

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH 'C' NEW DELHI**

**BEFORE : SHRI H.S. SIDHU, JUDICIAL MEMBER &  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 85/Del./2014  
Asstt. Year : 2010-11**

D.C.I.T., Circle 12(1),  
New Delhi.

vs. Hero Management Service Ltd.,  
E-1, Qutab Hotel Complex,  
Shaheed Jeet Singh Marg,  
New Delhi

(Appellant)

[PAN: AABCH 4681C]  
(Respondents)

Appellant by : Sh. Amrit Lal, Sr. DR  
Respondent by : Sh. Sumit Kumar Bansal, CA  
Date of hearing : 07.09.2016  
Date of pronouncement : 09.09.2016

**ORDER**

Per L.P. Sahu, A.M. :

This is an appeal by the Revenue against the order of Id. CIT(A)-XV, New Delhi dated 31.10.2013 for the assessment year 2010-11 only on the following ground :

- "1. Whether Ld. CIT(A) was correct on facts and circumstances of the case and in law in deleting the addition of Rs.1,04,08,582/- made by the AO u/s. 14A r.w.r. 8D?"*
2. The brief facts of the case are that the assessee filed its return of income on 11.10.2010 declaring a loss of Rs.9,99,34,304/- and case was selected for scrutiny and statutory notices were issued. During the course of scrutiny

proceedings, the AO noted that the company has earned tax free income and for that purpose, the company made investment of Rs.11,10,66,263/- in the shares of HMS Inc. and HMS BV-both foreign companies. The AO further noted that the assessee company has paid interest amounting to Rs.4,27,24,752/-. In this regard, the AO made disallowance u/s. 14A r.w.r. 8D of the Income-tax Act, 1961 for a sum of Rs.1,04,08,582/-. Aggrieved by the order of the AO, the assessee filed appeal before the Id. CIT(A), who deleted the addition made by the AO. The reasons for deletion of addition are as under :

*“6.2 Regarding the Ground No.2 of the appeal relating to disallowance u/s 14A read with Rule 8D, it is undisputed that the investment of Rs.11,10,66,263/- was made by the appellant company in two of its foreign subsidiaries, namely; M/s HMS Inc (U.K.) and M/s HMS BV (Netherlands). These investments have been made in the financial year ending on 31.03.2008 and are being carried forward since then. It is also undisputed that the provisions of Section 10(34) by which the dividend income is held as exempt relate to the dividend which is covered u/s 115-0 and the provisions of Section 115-0 are applicable for dividend distributed by a domestic company and not for a foreign company. Both M/s HMS Inc (USA) and M/s HMS BV (Netherlands) are foreign companies, therefore the dividend income from such companies are taxable in the hands of appellant. Accordingly, such investment could not have been considered for making disallowance under Rule 8D, read with Section 14A. Moreover, before invoking the Section 14A, the Ld. AO has to make the case that certain expenses were actually incurred for earning exempt income. The only ground for rejecting the above contention of the appellant by the Ld. AO was that the earlier decision of the Ld. CIT(A)-XIII was challenged by the department before the ITAT and is pending. However, without commenting upon the merit of such a stand of the department, keeping the clear provisions of law, there was no ground on the part of the Ld. AO for summarily rejecting the contentions of the appellant. The provision of Rule 8D could not have been invoked without any cogent grounds in view of the decision of Delhi High Court in the case of CIT Vs. Maxopp Investment: 247 CTR 162. Therefore, the disallowance made by the Ld. AO is not sustainable, hence the addition on this ground is deleted.”*

Being aggrieved from the above order regarding deletion of addition of Rs.1,04,08,582/-, the Revenue is in appeal before the Tribunal.

3. The ld. DR relied on the order of the Assessing Officer. On the other hand, the ld. AR relied on the order of the ld. CIT(A) and submitted that the investments were made with foreign companies and the dividend received from foreign companies are taxable in India. Therefore, the assessee has not received any exempt income and section 14A will not be applicable. The above section is applicable only where the exempt income is received by the assessee. It was also submitted that in the identical facts and circumstances, ITAT Delhi Bench in the case of the assessee itself for the assessment year 2009-10, in ITA No. 4753/Del./2012, has deleted the similar addition made by the AO. Copy of this order is placed on record.

4. We have considered the rival submissions and perused the entire material available on record and we find that the matter under consideration is squarely covered by the order dated 30.10.2015(supra) of coordinate bench in the case of assessee itself, whereby the identical issue has been decided in favour of assessee observing as under :

*“6. Even before the ITAT, the Revenue has not rebutted the finding of the Learned CIT(Appeals) on the fact that the assessee had invested in two foreign unlisted companies and there was no other sale or purchase of any investment during the year under consideration by the assessee. Thus, we are of the view that the Learned CIT(Appeals) was justified in holding that the above investment in question either in the shape of dividend or a capital gain are chargeable to tax and do not qualify for exemption under sec. 10(34) read with section 115-0 and section 10(38) of the Act, therefore, any income earned on foreign investment is not covered by section 14A of the Income-tax Act and accordingly Rule 8D would not*

*apply. We, thus, do not find infirmity in the First Appellate Order on the issue by which the Learned CIT(Appeals) has deleted the disallowance of Rs.1,13,08,722. The same is upheld. The ground Nos. 1 to 5 are accordingly rejected."*

5. Respectfully following the decision of coordinate Bench, we have no reason to take a view different from that taken by the Tribunal. Accordingly, the impugned addition has rightly been deleted by the Id. CIT(A). We, therefore, do not find any justification to interfere with the order of the Id. CIT(A).

6. In the result, the appeal of the Revenue is dismissed.  
Order pronounced in the open court on 09.09.2016.

Sd/-  
**(H.S. SIDHU)**  
Judicial Member

Sd/-  
**(L.P. SAHU)**  
Accountant Member

Dated : 09.09.2016

\*aks/-

Copy of order forwarded to:

(1) The appellant	(2) The respondent
(3) Commissioner	(4) CIT(A)
(5) Departmental Representative	(6) Guard File

By order

Assistant Registrar  
Income Tax Appellate Tribunal  
Delhi Benches, New Delhi