

आयकर अपीलीय अधिकरण, मुंबई "सी" खंडपीठ
Income-tax Appellate Tribunal " C "Bench Mumbai

सर्वश्री जोगिन्दर सिंह, न्यायिक सदस्य एवं राजेन्द्र, लेखा सदस्य

Before S/ShJoginder Singh, Judicial Member & Rajendra, Accountant Member

आयकर अपील सं./I.T.A./3378/Mum/2013, निर्धारण वर्ष /Assessment Year: 2009-10

DCIT, Circle-7(1) Room No.622, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400 020.	Vs.	M/s. Pan India Network Infravest Pvt. Ltd. 135, Continental Building, Dr. Annie Besant Rd. Worli, Mumbai-400 018. PAN:AACCP 2459 H
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A./ 4170 /Mum/2013, निर्धारण वर्ष /Assessment Year: 2009-10

M/s. Pan India Network Infravest Pvt. Ltd. Mumbai-400 018.	Vs.	DCIT, Circle-7(1) Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Love Kumar-DR

Assessee by: Shri Niraj Seth-AR

सुनवाई की तारीख / **Date of Hearing: 11.05.2016**

घोषणा की तारीख / **Date of Pronouncement: 11.05.2016**

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dated 12.02.2013 the Assessing Officer (A.O.) and the assessee have filed cross appeals. Assessee-company, engaged in the business of developing and building housing projects, filed its return of income on 26.09.2009, declaring total income at Rs.5,67,39,335/-. The assessment order was completed, u/s.143(3) of the Act, on 30.12.2011, determining the total income of the assessee at (-)Rs.4,00,57,592/-.

2. The effective Ground of appeal is about disallowance made u/s.14A r.w. Rule 8D of the Income tax Rules, 1962, (Rules). During the assessment proceedings the AO found that the assessee had made an investment of Rs.52 crores in equity shares of Western MP Infrastructures, that it had paid interest of Rs.2.22 crores, that it had not made any disallowance u/s.14A of the Act. He directed the assessee to explain as to why disallowance should not be made invoking the provisions of the said section. Vide its letter, dt.4.11.2011, the assessee stated that it had not earned any exempt income during the year under appeal, that investment was made out of its own surplus funds, that no disallowance was called for. However, the AO held that there was no direct nexus between the surplus funds and the investment made by the assessee. The AO relied upon the case of Cheminvest Ltd. (124 TJJ 577) and made a disallowance of Rs.1.66 crore.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). Before him, it was argued that the assessee had made strategic investment in unquoted equity shares out of the non interest bearing funds, that nexus was proved with bank statement submitted during the course of assessment proceedings, that the income from such investment was taxable under the head capital gains, that it had not earned/received any exempt income during the year under appeal, that it had not incurred any expense towards maintaining the investments, that it had sufficient interest free funds available with it. After considering the submission of the assessee and the assessment order, the FAA held that there was increase investment during the year of Rs.51.91 crore, that it was having investment in shares, that the income arising from the investment was or would be exempt, that the provisions of section 14A were applicable, that the provisions were applicable irrespective of the fact whether or not the exempt income was received, that the investment was made out of its own funds and the same were not interest bearing funds, that the possibility of utilisation of borrowed funds for the purpose of making investment could not be ruled out. He directed the AO to work out the disallowance as per the formula provided in sub clause(ii) of Rule 8D(2). Further he directed the AO to adopt the average value of assets to Rs.153.54 crores. He further directed the AO to restrict the disallowance under rule 8D(2)(iii) to Rs.5.00 lakhs only.

4. Before us, the Departmental Representative (DR) stated that matter could be decided on merits. Authorised Representative (AR) contended that the assessee did not earn any exempt income and hence, no disallowance can be made for the year under appeal. He referred to the case of Gateway Distriparks Ltd. (ITA No.5746/Mum/2013-dt.07/04/2016).

5. We have heard the rival submissions and perused the material before us. There is no doubt that the assessee had not earned exempt income during the year under consideration, so, in our considered opinion, no disallowance can be made u/s.14A of the Act. We find that in the case of M/s Gateway Distriparks Ltd. (supra), identical issue was adjudicated by us, as under:

“3. The next ground pertains to deleting the disallowance made u/s 14A of the Act ignoring the ratio of the Tribunal in Cheminvest Ltd. (121 ITD 318)(Del.). The crux of argument on behalf of the assessee is that no income was earned by the assessee and merely hypothetical disallowance has been made. Reliance was placed 378 ITR 33 (Del.) order dated 02/09/2015. Considering the totality of facts and the arguments from both sides, we find that the Hon’ble Delhi High Court in the aforesaid order dated 02/09/2015 held that where no exempt income was earned by the assessee in the relevant assessment years and since the genuineness of

expenditure is not in doubt, there is no question of disallowance u/s 14A of the Act. While coming to this conclusion, the Hon'ble High Court relied upon following decisions:-

- i. Cheminvest Ltd. v. CIT [2009] 317 ITR (AT) 86 (Delhi) [SB] (para 15)
- ii. CIT v. Chugandas and Co. [1964] 55 ITR 17 (SC) (para 14)
- iii. CIT v. Cocanada Radhaswami Bank Ltd. [1965] 57 ITR 306 (SC) (para 14)
- iv. CIT v. Corrtch Energy (P.) Ltd. [2015] 372 ITR 97 (Guj) (para 15)
- v. CIT v. Holcim India (P.) Ltd. (I.T.A.No.486 of 2014 decided on 5-9-2014) (para 15)
- vi. CIT v. Hero Cycles Ltd. [2010] 323 ITR 518 (P&H) (para 15)
- vii. CIT v. Lakhani Marketing Incl. [2015] 4 ITR-OL 246 (P&H) (para 15)
- viii. CIT v. Rajendra Prasad Moody [1978] 115 ITR 519 (SC) (para 10)
- ix. CIT v. Shivam Motors (P.) Ltd. (ITA No. 88 of 2014 decided on 5-5-2014) (para 15)
- x. IT v. Winsome Textile Industries Ltd. [2009] 319 ITR 204 (P&H) (para 15),
- xi. Eicher Goodearth Ltd. vs. CIT [2015] 378 ITR 28 (Delhi) (para 14)
- xii. Harish Krishnakant Bhatt v. ITA [2005] 278 ITR (AT) 1 (Ahd) (para 10) "
- xiii. Maxopp Investment Ltd. v. CIT [2012] 347 ITR 272 (Delhi) (para 12)

3.1. In view of the factual matrix and following the aforesaid decision from Hon'ble Delhi High Court and in the absence of any contrary decision brought to our notice by either side, we find no infirmity in the conclusion of the Commissioner of Income Tax (Appeal) and affirmed the same, thus, this ground of the Revenue is also having no merit, consequently, dismissed."

Respectfully, following the same we decide the effective ground of appeal against the AO.

I.T.A./3378/Mum/2013,AY. 2009-10

In the appeal, filed by the assessee, the only effective ground of appeal is about 14A disallowance. While deciding the appeal of the AO, we have held that if the assessee has not earned exempt income in a particular year no disallowance u/s.14A of the Act can be made. Therefore, reversing the order of the FAA, we decide the issue in favour of the assessee.

As a result, appeal filed by the AO stands dismissed and the appeal of the assessee stands allowed.
फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है और निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है.

Order pronounced in the open court on 11th May, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 11 मई, 2016 को की गई।

Sd/-

जोगिन्दर सिंह /Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(राजेन्द्र / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 11.05.2016.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "G" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अधि.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.