

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'C': NEW DELHI

BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER, AND  
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No. 4395/Del /2013  
Assessment Year: 2009-10

M/s Green Meadows P Ltd  
A-5, Swasthya Vihar  
New Delhi

Vs.

The I.T.O  
Ward -12(2)  
New Delhi

PAN : AAACG 0641 C

[Appellant]

[Respondent]

Date of Hearing : 21.07.2016

Date of Pronouncement : 03.08.2016

Appellant by : Shri P.C. Yadav  
Respondent by : Shri Amrit Lal, Sr. DR

**ORDER**

**PER CHANDRA MOHAN GARG, JUDICIAL MEMBER**

This appeal filed by the assessee is directed against the order of the CIT(A)-XV, New Delhi, dated 28/05/2013 for A.Y 2009-10 passed in first appeal No. 181/2011-12/CIT(A)-XV.

2. The main grievance of the assessee is that the A.O cannot make any disallowance u/s 14A of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] r.w.r 8D of the Income-tax Rules, 1962 [hereinafter referred to as 'the Rules' for short] when no exempt income has been received by the assessee during the relevant

financial period. To support this contention, the ld. AR placed reliance on the decision of the Jurisdictional High Court of Delhi dated 20.9.2015 in the case of Cheminvest Ltd Vs. CIT in ITA No. 749/2015 and vehemently submitted that the A.O as well as the ld. CIT(A) noted this fact that during the relevant period the assessee did not earn and claim any exempt income thus no disallowance can be made u/s 14A of the Act r.w.r 8D of the Rules.

3. Per contra, the ld. counsel of the Revenue strongly supported the action of the A.O and impugned order. However, he could not controvert this factual position that the assessee has not claimed any exempt income and as per the decision of the Hon'ble High Court of Delhi [supra] no disallowance can be made.

4. On careful consideration of the above and on careful perusal of the High Court order [supra] and from the operative para 23 of the order [supra], we find that their Lordships have held as under:

*“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.”*

5. In view of the above, we note that when the assessee has not earned exempt income, as also noted by the AO at page 2 para 5 [italic portion], then no disallowance u/s 14A of the Act, r.w.r. 8D of the Rules cannot be made as per proposition laid down by the Hon'ble High Court of Delhi in the case of Cheminvest Ltd [supra]. Consequently, order of the AO as well as that of the CIT(A) are set aside and the AO is directed to delete the entire impugned addition. Accordingly, the sole ground of the assessee is allowed.

6. In the result, the appeal of the assessee stands allowed.

**The order is pronounced in the open court on 03.08.2016.**

Sd/-

**(S.V. MEHROTRA)  
ACCOUNTANT MEMBER**

Sd/-

**(C.M. GARG)  
JUDICIAL MEMBER**

Dated: 03<sup>rd</sup> August, 2016

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi