

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "H",
MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No.1419/Mum/2017 (Assessment Year- 2012-13)

M/s Camelot Trading Pvt. Ltd. 64-H/2, Bansilal Building, 1 st Floor, JSS Road, Opera House, Mumbai-400004 PAN: AABCC1902B	Vs.	D.C.I.T, CC-6(4), 19 th Floor, Air India Building, Nariman Point, Mumbai-21.
(Appellant)		(Respondent)

Assessee by : Shri Suni Hirawat (AR)

Revenue by : Shri Ram Tiwari (DR)

Date of hearing : 24.08.2017

Date of Pronouncement : 29.09.2017

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee u/s 253 of the Income-tax Act (the Act) is directed against the order of Id. Commissioner of Income-tax (Appeals)-54 [for short the Id. CIT(A)], Mumbai dated 19.12.2016 for the AY 2012-13. The assessee has raised the following grounds of appeal:

1. On facts and in law, the learned Commissioner of Income-tax (Appeals) [hereinafter referred to as "Ld. CIT(A)"] had erred in confirming the disallowance of Rs.2,76,955/- u/s.14A made by the learned Assessing Officer. Under the facts and circumstances of the matter, the Ld. CIT(A) ought to have deleted disallowance of Rs.2,76,955/-.

2. On facts and in law, the Ld. CIT(A) had erred in including the value of shares held as stock-in-trade while computing disallowance as per Rule 8D r.w.s. 14A of the I.T. Act. Under the facts and circumstances of the matter, the

Ld. CIT(A) ought to have excluded the shares held as stock-in-trade from the purview of Rule 8D r.w.s. 14A.

3. The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable the Hon. ITAT to decide this appeal according to law.

2. Brief facts of the case are that the assessee filed return of income for relevant AY on 28.09.2012 declaring Nil income. The assessment was completed u/s 143(3) of the Act on 17.03.2015. During the assessment proceeding, the Assessing Officer (AO) asked the assessee as to why the disallowance u/s 14A of the Act be not made. The assessee in its reply dated 26.02.2015 contended that during the year, there was no there should not be any disallowance. It was further contended on behalf of the assessee, the assessee is in the business of share trading for which the provision of section 14A will not apply. The assessee without prejudice contended that there is no interest payment and there should be no disallowance towards the interest the actual expenses debited to the profit and loss account is only Rs.2,76,955/-. The contention of the assessee was not accepted by the AO and the AO made the disallowance of Rs. 2,76,955/-. On appeal before the Id. CIT(A), the action of AO was sustained. Further, aggrieved by the order of AO, the assessee filed the present appeal before us.
3. We have heard the Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the Revenue and perused the material available on record. The Id. AR of the assessee argued that during the year under consideration, the assessee has not earned any exempt income

and no disallowance is warranted. It was further argued that there was no investment made during the year and there should not be any disallowance u/s 14A of the Act. In support of submission, the Id. AR of the assessee argued that his case is covered by the decision of Special Bench in Cheminvest Vs ITO (2009) ITD 318 (SB). On the other hand, the Id. DR for the Revenue supported the order of authorities below.

4. We have considered the rival contention of both the parties and gone through the orders of authorities below. There is no dispute that the assessee has no exempt income during the Financial Year (FY) relevant to the present AY. Further, the assessee has not made any investment activity in the investment account. The assessee in alternative contended that on the basis of .5% of the average investment comes to Rs. 4,06,326/- and actual expenses debited to Profit & Loss A/c is Rs. 2,76,955/-. The AO instead of considering the contention of the assessee that no investment was made during the relevant AY and the assessee has not earned any exempt income; there cannot be any disallowance u/s 14A of the Act disallowed Rs.2,76,955/-. The Hon'ble Madras High Court in case of Redington (I) Pvt. Ltd. vs. ACIT [2017] 77 taxmann.com 257 (Mad) held that where there is no exempt income in the year, there cannot be a disallowance of expenditure in relation to an assumed income. Thus, considering the fact of the present case when the assessee has not earned any exempt income during the relevant year, there cannot be

disallowance u/s 14A in relation to any assumed income. Hence, the grounds of appeal raised by the assessee are allowed.

5. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 29th day of September 2017.

Sd/-

(G.S. PANNU)

ACCOUNTANT MEMBER

Mumbai; Dated 29/09/2017

S.K.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai