

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'एच', मुंबई ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI**  
सर्वश्री राजेन्द्र, लेखा सदस्य, एवं, राम लाल नेगी न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI RAJENDRA, AM AND SHRI RAM LAL NEGI, JM**  
**आयकर अपील सं./ITA No.1521/Mum/2015**  
**(निर्धारण वर्ष / Assessment Year: 2009-10)**

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| M/s. BCD Travels India Pvt.<br>Ltd., Level – 2, Office No.- 3B, B<br>Wing, Times Square,<br>Andheri Kurla Road,<br>Marol, Andheri (East),<br>Mumbai- 400059 | Vs. | The Dy. Commissioner of<br>Income Tax, Range- 9(2) (1),<br>Earlier Addl. CIT-8 (1),<br>Aayakar Bhavan,<br>Mumbai - 400012 |
| <b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACF1613R</b>  |     |   |
| <b>(अपीलार्थी /Appellant)</b>   | )   | <b>(प्रत्यर्थी / Respondent)</b>  |

निर्धारिती की ओर से /Assessee by : Shri. Brijmohan Puranmal Agarwal(AR)  
राजस्व की ओर से /Revenue by : Shri. M.C.Omi Ningshen(DR)

सुनवाई की तारीख / **Date of Hearing** : **20/02/2017**  
घोषणा की तारीख/**Date of Pronouncement** : **23/02/2017**

**आदेश / O R D E R**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against order dated 14/11/2014 passed by the Commissioner of Income Tax (Appeals)-16, Mumbai pertaining to assessment year 2009-10, whereby the Ld. CIT (A) dismissed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the act').

2. The brief facts of the case are that the assessee filed its return of income for the relevant Assessment Year declaring the total income of Rs. 1,02,67,029/- after claiming deduction u/s 10A amounting to Rs. 1,60,06,372/-. The return was processed and after scrutiny assessment order was passed determining the total income of Rs. 1,27,59,890/- after making additions including disallowance u/s 14A of the Act.

3. Aggrieved by the Assessment Order, the assessee carried the matter to the Ld. CIT (A), in appeal and challenged the same inter alia on the ground that the Ld. Assessing Officer has erred in disallowing amount of Rs. 2,06,762/- u/s 14A of the Income Tax Act read with Rule 8D (2)(iii). The Ld. CIT (A) after hearing the assessee dismissed this ground of appeal holding that the issue of disallowance u/s 14A is covered by circular of CBDT No. 5/2014 [F.No. 225/182/2013-ITA.II] dated 11/02/2014.

4. Still aggrieved, the assessee in appeal before the Tribunal on the following grounds of appeal:-

1. *“The Learned Assessing Officer (Dy. Commissioner Income Tax, Range 9(2) (1), Mumbai) has erred in disallowing an amount of Rs. 2,06,762/- u/s. 14A of the Income Tax Act read with Rule 8D(2)(ii) and the Learned Commissioner of Income Tax (Appeals)- 16 has further erred in upholding the order of the Assessing Officer.*
2. *The Learned Assessing Officer has erred in reallocating the sum expenditure of Non exempted unit to Tax exempted unit on the basis of the turnover and by doing so restricted the profit of exempted unit to Rs. 1,37,20,277/- instead of Rs. 1,60,06,372/- as claimed by the appellant*

*and the Learned Commissioner of Income Tax (Appeals)- 16 has further erred in upholding the order of the Assessing Officer.*

*3. Your appellant craves to leaves to add, alter, amend or withdraw any of the ground/s, if necessary.”*

5. Before us, the Ld. Counsel for the assessee at the outset submitted that the assessee does not want to press ground No. 2 of the appeal. We therefore dismissed ground No. 2 of the appeal as not pressed. As regards first ground of the appeal the Ld. Counsel for the assessee submitted that the Ld. CIT (A) has wrongly confirmed the disallowance of Rs. 2,06,762/- u/s 14A of the Act read with Rule 8D (2) (iii) rules of the Income Tax. The Ld. Counsel further submitted that the impugned order is contrary to the law laid down by the Mumba Bench of ITAT in *Garware Wall Ropes Limited Vs. Addl. CIT* (2014) 46 Taxmann.com 18 as in the said case, the Tribunal has held that the provisions of section are not applicable where no income has been claimed as exempt. The Ld. Counsel further relying on the decision of the Hon'ble High Court of Delhi passed in *Cheminvest Ltd. Vs. Commissioner of Income Tax ITA No. 749/2014* submitted that the order passed by the Ld. CIT (A) is liable to be set aside.

6. On the other hand, the Ld. DR relying on the concurrent findings of the authorities below submitted that the case is relied upon by the assessee are distinguishable on facts. Therefore, there is no scope for further interference in the order passed by the Ld. CIT (A).

7. We have heard the rival submissions and perused the material placed before us by the parties, in support of their contention, including the decisions relied upon by them. It is not the case of the revenue that the assessee has earned exempt income during the previous year relevant to the Assessment Year. It is also not disputed that the investment was not made out of its own funds and that no interest cost has been incurred by the assessee company for

making of such investment. The Ld. Counsel further submitted that in the proceedings year such disallowance u/s 14A was made by the then Assessing Officer in accordance with the provisions of rule 8D. However, the disallowance was deleted by the CIT (A) in appeal. In Cheminvest Ltd. Vs. CIT (supra), the Hon'ble Delhi High court has held that the expression 'does not form part of the total income' in section 14A envisages that there should be actual receipt of income, which was not includable in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. Since, during the assessment year under consideration the assessee did not earn any exempt income, the Ld. CIT(A) has wrongly confirmed the addition. We are, therefore, of the considered opinion that the case of the assessee covered by the decision of the Hon'ble High Court (supra) and the decisions of Mumbai Tribunal. We therefore respectfully following the aforesaid decisions decide this ground of appeal in favour of the assessee and allow the solitary ground of appeal.

8. In the result, appeal filed by the assessee for assessment year 2009-2010 is allowed.

Order pronounced in the open court on 23<sup>rd</sup> Feb, 2017.

Sd/-  
(RAJENDRA)  
ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 23/02/2017

*Alindra, PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**