

ITAT remanded matter as assessee claimed that suo moto disallowance made u/s 14A was due to mistake

Summary – The Mumbai ITAT in a recent case of Rupee Finance & Management (P.) Ltd., (the Assessee) held that where assessee made suo moto disallowance under section 14A which was later on claimed to be contrary to law on account of investment being made for strategic reasons in group companies while section 14A itself evolved subsequently, matter to be readjudicated

Facts

- The assessee NBFC made *suo-motu* disallowance of expense under section 14A. At the time of assessment, the Assessing Officer took the stand taken by the assessee, *i.e.*, disallowed expense under section 14A.
- Subsequently, the assessee found that disallowance had been wrongly offered in its return. However, same claim was not accepted by the Assessing Officer.
- On appeal, the Commissioner (Appeals) confirmed the disallowance made by the Assessing Officer on the ground that the assessee had himself made the disallowance; therefore, no relief could be given to the assessee.
- In the Instant appeal, the assessee contended that law in regard to the disallowance under section 14A had evolved quite recently and subsequent to passing of impugned assessment order. It was further submitted that the investment made for earning tax free income had been made for strategic reasons in group companies which could not be considered for making disallowance under section 14A as per the latest position of law.

Held

- Objective of the Income-tax proceedings is to determine the taxable income of the assessee and tax payable thereon, fairly and as per law only. It is also noted that article 265 of Constitution of India also provides in express terms that no tax can be collected without authority of law. It is also noted by us that way back in 1955, the Central Board of Revenue (now called as Central Board of Direct Taxes) had issued a circular wherein guidance was given to the Assessing Officers that they should assess taxable income and compute the tax liability of the taxpayers in accordance with law only and they should not take undue advantage of ignorance of the assessee. In case, any deduction is omitted to be claimed by an assessee and if same is allowable to the assessee as per law, then the Assessing Officer should, in all fairness, give an opportunity to the assessee to claim it in accordance with law.
- The law in regard to the disallowance under section 14A has evolved quite recently and subsequent to passing of impugned assessment order. The revenue was unable to *prima facie* rebut the issues raised by the assessee. Under these circumstances, it is appropriate to send this issue back to the file of the Assessing Officer where the assessee shall be free to raise all legal and factual issues with

regard to the disallowance under section 14A and shall file requisite evidences to establish its claim, as may be required by the Assessing Officer from time to time. The Assessing Officer shall decide this issue afresh after considering the material and the arguments as may be brought on record by the assessee on objective basis and shall be free to decide this issue independent of the voluntary disallowance made by the assessee in the return of income. The Assessing Officer would be well within his powers to assess the income below the amount offered by the assessee in the return of income, if the facts of this case and law applicable thereon so demands.