

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI  
**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**  
**AND**  
**SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

I.T.A. No.1619/M/2013  
(Assessment Year: **2009-2010**)

M/s. Sankalp Consumer Product Pvt. Ltd., Rupam Building, 5 <sup>th</sup> Floor, 239, P D'Mello Road, Opp. GPO, Fort, Mumbai-400001.	बनाम/ Vs.	Addl. CIT, Range-2(3), Mumbai.
स्थायी लेखा सं./PAN : AACCS2368A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Ms. Toral Shah
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Love Kumar, DR

सुनवाई की तारीख / Date of Hearing : 14.01.2016

घोषणा की तारीख /Date of Pronouncement : 29.01.2016

**आदेश / O R D E R**

**PER CHALLA NAGENDRA PRASAD, JM:**

This appeal is filed by the assessee against the order of the CIT (A)-6, Mumbai for the assessment year 2009-2010.

2. In this appeal, assessee raised two grounds. The **first grievance** of the assessee is that the CIT (A) erred in holding that the Assessing Officer has considered the revised return of income filed by the assessee on 16.9.2010. In this regard, Ld Counsel for the assessee submitted that assessee filed its return of income originally on 29.9.2009 disallowing the interest of Rs., 35,50,079/-. Subsequently, revised return was filed on 16.9.2010, wherein the interest was disallowed at Rs. 1,45,352/-. Ld Counsel for the assessee also submitted that in the assessment, the Assessing Officer has not considered the revised return of income, though it was filed in time. Further, Ld Counsel for the assessee submitted that while computing the income, the Assessing Officer considered the business income

reported in original return of income instead of revised return of income, thereby disallowing interest of Rs. 35,47,686/- u/s 14A of the Act, which amounted to double addition. Ld Counsel also submitted that the CIT (A) failed to consider the submissions of the assessee and held that the AO has considered the revised return of income, which is factually not correct.

3. On the other hand, Ld DR relied on the orders of the AO and the CIT (A) and supported the decision taken by the lower authorities.

4. We have heard both the parties and perused the orders of the Revenue Authorities as well as the relevant material filed before us. On perusal of the orders of the lower authorities, we find, it is the decision of the CIT (A) that the assessee filed revised return of income on 16.9.2010 and this revised return is in time. Thus, the Assessing Officer should have considered the revised return of income. Ld Counsel for the assessee inviting our attention to page 3 of the paper book, which is the computation of income filed along with the original return of income, submitted that the income of Rs. 4,02,93,998/- returned in the original return of income has been taken as the starting point for computation of income instead of income of Rs. 3,67,43,920/- reported in the revised income. Considering the above facts of the case, we direct the AO to consider the income reported in the revised return of income for the purpose of making addition/disallowance.

5. **Second issue** raised in by the assessee in this appeal is that the CIT (A) erred in confirming the disallowance made u/s 14A r.w. Rule 8D of the IT Rules, 1962 by the Assessing Officer. On this issue, at the outset, Ld Counsel for the assessee submitted that the assessee has not received any dividend income during the Assessment Year under consideration. Placing reliance on the recent judgment of the Hon'ble High Court of Delhi in the case of **Cheminvest Limited vs. CIT** in ITA No.749/2014, **dated 2.9.2015**, Ld Counsel for the assessee submitted that the said judgment is relevant for the proposition that *when no dividend income earned no disallowance is to be made u/s 14A of the Act*. Ld Counsel for the assessee also submitted that the assessee made investments in group concerns and such investments were not made for earning dividend income, but they made only in the interest of business and such investments, if sold, are liable for capital gains tax and

therefore, they are not taxable. It is settled law that any income arising out of investments is not taxable. It is the submission of the Ld Counsel for the assessee that in fact, the investments have come down as on 31.3.2009 when compared to the investments made as on 31.3.2008. Ld Counsel for the assessee also relied on another judgment of the Hon'ble Delhi High Court in the case of CIT vs. Holcim India P. Ltd in ITA No.486/2014 & ITA No. 299/2014, dated 5.9.2014, wherein it was held that *the provisions of section 14A and Rule 8D disallowances cannot be made if there is no exempt income or if there is a possibility of the gains on transfer of the shares being taxable*. Thus, it is the submission of the Ld Counsel for the assessee that in the absence of any dividend income and since the investments were made as a strategic investment not earning for any dividend income and since, the gains on investment is liable for capital gains, which not a tax free income, the provisions of section 14A of the Act have no application at all.

6. On the other hand, Ld DR relied on the orders of the Revenue Authorities.

7. We have heard both the parties and perused the orders of the Revenue Authorities as well as the cited precedents of the Hon'ble Delhi High Court (supra) as well as the relevant material placed before us. In the said judgment of the Hon'ble Delhi High Court in the case of Cheminvest Limited (supra) held that provisions of section 14A will not apply if no exempt income is received or receivable during the relevant previous year. While holding so, the Hon'ble High Court has held as under:

*"18. In the present case, the factual position that has not been disputed is that the investment by the Assessee in the shares of Max India Ltd. is in the form of a strategic investment. Since the business of the Assessee is of holding investments, the interest expenditure must be held to have been incurred for holding and maintaining such investment. The interest expenditure incurred by the Assessee is in relation to such investments which gives rise to income which does not form part of total income.*

*19. In light of the clear exposition of the law in **Holcim India (P) Ltd.** (supra) and in view of the admitted factual position in this case that the Assessee has made strategic investment in shares of Max India Ltd.; that **no exempted income was earned by the Assessee in the relevant AY and since the genuineness of the expenditure incurred by the Assessee is not in doubt, the question framed is required to be answered in favour of the Assessee and against the Revenue.***

*20. Since the Special Bench has relied upon the decision of the Supreme Court in Rajendra Prasad Moody (supra), it is considered necessary to discuss the true purport of the said decision. It is noticed to begin with that the issue before the Supreme Court in the said case was whether the expenditure under Section 57 (iii) of the Act could be allowed as a deduction against dividend income assessable under the head "income*

from other sources". Under Section 57 (iii) of the Act deduction is allowed in respect of any expenditure laid out or expended wholly or exclusively for the purpose of making or earning such income. The Supreme Court explained that the expression "incurred for making or earning such income", did not mean that any income should in fact have been earned as a condition precedent for claiming the expenditure. The Court explained:

*"What s. 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that is relevant in determining the applicability of s. 57(iii) and that purpose must be making or earning of income. s. 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of s. 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain natural construction of the language of s. 57(iii) irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure."*

21. There is merit in the contention of Mr. Vohra that the decision of the Supreme Court in *Rajendra Prasad Moody (supra)* was rendered in the context of allowability of deduction under Section 57(iii) of the Act, where the expression used is „for the purpose of making or earning such income“. Section 14A of the Act on the other hand contains the expression „in relation to income which does not form part of the total income.“ The decision in *Rajendra Prasad Moody (supra)* cannot be used in the reverse to contend that even if no income has been received, the expenditure incurred can be disallowed under Section 14A of the Act.

22. In the impugned order, the ITAT has referred to the decision in *Maxopp Investment Ltd. (supra)* and remanded the matter to the AO for reconsideration of the issue afresh. The issue in *Maxopp Investment Ltd. (supra)* was whether the expenditure (including interest on borrowed funds) in respect of investment in shares of operating companies for acquiring and retaining a controlling interest therein was disallowable under Section 14 A of the Act. In the said case admittedly there was dividend earned on such investment. In other words, it was not a case, as the present, where no exempt income was earned in the year in question. Consequently, the said decision was not relevant and did not apply in the context of the issue projected in the present case.

23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression „does not form part of the total income“ in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, **Section 14A will not apply if no exempt income is received or receivable during the relevant previous year.**

8. The Hon'ble Delhi High Court also considered the decision in the case of **Holcim India (P) Ltd.** (supra), wherein it was held that *long term capital gains on sale of shares is presently not taxable where the security transaction tax has been paid but a private sale of shares in an off-market transaction attracts capital gains tax.* In view of the above cited judgments, the assessee, which has not received any dividend income, is not liable for any disallowance u/s 14A r.w. Rule 8D. Thus, we direct the Assessing Officer to delete the disallowance made u/s 14A read with Rule 8D of the IT Rules, 1962.

9. In the result, appeal of the assessee is **allowed**.

Order pronounced in the open court on 29<sup>th</sup> January, 2016.

**Sd/-**

**(ASHWANI TANEJA)**

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 29.1.2016

व.नि.स./ OKK, Sr. PS

**Sd/-**

**(CHALLA NAGENDRA PRASAD)**

JUDICIAL MEMBER

**आदेश की 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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**