

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC-II', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

ITA No. 940/Del/2016  
Assessment Year: 2011-12

M/S CHEEKO TEL PVT. LIMITED, VS. INCOME TAX OFFICER,  
(NOW KNOWN AS M/S CHEEKOTEL WARD 6(1),  
VENTURE FUND PVT. LTD.) CR BLDG., I.P. ESTATE,  
8, NOIDA SPECIAL ECONOMIC ZONE, NEW DELHI - 110 002  
NOIDA-201305 (UP)  
(PAN: AACCC1927B)

**(APPELLANT)**

**(RESPONDENT)**

Assessee by : SH. K. SAMPATH, ADV. &  
SH. V. RAJA KUMAR, ADV.

Department by : SH. S.K. JAIN, SR. DR

**ORDER**

The Assessee has filed the Appeal against the impugned order dated 29.1.2016 of Ld. CIT(A)-2, New Delhi pertaining to assessment year 2011-12. The ground raised in the Assessee's appeal reads as under:-

"On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the AO invoking the provision of section 14A of the Act and disallowing Rs. 20,84,144/- even though there was not exempt income during the year under consideration. The order being arbitrary, erroneous, unwarranted

and unjust must be quashed with directions for relief.”

2. The brief facts of the case are that the assessee company filed its return showing income of Rs. 2,58,130/- on 17.2.2013 and the case was selected for scrutiny. The assessee company was engaged in the business of technology development, technology sale and technology related activities. During the year under consideration, the AO observed from the perusal of the balance sheet that value of investments had gone up from Rs. 31,59,17,489/- as on 31.3.2010 to Rs. 51,77,40,270/- as on 31.3.2011 (income from which would be exempt in the form of dividend) but the assessee had not made any disallowance u/s. 14A of the I.T. Act, 1961. In the assessment order, the AO made disallowance under section 14A read with Rule 8D(2)(iii) to the tune of Rs. 20,88,144/-, at the rate of half percent of the average value of investments and assessed the income of the assessee at Rs. 23,42,270/- vide his order dated 18.3.2014 passed u/s. 143(3) of the I.T. Act, 1961.

3. Aggrieved with the aforesaid order, assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order dated 29.1.2016 has dismissed the appeal of the assessee.

4. Now the Assessee is aggrieved against the impugned order and filed the present appeal before the Tribunal.

5. Ld. DR relied upon the order of the authorities below.

6. On the contrary, Ld. Counsel of the Assessee has stated that no disallowance u/s. 14A of the I.T. Act, 1961 was warranted in the instant case as no dividend income had been earned by the assessee during the year. He also stated that no tax free income had been earned and also as such no disallowance u/s. 14A should be made. To support his contention, he relied upon the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT, reported in 378 ITR 33.

7. I have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A). I find considerable cogency in the assessee's counsel of the assessee that it is not in dispute that assessee has not earned any dividend income or any kind of exempt income from the investment made or no tax free income has been earned. I find the issue in dispute is squarely covered by the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT 378 ITR 33 wherein the Hon'ble Court has held that no exempted income was earned by the assessee in the relevant assessment year and since the genuineness of the expenditure

incurred by the assessee was not in doubt, no disallowance could be made under section 14A. Thus, respectfully following the ratio laid down by the Hon'ble Delhi High Court in the case of Cheminvest Ltd. (Supra), I hold that, no disallowance u/s. 14A is called for, once there is no exempt income received or receivable by the assessee during the relevant previous year. Accordingly, the addition in dispute is deleted and accordingly, the ground raised by the assessee stands allowed.

8. In the result, the appeal of the Assessee is allowed.

Order pronounced in the Open Court on 03/1/2017.

**Sd/-**

**(H.S. SIDHU)  
JUDICIAL MEMBER**

Dated: 03/1/2017

**\*SR BHATNAGAR\***

**Copy forwarded to: -**

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

TRUE COPY

By Order,

**ASSISTANT REGISTRAR**

