

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH "G" BENCH NEW DELHI)**

**BEFORE SHRI G.D. AGRAWAL, PRESIDENT**

**&**

**SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**In ITA No. 5797/Del/2015**

**Assessment Year: 2012-13**

<b>Hoovar Services Pvt. Ltd. 16<sup>th</sup> Floor, Dr. Gopal Das Bhawan, 28<sup>th</sup> Barakhamba Road, New Delhi</b>	<b>Vs.</b>	<b>DCIT Coy. Circle 11(1), New Delhi</b>
(Applicant)		(Respondent)
<b>(PAN: AAACH2344B)</b>		

Revenue by: Shri Atiq Ahmed, Sr. DR

Assessee by: Shri V. Raja Kumar, Advocate

Date of hearing	21/08/2017
Date of pronouncement	24/08/2017

**ORDER**

**PER AMIT SHUKLA, JUDICIAL MEMBER:**

The aforesaid appeal has been filed by the assessee against the impugned order dated 22.09.2015, passed by the Ld. CIT (Appeals)-4, New Delhi for the quantum of assessment passed u/s 143(3) for the A.Y. 2012-13. The assessee has raised following grounds of appeals:

*"1. That on the facts & in the Circumstances of the case & in Law CIT (A) has wrongly confirmed the addition of Rs. 1,45,150/- in appellant's income on account of cessation/remission of liability u/s 41 (1) of the Income Tax Act.*

2. *That on the facts and circumstances of the case in law, the CIT(Appeals) has wrongly confirmed the addition of Rs. 1,93,125/- in appellant's income u/s 14 A read with Rule 8D disregarding the written submissions and decided cases, wrongly holding that the company has incurred expenses to earn future exempt dividend income on investment in shares with associate companies though there is no such exempt income , expenses or investment made during the year.”*

2. The brief facts qua the first issue are that, the Assessing Officer from the details of sundry creditors noted following creditors which were shown payable since year 2001:-

1.	<i>Sandhu Engineering Works</i>	<i>Rs. 1,30,150/-</i>
2.	<i>Suptertech Engineers and Fabricators</i>	<i>Rs. 15,000/-</i>
	<i>Total</i>	<i>Rs. 1,45,150/-</i>

In response to the show cause notice by the AO as to why these amounts should not be added as cessation of liabilities u/s 41(1), the assessee submitted that these amounts represents unpaid part of the purchased price of generators purchased from these parties. Since the generators did not perform satisfactorily, therefore, the assessee wanted to pay lesser purchase price and the matter was under negotiation with the parties and they have not given up their claim. Accordingly, it was decided by the assessee that as and when the issue will be settled and if the amount gets reduced, then it will be reduced from the cost of generators. However, the Assessing Officer held that since no confirmation has been filed from the creditors and liability is very old, therefore, it has to be added under section 41(1). The Learned CIT (Appeals) has confirmed the order of the Assessing Officer.

3. After hearing both the parties and on perusal of the material on record, it seen that the credit balances in the name of the two parties for sums aggregating to Rs. 1,45,150/- was outstanding in the balance sheet, which as per the assessee represented unpaid part of purchase price and was a liability to be paid because, *firstly*, there was some ongoing disputes between the parties with regard to the settlement of purchase price of generators as they were not performing satisfactorily; and *secondly*, these parties have not given up their claim. Admittedly the liability has not been written off in the books of account and the assessee continues to acknowledge it as a debt. In order to attract provision of section 41(1), it is essential that there should be an irrevocable cessation of liability without any possibility of the same being revived and if the assessee has acknowledged its liability successively over the years then it does not mean that the liability has ceased to exist. If the outstanding balances under the names of the sundry creditors have been accepted in the earlier years then there was no occasion to add the same in this year as income. There has to be some element of benefit derived by the assessee in respect of the liability which has been earlier allowed as deduction. Thus, we do not find any reason or justification by the Assessing Officer or Learned CIT (Appeals) to treat the amount outstanding/ payable to the sundry creditors as income of the assessee in this year on the ground that the liability has ceased to exist. Accordingly, the ground no.1 is allowed.

4. The second issue raised by the assessee is disallowance of Rs. 1,93,125/- made u/s 14A read with Rule 8D. The Assessing Officer has made the disallowance under Rule 8D (2)(iii) of Rs. 1,95,125/-

on account of indirect expenditure which has been confirmed by the Learned CIT(Appeals) also.

5. However on the perusal of the assessment order, we find that the assessee company has not earned any exempt income during the relevant year which is evident from the following observation of the AO as appearing in page no. 5 of the assessment order:-

***“Therefore, although the assessee company has not earned any exempt income during the year, disallowance is being made as the income as and when received would be exempted.”***

Whence, there is no actual receipt of any exempt income which can be said to be included in the total income during the relevant previous year, then disallowance u/s 14A cannot be triggered in this year. This proposition has been upheld by the Hon'ble Jurisdictional High Court in the case of **Chem Invest Ltd. vs. CIT, reported in (2013) 378 ITR 333**. The Hon'ble Delhi High Court after considering the various decisions came to the following conclusion:-

*“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.**”*

Thus, respectfully following the ratio laid down by the Hon'ble Jurisdictional High Court that no disallowance u/s 14A can be made. Accordingly, ground no. 2 is allowed.

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

**Order pronounced in the open court on 24.08.2017.**

**Sd/-**

**(G.D. AGRAWAL)  
(PRESIDENT)**

**Sd/-**

**(AMIT SHUKLA)  
(JUDICIAL MEMBER)**

Dated: 24.08.2017

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Copy forwarded to:

- 1) Appellant
- 2) Respondent
- 3) CIT
- 4) CIT (Appeals)
- 5) DR: ITAT

ASSISTANT REGISTRAR

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