

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.448/Bang/2016
Assessment Year : 2011-12

M/s. Bobba Aviation Cargo and Ground Handling Services Pvt. Ltd., #33/5, Mount Kailash, Meanee Avenue Road, Ulsoor, Bangalore – 560 042. PAN : AADCB 3096 R	Vs.	The Deputy Commissioner of Income Tax, Circle – 11(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri. V. Srinivasan, Advocate
Respondent by	:	Shri. Pradeep Kumar, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	4.1.2021
Date of Pronouncement	:	4.1.2021

ORDER

Per N.V. Vasudevan, Vice President

This is an appeal filed by the assessee against the order dated 31.12.2015 of CIT(A)-1, Bangalore, relating to Assessment Year 2011-12.

2. The only issue that arises for consideration in this appeal is with regard to correctness of the disallowance of a sum of Rs.30,52,913/- made by the AO and confirmed by the CIT(A), being disallowance under section 14A of the Income Tax Act, 1961 ('Act'), r.w.r. 8D of the Income Tax Rules, 1962 ('Rules').

3. The assessee is a company engaged in the business of providing sales, marketing and Ground Handling services for Lufthansa Cargo AG. The assessee has operations at Bangalore, Chennai, Kolkata and Hyderabad. In the course of assessment proceedings for Assessment Year 2011-12, the AO noticed that the assessee earned income which does not form part of the total income under Chapter III of the Act. In view of the provisions of section 14A of the Act, which provides that any expenditure incurred to earn income which does not form part of the total income shall be allowed as deduction, the AO disallowed expenses incurred in earning exempt income by applying the modality of computing disallowance as laid down in the provisions of Rule 8D of the Rules. The AO made the following disallowance:

A.	<i>Total amount of Direct interest / other expenses pertaining to tax-exempt investments U/R 8D(2)(i)</i>	<i>NIL</i>		
B.	<i>Total amount of indirect interest pertaining to tax-exempt investments</i>	<i>34,09,446</i>		
		<i>A.Y. 10-11</i>	<i>A.Y 11-12</i>	<i>Average</i>
C.	<i>Average amount of tax exempt investments</i>	<i>12,07,89,740</i>	<i>12,07,89,740</i>	<i>12,07,89,740</i>
D.	<i>Average amount of total assets</i>	<i>14,89,13,367</i>	<i>18,74,13,385</i>	<i>16,81,63,376</i>
E.	<i>Proportionate indirect interest to be disallowed</i>	$\frac{B \times C}{D}$	$\frac{34,09,446 \times 12,07,89,740}{16,81,63,376}$ $= 24,48,964$	
F.	<i>0.5 % of average amount of tax exempt investments</i>		<i>6,03,949</i>	
G.	<i>Total disallowance attracted u/s. 14A read with Rule 8D</i>	$A + E + F$	<i>30,52,913</i>	

4. On appeal by the Assessee the CIT(A) confirmed the order of the AO. Aggrieved by the order of the CIT(A), the Assessee has preferred the present appeal before the Tribunal.

5. At the time of hearing, learned Counsel for the assessee submitted that the disallowance under section 14A of the Act cannot be more than the exempt income earned by the assessee. He submitted that if a direction is given to the AO to restrict the disallowance under section 14A of the Act to the extent of exempt income earned by the assessee, the assessee would not like to argue on other aspects of the disallowance made by the Revenue authorities. In support of the case of the assessee that the disallowance under section 14A of the Act cannot be in excess of the exempt income earned by the assessee, he relied on certain judicial pronouncements, which we will discuss in the subsequent paragraphs. The learned DR relied on the order of the CIT(A).

6. We have carefully considered the rival submissions. As already stated, at the time of hearing, the learned Counsel for the assessee restricted his arguments only to the point that the disallowance under section 14A of the Act should be restricted to the extent of dividend income earned by the assessee in the light of the decision of the Hon'ble Delhi High Court in the case of *Joint Investments (P) Ltd. v. CIT*, 372 ITR 694 wherein a view was taken that disallowance u/s. 14A of the Act cannot exceed the exempt income. Similar view was expressed by the Hon'ble Delhi High Court in the case of *CIT v. Holcim India Pvt. Ltd.*, 272 CTR 282 (Del). These decisions were considered by the Mumbai Bench of the Tribunal in the case of *Future Corporate Resources Ltd v. ACIT*, ITA No.4658/Mum/2015 dated 26.07.2017 relating to AY 2011-12 and it was held by the Tribunal Mumbai Bench that disallowance under section 14A of the Act cannot exceed the exempt income. Following

the aforesaid decisions, we hold that disallowance under section 14A of the Act in the present case should be restricted to the exempt income earned by the assessee. Since the quantum of dividend income is not found spelt out in the orders of the Revenue authorities, we remand the issue to the AO for the limited purpose of ascertaining the quantum of exempt income earned by the assessee. We hold and direct accordingly.

7. In the result, the appeal of the assessee is partly allowed to the extent indicated above.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(B. R. BASKARAN)
Accountant Member

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore,

Dated: 4.1.2021.

/NS/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
ITAT, Bangalore.