

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI L. P. SAHU, ACCOUNTANT MEMBER
AND
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.4771/Del/2014 (A.Y 2011-12)

DCIT Circle-2(1) New Delhi (APPELLANT)	vs	Bharat Hotels Ltd. Barakhamba Lane New Delhi AAACB1298E (RESPONDENT)
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Appellant by	Mrs. Parmita Tripathy, CIT DR
Respondent by	Sh. K. V. S. R Krishna, CA

Date of Hearing	07.06.2017
Date of Pronouncement	08.06.2017

ORDER

PER SUCHITRA KAMBLE, JM

This appeal has been filed by the Revenue against the order dated 10/06/2014 passed by CIT(A)-V, New Delhi for the Assessment Year 2011-2.

2. The grounds of appeal are as under:-

- “1. The Ld.CIT(A) erred on facts and in law in deleting the disallowance made u/s 14A of the Act amounting to Rs. 4,83,64,714/-.

2. The Ld.CIT(A) erred on facts and in law in deleting the disallowance of depreciation on World Trade Centre and World Trade Tower amounting to Rs.56,268/-. The Ld. CIT(A) failed to appreciate that the assessee was not the owner of the buildings but was only an occupant.”

3. The first ground of the Revenue appeal is that the CIT(A) erred in deleting the disallowance made u/s 14A of the Act amounting to Rs.4,83,64,714/-. The Ld. AR submitted that the disallowance u/s 14A is fully covered in favour of the assessee by earlier Assessment Year 2009-10 & 2010-11 in assessee's own case. The Ld. AR further submitted that various High Courts have held that where dividend is not received disallowance u/s 14A cannot be made. The Ld. AR submitted the Tribunal's order in assessee's own case for Assessment Year 2009-10 & 2010-11 (ITA No. 4959/Del/2012 & 5401/Del/2013) Para 5 and 5.3 of the said order are as follows:-

"5. We have heard rival parties and have gone through the material placed on record. We find from the facts of the present cases that following are the undisputed facts:

i) The assessee did not receive dividend during the year under consideration.

ii) The investment was made by the assessee Company in subsidiary companies for strategic Purposes.

iii) The investment during the year was made in a subsidiary company which was situated outside India and, therefore, the dividend income if any received from foreign companies was not exempt.

5.1. We find that various High Courts have dealt with the issue of disallowance u/s 14A where there is no receipt of dividend. The Hon'ble Jurisdictional High Court of Delhi in the case of Holcim India Pvt. Ltd. (supra) vide para 14 to 17 has held as under:-

" On the issue whether the respondent-assessee could have earned dividend income and even if no dividend income was earned, yet Section 14A can be invoked and disallowance of expenditure can be made, there are three decisions of the different High Courts directly on the issue and against the appellant-Revenue. No contrary decision of a High Court has been shown to us. The Punjab and Haryana High Court in Commissioner of Income Tax, Faridahad Vs. M/s. Lakhani Marketing Incl., ITA No.

970/2008, decided on 02.04.2014, made reference to two earlier decisions of the same Court in CIT Vs. Hero Cycles Limited, [2010] 323 ITR 518 and CIT Vs. Winsome Textile Industries Limited, [2009] 319 ITR 204 to hold that Section 14A cannot be invoked when no exempt income was earned. The second decision is of the Gujarat High Court in Commissioner of Income Tax-1 Vs. Corrttech Energy (P.) Ltd. [2014] 223 Taxmann 130 (Guj.) The third decision is of the Allahabad High Court in Income Tax Appeal No. 88 of 2014, Commissioner of Income Tax (**li**) Kanpur, Vs. M/s. Shivam Motors (P) Ltd. decided on 05.05.2014. In the said decision it has been held:

"As regards the second question. Section 14A of the Act provides that for the purposes of computing the total income under the Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. Hence, what Section 14A provides is that if there is any income which does not form part of the income under the Act, the expenditure which is incurred for earning the income is not an allowable deduction. For the year in question, the finding of fact is that the assessee had not earned any tax free income. Hence; in the absence of any tax free income, the corresponding expenditure' could not be worked out for disallowance. The view of the CIT(A), which has been affirmed by the Tribunal, hence does not give rise to any substantial question of law. Hence, the deletion of the disallowance of Rs. 2,03,7521- made by the Assessing Officer was in order".

15. Income exempt under Section 10 in a particular assessment year, **may not have been exempt earlier and can become taxable in future years. Further, whether income earned in a subsequent year would or would not be taxable, may depend upon the nature of transaction entered into in the** subsequent assessment year. For example, **long** term capital gain on sale of shares is presently not taxable where security transaction tax has been paid, but a private sale of shares in an off market transaction attracts capital gains tax. It is an undisputed position that respondent assessee is an investment company and had invested by purchasing a substantial number of shares and thereby **securing right to management. Possibility of sale of shares by private** placement etc. cannot be ruled out and is not an improbability. Dividend may or may not be declared. Dividend is declared by the company and strictly in legal sense, a shareholder has no control and cannot insist on payment of dividend. When declared, it is subjected to dividend distribution tax.

16. What is also noticeable is that the entire or whole expenditure has

*been' disallowed as if there was no expenditure incurred by the respondent-assessee for conducting business. The CIT(A) has **positively held that the business was set up and had commenced.** The said finding is accepted. The respondent-assessee, therefore, had to incur expenditure for the business in the form of investment in shares of cement companies and to further expand and consolidate their business. Expenditure had to be also incurred to protect the investment made. The genuineness of the said expenditure and the fact that it was incurred for business activities was not doubted by the Assessing Officer and has also not been doubted by the CIT(A).*

*17. In these circumstances, we do not find any merit in the present **appeals. The same are dismissed in limine.** "*

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5.3. In the present cases also, we note that the assessee had made strategic investments in subsidiary companies and the purpose was to run hotels and the investments were not made for the purpose of earning dividend. Therefore, on the basis of case laws relied upon by Ld. AR under such circumstances disallowance u/s 14A cannot be made.

5.3. Further, we find that the subsidiary company in which the investment was made during the years were situated outside India, thus dividend if any received from them would not have been exempted. Therefore, keeping in view all facts and circumstances, the Ground No. 1 in both the appeals are dismissed."

6. As regards Ground No. 2 which is relating to the disallowance of depreciation on World Trade Center and World Trade Tower amounting to Rs. 56,268/-, the Ld. AR submitted that the said issue is also covered in favour of the assessee by the same above mentioned ITAT Order for Assessment Year 2009-10 & 2010-11 whereby Tribunal had followed Assessment Year 2008-09 order.

7. The Ld. AR further submitted that the Tribunals order for Assessment Year 2009-10 & 2010-11 is confirmed by the Hon'ble High Court in assessee's case.

8. The Ld. DR could not distinguish the said ITAT order as well as High Court order and relied upon the Assessment Order.

9. We have heard both the parties and perused all the relevant documents placed before us including the consolidated order of the ITAT in assessee's own case for the Assessment Year 2009-10 & 2010-11 as well as confirming the said ITAT order by the Hon'ble Delhi High Court. Since the grounds in this present appeal and in the earlier appeals for earlier Assessment Years are similar including the factual aspect. This appeal is squarely covered by the Delhi High Court's order in assessee's own case for earlier Assessment Years. Therefore, there is no merit in the Revenue's appeal.

10. In result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 08th June, 2017.

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 08/06/2017

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	07/06/2017	PS
2.	Draft placed before author	07/06/2017	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	07.06.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	07.06.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		