

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI I.C.SUDHIR, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 4706/Del/2014
(Assessment Year: 2009-10)

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| ITO, Ward-5(4), New Delhi | Vs. | Moderate leasing and Capital Services Ltd, 415, Modi Towers, 98, Nehru Place, New Delhi PAN:AAACM6945K |
| (Appellant) | | (Respondent) |

| | |
|-----------------------|---------------------------|
| Revenue by : | Sh. HK Choudhury, CIT DR |
| Assessee by: | Sh. Premjit S Kashyap, CA |
| Date of Hearing | 30/05/2017 |
| Date of pronouncement | 31/05/2017 |

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is preferred by revenue against the order of the Id CIT(A)-V, New Delhi dated 06.06.2014 by which the disallowance of Rs. 99047514/- made by the Id Assessing Officer u/s 14A of the Income Tax Act vide order u/s 143(3) of the Act dated 05.12.2011 for AY 2009-10 was deleted.
2. The revenue has preferred following grounds of appeal:-
 - “1. *Whether on the facts and circumstances of the case and in law, the Id CIT(A) erred in deleting the additions of Rs. 99047514/- made by the AO on account of disallowance u/s 14A read with Rule 8D.*
 - 1.1 *Whether on the facts and circumstances of the case and in law, the Id CIT(A) has ignored that the disallowance was made according to the section 14A read with Rule 8D of the Income Tax Rule?*
 2. *Whether on the facts and circumstances of the case and in law, the Id CIT(A) has ignored that the facts of Asstt. Year 2011-12 are not similar to the asstt. Year 2009-10?”*
3. The brief facts of the case is that the assessee company filed its return of income on 29.09.2009 for Rs. 3176580/-. During the year the assessee has received a sum of Rs. 1700/- as dividend and claimed the same as exempt. The Id Assessing Officer after show cause made disallowance u/s 14A of the Act amounting to Rs. 99047514/- applying provisions of Rule 8D. the assessee contested the same before the first appellate authority who recomputed the disallowance u/s 14A of the Act applying Rule 8D of the Income Tax Rules after remand report of the assessee at

Rs. 264/- therefore, out of total disallowance made by the Assessing Officer of Rs. 99047514/- he directed disallowance to be restricted to Rs. 264/- only. Therefore, the revenue is in appeal before us.

4. The Id DR relied upon the orders of the Id Assessing Officer and the Id AR relied upon the order of the Id CIT(A).
5. We have carefully considered the rival contentions and also perused the orders of the lower authorities. Admittedly no disallowance has been made by the assessee despite earning exempt income of Rs. 1700/-. Therefore, the provisions of Rule 8D shall apply and disallowance needs to be recomputed. The Id first appellate authority has recomputed the disallowance under Rule 8D and restricted the disallowance to Rs. 264/- only. No infirmity was pointed out before us in the computation confirmed by the Id first appellate authority. However, the Hon'ble Delhi High Court in case of Joint Investment Pvt. Ltd. Vs. CIT 372 ITR 694 has held that disallowance u/s 14A cannot swallow the entire amount as it has happened in this case as per assessment order. Therefore, following the decision of the jurisdictional High Court we are of the opinion that as the exempt income itself is Rs. 1700/- only the disallowance cannot exceed that sum. Hence, no further disallowance can be made. Therefore, the appeal of the revenue is deserves to be dismissed.
6. In the result, the appeal of the revenue is demised.

Order pronounced in the open court on 31/05/2017.

-Sd/-

**(I.C. SUDHIR)
JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 31/05/2017
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi