

**आयकर अपीलीय अधिकरण "K" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI  
BEFORE SHRI D.T GARASIA, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 6971/Mum/2016

(निर्धारण वर्ष / Assessment Year : 2007-08)

Dish TV India Ltd. FC-19 Film City, Sec-16A Noida-201301, Uttar Pradesh	<b>बनाम/</b>  v.	ACIT Range 16(1) 4 <sup>th</sup> Floor, R.No. 467, Aayakar Bhavan, Mumbai- 400020
स्थायी लेखा सं./PAN : AAACA5478M		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by:	Shri. Jay Bhansali
Revenue by :	Shri. V. Jenardhanan

सुनवाई की तारीख /**Date of Hearing** : 07-11-2017

घोषणा की तारीख /**Date of Pronouncement** : 13.11.2017

**आदेश / ORDER**

**PER RAMIT KOCHAR, Accountant Member**

This appeal, filed by the assessee, being ITA No. 6971/Mum/2016 for assessment year 2007-08, is directed against the appellate order dated 16.08.2016 passed by learned Commissioner of Income Tax (Appeals)-4, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2007-08, appellate proceedings had arisen before learned CIT(A) from the assessment order dated 30.01.2015 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) r.w.s. 254 of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by the Assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

"1. (i) The Ld. CIT(A) erred in law and facts in confirming disallowance of Rs. 48,80,605/- out of expenses u/s 14A of the Act @ 1% of personnel cost and other expenses on assumption basis. The

*reasons given by him for doing so are wrong, contrary to the facts of the case and against the provisions of law.*

*(ii) The Ld. CIT(A) erred in law and facts in confirming mechanical disallowance of Rs. 48,80,605/- without proving the nexus of expenditure with the investments made or incurred for the purpose other than business hence the disallowance u/s 14 A is unwarranted.*

*2. The appellant craves the leave to add, amend or alter all or any grounds of the appeal.”*

3. The assessee is providing direct to home(DTH) satellite television services and teleport services including placement and active service . In the first round of litigation while passing the order u/s. 143(3) of the Act, the A.O made an inter-alia additions to the tune of Rs.1,97,58,364/- u/s. 14A. The learned CIT-A in the first round of litigation confirmed the disallowance to the tune of Rs.5 lacs and deleted the balance additions to the tune of Rs. 1.92 crores . The department came in appeal in first round of litigation before the tribunal and tribunal was pleased to pass orders in ITA no. 1646/Mum2012 dated 10.07.2013 wherein the tribunal restored the issue of disallowance u/s. 14A to the file of the A.O and allowed the appeal of the Revenue for statistical purposes.

In second round of litigation, the assessee submitted before the AO that assessee has not used any borrowed funds for making investments and investment have been made out of internal accruals . It was also submitted that there is no nexus of loans with investments and it was submitted that no expenses were incurred for buying or maintaining investments and hence section 14A cannot be applied.

The A.O after considering the reply of the assessee observed that there are expenditure incurred in relation to the earning of the exempt income and hence disallowance of expenditure 14A is required to be made. The AO observed from the financial statements of the assessee that the assessee has incurred following expenditure:

<i>i) Personal Cost</i>	<i>Rs.14,87,20,588/-</i>
<i>ii) Administrative &amp; other Expenses</i>	<i>Rs.33,93,39,990/-</i>
<i>iii) Financial Charges</i>	<u><i>Rs.11,78,23,547/-</i></u>

Total                      Rs.60,58,84,125/-

The AO made disallowance @3% of the above expenses which led to the disallowance of Rs. 1,81,76,524/- u/s 14A relying upon judgment of Hon'ble Bombay High Court in the case of Godrej and Boyce Manufacturing Company Limited v. DCIT (I.T. Appeal No. 626 of 2010 and Writ Petition no. 758 of 2010). The assessee carried the matter in appeal before the learned CIT-A in second round of litigation who restricted the addition/disallowance of expenditure to 1% of the said expenses by holding as under:

*“3.3. I have circumspected the facts & circumstances of the case and have carefully considered the findings of the Assessing Officer as well as rival submission of the Appellant . I find that in order dated 25.01.2010, my Ld. predecessor, CIT(A) has restricted the disallowance of expenditure to the extent of Rs.5 lacs. However, department has filed appeal against this order and Hon'ble ITAT has set aside the order of the CIT(A) and restored the issue to tie file of the Assessing Officer for considering the disallowable expenditure as held in A Y.2005-06. There is a direction for disallowance of expenses on reasonable basis. However, the Ld. Assessing Officer has very mechanically disallowed 3% of Personnel Cost, Administrative & Other Expenses and Financial Charges, totalling to Rs.60,58,84,125/~. It is very evident from the Balance Sheet that total investment as on 31.03.2007 is of Rs.94,45,10,450/~ whereas on 31.03.2006 total investment of Rs.1,06,,87,15,480/- whereas the total interest-free fund of the Appellant as on 31.03.2006 was of Rs.4,44,39,32,900/-, Similarly, as on 31.03.2007 owned fund was of Rs.21,2,40,79,601/-. Thus, investment of Rs.94,45,10,040/- as appearing in Schedule-7 cannot be presumed to be from unsecured loan of Rs.30,63,14,726/-. Therefore, there is Financial Cost to the Appellant for making investment in sister concern. Since there is a huge Investment and it is well known fact that for making such investment managerial involvement and Administrative expenses are bound to be there. Hence, it cannot be pleaded that no expenditure was incurred for earning dividend or capital gains, therefore, definitely there is some expenditure.*

*3.4 However calculation of expenditure @3% the finding of the Assessing Officer or reasoning of the Assessing Officer is not convincing one because most of the investment are internal transfer of fund which requires less managerial involvement. Further, the business of the Assessee is altogether different than simple investment hence, considering the facts & circumstances of the case, disallowance from Personnel Cost & Other Expenses @1% will be the most reasonable. Accordingly disallowance is restricted to Rs.48,80,605/-. The Assessing Officer is therefore, directed to delete the balance amount of Rs.1,32,95,919/-“*

4. The assessee carried the matter further in appeal before the tribunal in the second round of litigation. It was submitted by learned counsel for the

assessee that Rule 8D of the Income-tax Rules, 1962 is not applicable as a year under consideration is assessment year 2007-08 and rule 8D is applicable only with effect from AY 2008-09 as held by Hon'ble Bombay High Court in the case of Godrej and Boyce Manufacturing Company Limited(supra). It was submitted that in the first round of litigation , learned CIT-A restricted disallowance u/s 14A to Rs. 5 lacs while in second round the CIT-A has upheld the disallowance to the tune of 1% of the total expenditure and disallowance u/s 14A as confirmed by learned CIT(A) comes to Rs. 48.8 lakh , while A.O upheld the disallowance u/s 14A in the second round of litigation to 3% of the expense which come to 1.82 crore. At the outset Ld. Counsel for the assessee submitted that there is no exempt income earned by the assessee and ratio of decision of Hon'ble Delhi High Court in the case of Cheminvest Limited v CIT in ITA no.749/2014 ((2015)(9) TMI 238-Delhi High Court) is directly applicable and hence no disallowance of expenditure can be made u/s 14A It was further submitted that Hon'ble Bombay High Court has also taken similar view while following the decision of Cheminvest Ltd. v. CIT[ (2015)(9) TMI 238 –Delhi High Court ] in the case of Principal CIT v. Ballarpur Industries Ltd. in ITA no. 51 of 2016 reported in [2016 (10) TMI 1039 Bombay High Court]. Thus , it was submitted that no disallowance u/s 14A can be made . It was submitted that assessee has voluntarily disallowed Rs.5 Lacs u/s 14A which is reasonable disallowance in the first round of litigation which is acceptable to assessee. it is also submitted that no satisfaction has been recorded by the A.O while making disallowance u/s. 14A . The learned CIT-A has made disallowance u/s. 14A in mechanical manner by adopting disallowance at the rate of 1% while A.O disallowed at the rate of 3%. Thus it was submitted that there is no dividend income and hence no disallowance can be made u/s. 14A except as accepted by the assessee to be reasonable disallowance to the tune of Rs. 5 lacs. The learned counsel for the assessee produced before us decision of the tribunal in the assessee's own case in ITA no. 2066 and 2067/Mum/2015 vide orders dated 20.12.2016 wherein for AY 2008-09 and 2009-10 , wherein the tribunal has followed the decision of Hon'ble Delhi High Court to hold that since the assessee has not earned any dividend income and the investments were made only as a strategic investment in wholly owned subsidiary companies , no disallowance u/s 14A is attracted. The Ld. DR on the other hand relied upon the order of the learned CIT-A .

5. We have considered rival contentions and perused the material on record including case laws cited before us. We have observed that the assessee is engaged in business of direct to home (DTH) satellite television services and teleport services. We further observed that assessee has not received any dividend income or other exempt income during the impugned assessment year. The assessee has conceded and accepted to have incurred Rs. 5 lacs towards an expenditure u/s. 14A towards earning of an exempt income which is claimed to be reasonable expenditure to be disallowed u/s 14A . We have observed that the assessee has not received any exempt dividend income ratio of the decision of Hon'ble Delhi High Court in the case of Cheminvest Limited v. CIT (supra) and decision of the Hon'ble Bombay High Court in the case of Ballarpur Industries Limited (supra) is applicable , the disallowance of expenditure u/s 14A in the instant case be restricted to an admitted expenses to have been incurred for earning of the exempt income to the tune of Rs. 5 lack . We have also observed that the tribunal in assessee own case for AY 2008-09 and 2009-10 has deleted the disallowance u/s. 14A by holding as under:

*“ 7. We have heard the rival submissions and perused the orders of authorities below.*

*8. It is an undisputed fact that the assessee has not received any exempt income in these two assessment years. In such circumstances it has been held by the Hon'ble Delhi High Court that no disallowance under section 14A can be made. Following this decision, the co-ordinate bench of the Tribunal in the case of Vakrangee Ltd. vs. ACIT in ITA No.6988/Mum/2014 dated 10.08.16 held as under:*

*“3.4.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record, including the judicial pronouncements cited and placed reliance on in support of propositions put forth by the assessee for deletion of the disallowance of Rs.74,31,010/- under section 14A r.w. Rule 8D. Admittedly, the assessee has not earned any exempt income in the year under consideration and this fact has not been controverted by the learned CIT(A). The applicability of the provisions of section 14A of the Act is in respect of expenditure incurred is in relation to the earning of income not includible in total income. A plain reading of the provisions of section 14A of the Act envisages that there should be actual receipt of income not includible in the total income. Therefore, the provisions of section 14A of the Act will not apply when no exempt income is received or receivable by the assessee during the relevant previous year. This proposition has been upheld by the Hon'ble Delhi High Court in the case of Cheminvest*

*Ltd. vs. CIT (2015) 278 ITR 33 (Del) vide order dated 02.09.2015 wherein at para 23 thereof their Lordships have held as under: -*

*“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 Act 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.”*

*3.4.2 In the case on hand, admittedly the factual position is that the assessee has not earned any exempt income in the year under consideration. In these circumstances, in our considered view, the ratio of the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. (supra) would squarely apply. The Hon'ble High Court in the aforesaid judgement held that no disallowance under section 14A of the Act can be made in the year in which no exempt income is earned. It was held that the expression ‘does not form part of the total income’ in section 14A of the Act envisages that there should be an actual earning of income which is not includible in the total income during the relevant year for the purpose of disallowing any expenditure incurred in relation to the said exempt income. Therefore, in the factual matrix of the case on hand, as discussed above, we respectfully following the decisions of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. (supra) and the Coordinate Bench of this Tribunal in the case of Fair Exports (India) Pvt. Ltd. (supra) hold that no disallowance under section 14A of the Act can be made in the case on hand for the year under consideration since the assessee has not earned any exempt income. We therefore set aside the decision of the authorities below and direct the AO to delete the disallowance of expenditure amounting to Rs.74,31,010/- under section 14A of the Act.”*

*9. The co-ordinate bench further held that if the investment was made as a strategic investment in group companies for controlling interest no disallowance is attracted under section 14A of the Act observing as under:*

*3.5.1 Further the learned A.R. for the assessee has submitted that, even otherwise, the said disallowance under section 14A w.r. Rule 8D ought not to have been made as the entire investment in shares made by the assessee of Rs.52,15,95,000/- was strategic investment in group companies for control over these companies and not for investment purpose with the intention of earning of tax exempt dividend income. On a perusal of the details on record, i.e. the impugned order of the learned CIT(A) and the order of assessment we find that the averments of the learned A.R. that the entire shares held by the assessee are in respect of its strategic investments in subsidiary/group concerns is factually correct. We find that a Coordinate Bench of this Tribunal in the case of Fiduciary Euromax Global Markets Ltd. in ITA No. 1349/Mum/2012 and others dated 29.06.2016, relied on by the assessee, at para 14 thereof on similar factual circumstances has held that: -*

*“14. .... strategic investment in group companies therefore cannot be held to be for investment purposes or with the object of earning of dividend/tax exempt income, but the same, in*

*the light of above referred to judicial decisions can safely be said to be related to the business activity of the assessee and no disallowance, therefore, is attracted on such an income u/s 14A of the Act. In the light of the above referred to decisions and respectfully following the same, we direct the AO to exclude the strategic investments made by the assessee in group companies while calculating the disallowance under section 14A read with rule 8D of the Income Tax Act."*

*3.5.2 Following the aforesaid decision of the Coordinate Bench of this Tribunal in the case of Fiduciary Euromax Global Markets Ltd. (supra), we hold and direct that the strategic entire investments made by the assessee in group companies are to be excluded while computing the disallowance under section 14A r.w. Rule 8D.*

*10. Respectfully following the said decision, we hold that since the assessee has not earned any dividend income and the investments were made only as a strategic investment in wholly owned subsidiary companies no disallowance under section 14A is attracted. Thus, we direct the Assessing Officer to delete the disallowance made under section 14A in both these assessment years. Accordingly, grounds filed by the assessee are allowed.*

*11. In the result, both the appeals of the assessee are allowed."*

6. Respectfully following the aforesaid decision of the tribunal in assessee own case and keeping in view factual matrix of the case we hereby order deletion of the addition u/s 14A as confirmed by the learned CIT-A by restricting/upholding the disallowance of expenditure u/s 14A to the tune of admitted expenditure of Rs 5 lacs claimed to have been incurred by the assessee for earning exempt income as conceded by the assessee. We order accordingly.

7. In the result appeal of the assessee in 6971/Mum/2016 for assessment year 2007-08 is partly allowed.

Order pronounced in the open court on 13.11.2017

आदेश की घोषणा खुले न्यायालय में दिनांक: 13.11.2017 को की गई ।

Sd/-  
(D.T. GARASIA )  
JUDICIAL MEMBER

Sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

Mumbai, dated: 13.11.2017

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, E
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR  
ITAT, MUMBAI