

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 3557/DEL/2016 (A.Y 2012-13)

DCIT Central Circle-29 New Delhi (APPELLANT)	Vs	Futurz Next Services Ltd. FA-45, Shivaji Enclave, New Delhi AABCJ7692K (RESPONDENT)
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Appellant by	Sh. Rano Jain, Adv
Respondent by	Sh. B. Ramanjaneyulu, Sr. DR

Date of Hearing	26.10.2017
Date of Pronouncement	07.11.2017

ORDER

PER SUCHITRA KAMBLE, JM

The appeal is filed by the Revenue against the order dated 17/3/2016 passed by CIT(A)-30, New Delhi.

2. The grounds of appeal are as under:-

“ (a) On the fact and in the circumstances of the case, the Ld.CIT(A) has erred in law and on facts in deleting the disallowance u/s 14A read with Rule 8D of the Income Tax Rules ignoring the fact that the provisions of Section 14A are mandatory.

(b) On the fact and in the circumstances of the case, the Ld.CIT(A) has erred in law and on facts is not appreciating the content of CBDT Circular No. 05/2014 dated 11/2/2014 which clarifies that Rule 8D read with

Section 14A of the Act provides for disallowance of the expenditure even where tax payer in particular year, has not earned any exempt income

(c) That the order of the CIT(A) is erroneous and is not tenable on facts and in law.

(d) That the grounds of appeal are without prejudice to each other.”

3. During the year under consideration, search and seizure action u/s 132 took place on 30/3/2012. The return of income was filed on 30/9/2012 declaring loss of Rs.1,82,291/-. Consequently, the case of appellant for the Assessment Year under consideration i.e. Assessment Year 2012-13 was selected for scrutiny and notices u/s 143(2) and 142(1) dated 5/8/2013, 9/9/2013 and 10/9/2013 were issued. In response to these notices, the AR of the appellant appeared before the A.O time to time and filed the relevant details. Assessment u/s 143(3) was completed vide order dated 30/3/2015 at total income of Rs.2,69,37,430/- after making following addition:-

(a) On account of disallowance u/s 14A

4. Being aggrieved the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee by relying on the Jurisdictional High Court decision in case of CIT Vs. Holcim India Pvt. Ltd.

5. The Ld. DR relied upon the order of the Assessing Officer and submitted that the addition was rightly made.

6. The Ld. AR submitted that there was no exempt income earned by the assessee during the year. Therefore, Rule 8D will not be applicable in the present case. The Ld. AR relied upon the order of the Hon'ble Delhi High Court in case of Cheminvest Investment Ltd. reported at 371 ITR 23.

7. We have heard both the parties and perused the material available on record. It is clear from the records that that there was no exempt income attributable in the hands of the assessee. Therefore, applying Section 14A read with Rule 8D is not appropriate on part of Assessing Officer. The CIT(A) rightly held that no expenditure can be disallowed against Nil exempt income and this view is also supported by the decision of the Jurisdictional High Court of Delhi in case of CIT Vs. Holcim India Pvt. Ltd. (Supra) and Chemnvest Investment Ltd. reported at 371 ITR 23.

8. In result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 07th November, 2017.

Sd/-

(N. K. SAINI)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 07/11/2017
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	26/10/2017	PS
2.	Draft placed before author	26/10/2017	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	07.11.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	07.11.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		