition of Rs 8,86,98,230/- made by the Assessing u/s 40(a)(ia) of the Act cannot survive and hence, is deleted.

4.4. In the result, Ground Nos.2 to 6 are allowed.

5. Ground Nos. 7 to 11 are against the disallowance of transponder hire charges {mounting to Rs 2,53,04,473 and channel placement fees of Rs.5,90,07,689/-u/s.40(a)(ia).

5.1 In so far as the disallowance of transponder hire charges is concerned, I have considered the submission filed by the appellant. In its submission, the appellant has contended that as regards the payment of transponder hire charges of Rs 2,53,04,473, it has duly deducted tax at source u/s 194J and/ or 195 of the Act on the said payments. Further, the appellant has also placed a sheet capturing the details of the transponder hire charges paid and the corresponding TDS thereof on record in order to substantiate its contention.

observed that the appellant has duly complied with the TDS requirements insofar as these payments are concerned. Accordingly, the Assessing Officer is directed not to subject the payment of transponder hire charges of Rs 2,53,04,473 to disallowance u/s 40(a)(ia) of the Act. Further, in respect of the disallowance of channel placement fees, it is noted that according to the Assessing Officer channel placement fees is a carriage fee which comes under the definition of 'royalty as explained in explanation 2 to sec. 9(1}(vi). In the assessment order, the AO has discussed the concept of royalty and has finally held that such placement fees are carriage fees paid by the appellant is in fact royalty, hence, TDS has to be made u/s. 194J of the I.T.Act. Since the assessee has made TDS u/s.194C at lower rate, such expenditure is not to be allowed.. Thus, mainly on these reasoning, the AO has disallowed an amount of Rs, 5,90,07,689/-. In appeal, it is submitted that the Id. AO has wrongly disallowed the genuine expenditure merely on the ground that instead of u/s. 194C, it should have been u/s.194J. It is submitted that the payment of channel placement fees is not at all covered within the ambit of definition of Explanation 6 to Sec. 9(1)(vi). It is, therefore, submitted that such genuine expenditure should be allowed following the decision of Hon'ble ITAT, Mumbai in the case of DCIT-11(2) vs.M/s. Chandanbhoy & Jassobhoy ITA No.20/Mum/2010 dated 21.10.2011 and also case of CIT vs.

S.K.ekriwal 361 ITR 472(Calcutta).

5.3 I have considered the findings of the AO and the rival submissions of the appellant, carefully. The decisions relied upon by the Ld. A R clearly support the view that where tax has been deducted at source under a particular section and in the opinion of the AO tax ought to have been deducted under a different section, no disallowance arises u/s 40(a)(ia) of the Act, The Hon'ble Calcutta High Court in CIT v SK Tekriwal (361 ITR 472) has also upheld the view of the ITAT that no disallowance is warranted u/s. 40(a)(ia) in a case where tax has been deducted at source under a particular section. Further, the Ld. A R has also placed on records various judicial precedents wherein it has been held by the Hon'ble ITATs/ High Court that withholding provisions u/s 194J of the IT. Act are not attracted in the case of channel placement fees since the same do not fall under the term 'royalty' as defined u/s 9 of the IT. Act. It is further observed that the appellant has also placed reliance on the decisions of the various tribunals (including Mumbai Tribunal) wherein it has been held that withholding provisions u/s 194C of the IT. Act are attracted in case of channel placement fees.

In view of the above, considering that the channel placement issue in appellant's case is squarely covered in favour of the appellant by the aforesaid decisions placed on record, I hereby delete the addition of Rs.5,90,07,689/- made by the AO u/s 40(a)(ia) of the Act.

amount of Rs 19,39,204 u/s 14A of the Act rw Rule 8D.According to the AO, the appellant has not any expenses relating to earning exempt income and has not maintained any separate account for the exempt income. According to the Assessing Officer, the assessee has made investment which is capable of exempt income hence, expenditure related to such investment is to be disallowed. The Assessee cannot so that it has incurred any expenditure for making such investment. It is clear that no exempt income can be earned without incurring expenses. The computer, electricity, office staff, vehicle, telephone and common expenses are also related to earning of exempt income hence, after discussing the provision of law u/s.14A Income-Tax Act, 1961, the Assessing Officer has applied rule 8D of the IT. Rule, 1962 and has worked out disallowable expenditure to the tune of Rs.19,39,202/-. During the appellate proceedings, the Ld AR submitted that the appellant had not earned any income forming part of the total income which is claimed as exempt under the provisions of the Act for the year under consideration. The appellant has thereby challenged the disallowance made by the AO on the basis that no disallowance u/s 14A of the Act r.w. Rule 8D could be made in absence of exempt income being earned during the year.

6.1. The appellant placed reliance on the decision of the Hon'ble Bombay High Court in the case of Delite Industries Limited ITA No, 110 of 2009, wherein the Hon'ble High Court dismissed the appeal filed by the income tax department on the question whether disallowance u/s14A could be made in the absence of earning of exempt income by observing as under:-

"on facts we find that there is no profit for the relevant assessment year.

Hence the question as framed would not arise."

6.2. The appellant also submitted that following the aforesaid decision of the Hon'ble Bombay High Court, the Hon'ble Jurisdictional Mumbai ITAT in the case of Avshesh P. Ltd. vs. DCIT ITA No.5779/Mum/2006 & ITA No.208/Mum/2009, has held that when assessee has actually not earned the dividend income (exempt income), no disallowance under Section 14A of the act could be made by the Id AO.

6.3. Further, reliance was also placed on the decision of the Hon'ble Chennai ITAT in the case of Siva Industries and Holdings Ltd vs. ACIT ITA No 2148/Mds/2010, wherein it was held that if there is no claim of tax free income, there cannot be any disallowance u/s 14A of the Act. In the instant case, the appellant has not earned any exempt income, hence, no disallowance can be made u/s 14A of the Act. Reliance was also placed on the decision of the Hon'ble Chennai ITAT in the case of ACIT vs M Baskaran ITA No 1717/Mds/2013, wherein (after considering Circular no 5 of 2014 dated 11 February 2014 issued

u/s 14A of the Act.

6.4. It has also been argued that no disallowance could be made in absence of actual expenditure incurred. As per the provisions of sub section (1) of section 14A, disallowance is to be made for expenditure 'incurred' in relation to exempt income. The word 'incurred' signifies that the expenditure must have been actually incurred. Any notional or estimated expenditure cannot be considered for disallowance. It was submitted that during the year under consideration, the appellant did not incur any expenditure to earn exempt income. Hence, no expenditure could be disallowed u/s 14A of the Act.

6.5. In this regard, the appellant placed reliance on the decision of Hon'ble Punjab and Haryana High Court in the case of Hero Cycles Ltd 323 ITR 518, wherein it has been held that disallowance u/s 14A should not be made where it is found that no expenditure has been incurred by the assessee for earning exempt income. The .relevant extract of the decision has been reproduced:-

> "The contention of the revenue thai 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 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. "

6.6. In view of the above, it was submitted that since the appellant did not incur any expenditure for earning exempt income, no disallowance u/s 14A of the Act could be made. Further, the appellant also submitted that all its investments are made out of its own funds and in the shares of its subsidiary, Kannada Prabha Publications Ltd. The Ld AR submitted that the investments made by the appellant in its subsidiary are strategic in nature and are held for acquiring controlling interest. The said investments are not made with the intention of earning dividend income therefrom. These investments do not require day-to-day monitoring and accordingly, no administrative expenditure is incurred in respect of the same by the appellant. In view of the same, the Id AR submitted that no disallowance is required to be made u/s 14A in respect of these investments. The details of the investments held as on 31 March 2012 were also provided by the appellant in its submission in order to substantiate its proposition.

6.7. I have considered the submissions of the appellant as well as the findings given by the AO. It is noticed that the Id AO had disallowed a sum of Rs 19,39,204 by applying Rule 8D u/s 14A of the Act. The disallowance of expenditure made by the Assessing Officer is worth approval because investment made

earned is not material because investment so made is capable of earning exempt income. Further, the contention that no actual expenditure has been incurred is not convincing one because for making investment and taking track of investment may be of subsidiary companies requires use of office premises, managerial cost and other related expenditure. Further, argument that an entire investment has been made in own subsidiary and is strategic in nature, makes no because expenditure element is very much there. Recently, in the case of Beverages Ltd. Vs. DCIT.Cen.Cir.2(3), Bangalore(2016) 72 taxmann.com 102 e dated 31.05.2016, the Hon'ble Karnataka High Court has held that Section 14A Tax Act, 1961 is applicable even where motive in acquiring shares of subsidiaries was to obtain controlling interest. Thus, the disallowance of expenditure of Rs.1939204/- u/s.14A Income Tax Act 1961 is sustained.

5. The first issue that came to our consideration is disallowance of carriage fees / channel placement fees u/s.40(a)(ia) for failure to deduct tax at source u/s.194J of the Income Tax Act, 1961. The ld. AR for the assessee at the time of hearing submitted that the issued involved in the present appeal is squarely covered in favour of the assessee by the decision of ITAT Mumbai 'A' Bench in assessee's own case for the A.Y.2011-12 in ITA No.6786/Mum/2016 where under identical set of facts, the Tribunal deleted the additions made by the AO towards disallowance of carriage fees / channel placement fees u/s.40(a)(ia) for failure to deduct tax at source u/s.194J of the Income Tax Act, 1961.

6. The ld. DR on the other hand fairly accepted that the issue is covered in favour of the assessee by the decision of ITAT, Mumbai for earlier years.

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The issue involved in the present appeal, i.e. whether channel placement fees / transponder fees is liable for TDS u/s.194J of the Act, consequently liable for disallowance u/s.40(a)(ia) for failure to deduct tax at source. We find that the Co-ordinate Bench of ITAT, Mumbai 'A' Bench in assessee's own case has considered the issue in the light of the provisions of Section 194J and by following the decision of Hon'ble Bombay High Court in the case of CIT vs. NGC Networks (India) Pvt. Ltd., in ITA No.397 of 2015 held that channel placement fees is not a royalty in terms of Explanation-2 to Section 9(i) (vi) of the Income Tax Act, 1961, therefore, no disallowance could be made u/s.40(a)(ia) for failure to deduct tax at source u/s.194J of the Income Tax Act, 1961. Relevant observations of the Tribunal are as under:-

"7. We have heard the rival submissions and perused the relevant materials on record. In the case of M/s NGC Networks (India) Pvt. Ltd. (supra), the following questions of law were urged before the High Court by the Revenue :

disallowance of Channel Placement Fee cannot be made u/s 40(a)(ia) of the I.T. Act when the tax was deducted thereon u/s 194C instead of Sec. 194J of the I.T. Act?

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that the disallowance of Channel Placement Fee is not in the nature to be deducted u/s 194J of the I.T. Act despite Explanation 6 thereto inserted w.e.f. 01/06/1976?

The Hon'ble High Court held that

"(d) We find that view taken by the impugned order dated 9th July of the Tribunal that a party cannot be called upon to perform an impossible Act i.e. to comply with a provision not in force at the relevant time but introduced later by retrospective amendment. This is in accord with the view taken by this Court in CIT v. Cello Plast (2012) 209 Taxman 617- wherein this Court has applied the legal maxim lex non cogit ad impossibilia (law does not compel a man to do what he cannot possibly perform.

(e) in the present facts, the amendment by introduction of Explanation-6 to section 9(1)(vi)of the Act took place in the year 2012 with retrospective effect from 1976. This could not have been contemplated by the Respondent when he made the payment which was subject to tax deduction at source u/s 194C of the Act during the subject assessment year, would require deduction u/s 194J of the Act due to some future amendment with retrospective effect.

(f) Further, we also notice that under section 40(a)(i) of the Act, under which the expenditure has been disallowed by the Revenue, meaning of royalty as defined therein, is that as provided in the Explanation 2 to section 9(1)(vi) of the Act and not Explanation 6 to section 9(1)(vi) of the Act. Thus, the disallowance of expenditure u/s 40(a)(i) of the Act can only be if the payment is 'Royalty' in terms of Explanation 2 to section 9(1)(vi) of the Act. Undisputedly, the payment made for channel placement as a fee, is not royalty in terms of Explanation 2 to section 9(1)(vi) of the Act. Therefore, no disallowance of expenditure u/s 40(a)(vi) of the Act, can be made in the present case."

7.1 Thus, in the instant case, the assessee could not have deducted tax u/s 194J on account of subsequent amendment in definition of royalty by Explanation 6. Consequently, the disallowance by the AO by treating channel placement fees as process royalty under Explanation 6 to 9(1)(vi) is not warranted.

7.2 In the case of UTV Entertainment Ltd. (supra), it is held by the Hon'ble Bombay High Court that in case of assessee carrying on business of broadcasting of television channels, payments of placement charges and subletting charges would fall within the meaning of 'work' covered in clause (iv) of Explanation to section 194C, and thus, assessee was justified in

withholding u/s 194C, to be more specific under clause (iv) of Explanation to section 194C.

7.3 Further, it is held in the case of S.K. Tekriwal (supra), by the Hon'ble Calcutta High Court that if there is any shortfall due to any difference of opinion as to taxability of any item or nature of payments falling under various TDS provisions, the assessee can be declared to be an assessee in default u/s 201, but no disallowance can be made by invoking provisions of section 40(a)(ia).

However, the Hon'ble Kerala High Court has held that disallowance u/s 40(a)(ia) is to be made where TDS has been made under wrong provisions.

In absence of decision of jurisdiction High Court, in view of contrary decisions, one has to follow the view which is in favour of the assessee as laid down in Vegetable Products Ltd. (supra).

8. In view of the above reasons, we uphold the order of the Ld. CIT(A) and dismiss the appeal filed by the revenue."

8. In this view of the matter and consistent with view taken by the Co- ordinate Bench in assessee's own case, we are of the considered view that there is no error in the findings recorded by the CIT(A) in deleting additions made by the AO towards carriage fees / channel placement fees u/s.40(a)(ia) of the Income Tax Act, 1961. Hence, we are inclined to upheld the order of ld. CIT(A) and dismiss the appeal filed by the revenue.

9. The assessee has filed Cross Objection in support of order of the ld. CIT(A). Since, we have already dismissed the appeal filed by the revenue and upheld findings of the ld. CIT(A), the Cross Objection filed by the assessee becomes infructous and hence, the same is dismissed as not maintainable.

10. In the result, appeal filed by the revenue and cross objection filed by the assessee is dismissed.

11. The only issue that came up for consideration from assessee's appeal is disallowance of expenses incurred in relation to exempt income. During the assessment proceedings, the AO noticed that the assessee has made huge investments in exempt income generating shares and securities, however, not made any suomoto disallowance in respect of expenses incurred in relation to exempt income, therefore, a show-cause notice dated 12/02/2015 has been issued asking as to why disallowance of expenses contemplated u/s.14A shall not be disallowed by invoking provisions of Rule 8D(2) of the Income Tax Rules 1962.

12. In response, the assessee submitted that during the year it has not earned any exempt income, therefore, the question of disallowance of expenses incurred in relation to exempt income u/s.14A of the Act, does not arise. The AO after considering relevant submissions of the assessee and also by

Ltd., held that the provisions of rule 8D is mandatorily applicable from the AY 2008-

09 onwards whether or not the assessee has earned exempt income, therefore, he has determined the expenses incurred in relation to exempt income by invoking rule 8D(2)(iii) @0.5% of average value of investment and made disallowance of Rs.19,39,204/-.

13. The ld. AR for the assessee, at the time of hearing submitted that this issue is squarely covered in favour of the assessee by the decision of Hon'ble Bombay High Court in the case of Ballarpur Industries Ltd., in ITA No.51/2016 dated 13/10/2016 where the Hon'ble High Court held that when there is no exempt income earned for the year under consideration, expenses contemplated u/s.14A of the Income Tax Act, 1961 could not be disallowed. The AR further submitted that the Co-ordinate Bench of ITAT in the case of Essar Infrastructure Ltd., In ITA No.4769/Mum/2017 has considered an identical issue and by following the decision of Hon'ble Bombay High Court in the case of Pr. CIT vs. Ballarpur Industries Ltd., held that when there is no exempt income earned for the year under consideration, expenses incurred in relation to exempt income cannot be disallowed.

14. The ld. DR on the other hand fairly accepted that the issue is covered in favour of the assessee by the decision of Hon'ble Bombay High Court, however, he further submitted that in view of specific provisions of section 14A r.w.r. 8D, the AO is required to determine the disallowance of expenses in relation to exempt income whether or not the assessee has earned exempt income for the year under consideration.

15. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the assessee has not earned any exempt income for the year under consideration. In fact, the AO has brought out this fact in his assessment order. Once, there is no exempt income for the year under consideration whether expenses incurred in relation to earning exempt income contemplated u/s.14A could be disallowed or not is no longer res integra. The Jurisdictional High Court of Bombay (Nagpur) in the case of Pr. CIT vs. Ballarpur Industries Ltd., in Income Tax Appeal No.51/2016 has considered an identical issue in the light of the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd., (2015) 378 ITR 35 and held that when there is no exempt income, expenses incurred in relation to exempt income contemplated u/s.14A could not be disallowed. The Co-ordinate Bench of ITAT in the case of Essar Infrastructure Ltd., In ITA No.4769/Mum/2017 had taken similar view. The relevant observations of the Tribunal are as under:-

4. We have heard rival contentions and gone through the facts and circumstances of the case. Admitted fact is that the assessee has no exempt income and in such circumstances, we

CIT vs. Ballarpur Industries Limited in Income Tax Appeal No. 51 of 2016, wherein this issue has been considered and finally following the judgment of Hon'ble Delhi High Court in the case of Cheminvest Limited vs. CIT (2015) 378 ITR 33 (Delhi) held as under: - "On hearing the learned Counsel for the Department and on a perusal of the impugned orders, it appears that both the Authorities have recorded a clear finding of fact that there was no exempt income earned by the assessee. While holding so, the Authorities relied on the judgment of the Delhi High Court in Income Tax Appeal No. 749/2014, which holds that the expression "does not form part of the total income" in Section 14A of the Income Tax Act, 1961 envisages that there should be an actual receipt of the income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. The Income Tax Appellate Tribunal held that the provisions of Section 14A of the Income Tax Act, 1961 would not apply to the facts of this case as no exempt income was received or receivable during the relevant previous year. It is not the case of the Assessing Officer that any actual income was received by the assessee and the same was includible in the total income. In the facts of the case, the Authorities held that since the investments made by the assessee in the sister concerns were not the actual income received by the assessee, they could not have been included in the total income."

16. In this view of the matter and consistent with view taken by the Co- ordinate Bench which is further supported by the decision of the Hon'ble Bombay High Court in the case of Ballarpur Industries Ltd., (supra), we are of the considered view that the AO was erred in determining disallowance of expenses incurred in relation to exempt income u/s.14A of the Act. Hence, we direct the AO to delete additions made towards disallowance of expenses u/s.14A r.w.r. 8D(2)(iii) of Income Tax Rules

1962. In the result, appeal filed by the assessee is allowed.

17. In the result, appeal filed by the revenue is dismissed and appeal filed by the assessee is allowed whereas Cross Objection filed by the assessee is also dismissed.

Order pronounced in the open court on this 28/03/2019

(G. MANJUNATHA)