IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

I.T.A. No.174/Mum/2017
(Assessment Year: 2010-11)

ACIT Circle-2(3)(1), Room No. 552, 5th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020	vs.	M/s. Varun Corporation Pvt. Ltd., 6, Shoorji Vallabhdas Marg, Ballard Estate, Mumbai-400001
		PAN : **AAACK1582A**
(**Appellant**)	..	(**Respondent**)

Revenue by :	Shri Rajeev Gubgotra (DR)
Assessee by:	Ms. Sweta Narvekar (AR)

Date of Hearing : 04.07.2019
Date of Pronouncement : 04.07.2019

ORDER

PER PAWAN SINGH, JUDICIAL MEMBER

1. This appeal by revenue is directed against the order of Commissioner (Appeals)-6 Mumbai dated 21st of October 2016 for assessment year 2010- 11, which in turn arises from assessment order passed by assessing officer under section 143(3) read with section 147 dated 26th February 2016. The revenue has raised following grounds of appeal:

(1) Whether on the facts and in the circumstances of the case learned Commissioner (Appeals) erred in restricting disallowance under section 14A to the extent of amount suo moto disallowed by the

assessee ignoring the disallowance 14A should be calculated as per working of Rule 8D.

(2) *Whether on the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in restricting the disallowance under section 14A to the extent of amount disallowed suo moto by assessee, without considering the facts and Notification 43 /2016 dated 2nd of June 2016 will not apply for the assessment year.*

2. Brief facts of the case are that the assessing officer while passing the assessment order under section 143(3) read with section 147 on 26th February 2016, disallowed a sum of Rs. 17,66,49,965/ -under section 14A against the exempt income of Rs. 2.05 Crore (Aprox) . On appeal before learned Commissioner (Appeals), the assessee besides challenging the reopening under section 147 also challenged the disallowance made by assessing officer and urged that disallowance under section 14 A cannot exceed the exempt income earned by the assessee during the relevant period. During the relevant period the assessee has earned exempt income of Rs. 2,05,50,820/- whereas the assessee voluntarily disallowed a sum of Rs. 15,36,20,152/- under section 14A. The learned Commissioner (Appeals) after considering the submission of assessee granted partial relief to the assessee in restricting the addition/disallowance under section 14A, to the voluntary disallowance made by assessee. However, the learned Commissioner (Appeals) on the issue of reopening held that the assessee is granted relief, thus, the issue of reopening has become

academic. Thus, aggrieved by the order of Commissioner (Appeals) the revenue has filed the present appeal before us.

3. We have heard the submission of learned DR of the revenue and learned and DR for revenue and perused the material available on record. On our specific quarry it was disclosed that the ld AR appearing on behalf of the assessee, that the assessee has not filed any further appeal before this tribunal against partial disallowance under section 14A. The learned DR for the revenue supported the order of assessing officer. The learned DR further submits that the learned Commissioner (Appeals) instead of confirming the disallowance in accordance with the Rule 8D, restricted the same to the extent of voluntary disallowances made by assessing and prayed to reverse the order and to restore the order passed by assessing officer.

4. On the other hand the learned AR for the assessee submits that though the disallowance under section 14A should not exceed the exempt income as law laid down by various superior courts and the tribunals. As the assessee has not filed any appeal against the disallowances restricted by assessing officer. The appeal filed by the venue should be dismissed at threshold.

5. We have considered the rival submission of the parties and have gone through the orders of authorities below. There is no dispute that during the relevant period the assessee has earned exempt income of

Rs.2,05,50,820/-. The assessee made *suo moto* disallowance of Rs.15,36,20,152/-. The assessing officer in reassessment proceeding invoked the provision of Rule 8D and computed the disallowances of Rs.17,66,49,695/-, which consist of disallowance under Rule 8 D2(i) of Rs. 23,10,23,327/-, under Rule 8D2(ii) of Rs. 14,92,77,372/- and under Rule 8D2(iii) of Rs. 42,70,266/-. However, the learned Commissioner (Appeals) after considering the submission of assessee and the decision of Delhi High Court in Joint investment Private Ltd 59 taxmann.com 295, Punjab and Haryana High Court in PCIT versus Empire Package (ITA NO. 415 of 2015) and the decisions of Mumbai tribunal in Daga Global Chemical Pvt Ltd (IT No. 5592/M/2012) concluded that as the assessee has earned only exempt income of Rs. 2.05 crore (Aprox) and the assessee itself has disallowed a sum of Rs. 15.36 crore (Aprox), which is more than the exempt income earned by the assessee, thus no further disallowance can be sustained. The learned DR for the revenue was unable to convince is as to why the disallowance sustained by ld Commissioner (Appeals) to the extent of Rs. 15.36 crore is inadequate disallowances against the exempt income of Rs. 2.05 crore (Aprox).

6. As we have already recorded that the assessee has not filed any further appeal against the order of learned Commissioner (Appeals) against restricting the disallowance to Rs. 15.36 crore, nor was any Cross Objections filed. Therefore, in view of the above discussion we do not

find any merit in the submission made by learned DR for the revenue, in the result appeal of the revenue is dismissed.

7. Order pronounced in the open court at the time of hearing of the appeal.

Order pronounced in the open court on 04.07.2019

Sd/-	**Sd/-**
(G. MANJUNATHA)	(PAWAN SINGH)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, dated: 04.07.2019

SK P.S.
copy to:

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI