

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "J", MUMBAI

Before ShriSaktijit Dey (JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No. 5792 & 5834 /Mum/2016  
(Assessment year: 2012-13 & 2013-14)

Vikrangee Ltd Vikrangee House Marol Co-op Indl Estate Off M.V. Road, Andheri (E) Mumbai 400 059 PAN : AAACV9920D	vs	The Dy.CIT, Cent.Cir.4(2), Mumbai
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Appellant by	Shri Dhaval Shah
Respondent by	Shri M.C . Omi Ningshen

Date of hearing	02-11 -2017
Date of pronouncement	08-11-2017

**ORDER**

Per G Manjunatha, AM :

These two appeals filed by the assessee are directed against separate, but identical orders of the CIT(A)-52, Mumbai dated 01-06-2016 and 12-07-2016 for the assessment years 2012-13 and 2013-14. Since the facts are identical and issues are common, these appeals were heard together and are disposed of by this common order, for the sake of convenience.

2. The assessee has raised common grounds of appeal for both the assessment years.

For the sake of brevity, grounds of appeal raised by the assessee for AY 2012-13 are

reproduced below: \_

1. *"On the facts and circumstances of the case, the Ld. Comm. of Income Tax (Appeals) legally erred in confirming the action of the Assessing Officer for the disallowance made u/s 14A at Rs.2,88,93,452/- of the Act.*
  
2. *On the facts and circumstances of the case, the Ld. Comm. of Income Tax (Appeals) further erred in not appreciating the fact that the investments are made for the strategic purposes in - the associate and group companies to take over the control/management and no disallowance u/s 14A is applicable on the said investments."*
  
3. The brief facts of the case are that the assessee company engaged in the business of software development and IT enabled services, filed its return of income for the assessment year 2012-13 on 29-09-2012 declaring total income of Rs.19,04,19,240. The case was selected for scrutiny and while completing the assessment, the AO made addition of Rs.2,88,93,452 by partly disallowing the expenses claimed by the assessee as per the provisions of section 14A of the Act, r.w.r. 8D of I.T. Rules. Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). Before CIT(A), assessee has filed elaborate written submissions and also relied upon certain judicial precedents to argue that it has not earned any exempt income from its investment; therefore, the question of disallowance of expenditure u/s 14A r.w.r.8D does not arise. The CIT(A), considering the explanation of the assessee and also relying upon the decision of ITAT, Delhi Special Bench in the case of Cheminvest Ltd vs ITO (2009) 121 ITD

318 (Del)(SB) and also the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg Co Ltd 328 ITR 81 (Bom) upheld addition made by the AO towards disallowance of expenditure u/s 14A r.w.r.8D of IT Rules. Aggrieved by the order of CIT(A), the assessee is in appeal before us.

4. The Ld.AR for the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of the ITAT, F-Bench, Mumbai in assessee's own case for the assessment years 2010-11 and 2011-12 in ITA No.5786 & 5787/Mum/2014 dated 26-07-2016. The co-ordinate bench, after considering the relevant provisions held that when there is no exempt income of whatsoever from the investment, then the question of disallowance of expenditure u/s 14A by invoking Rule 8D does not arise.

5. The Ld.DR on the other hand, strongly supported the order of the CIT(A). The Ld.DR further submitted that whether there is an exempt income or not once, there is investment in earning exempt income, the AO is bound to work out the disallowance in respect of expenditure directly attributable to earning of exempt income and administrative and other expenses as per the provisions of Rule 8D. The Ld.DR further submitted that the CBDT, vide circular No.5 of 2014 dated 11-02-2014 has clarified that disallowance u/s 14A is to be made even if no exempt income had been earned by the assessee during the year. Therefore, the AO has rightly disallowed expenditure incurred in relation to exempt income by invoking Rule 8D and his order should be upheld.

6. We have heard both the parties, perused the materials available on record and

gone through the orders of authorities below. The limited issue that came up for our consideration is whether the AO was right in disallowing expenditure incurred in relation to exempt income even though the assessee has not earned any exempt income for the year under consideration. A similar issue has been considered by the co-ordinate bench of ITAT, Mumbai "F" Bench in assessee's own case for the assessment year 2010-11 in ITA No.5786/Mum/2014. The co-ordinate bench, after considering the relevant provisions and also relying upon the decision of Hon'ble Delhi High Court in the case of CIT vs Cheminvest Ltd reported in (2015) 378 ITR 33 (Del) held that no disallowance u/s 14A can be made if there is no exempt income earned during the year. The co-ordinate bench further observed that there would be no adjustment of disallowance u/s 14A can be made on this score in the book profit u/s 115JB of the Act. The relevant portion of the order is extracted below:-

*5. After considering the rival submissions and on perusal of the impugned order and material on record, we find that it is an admitted fact that no exempt income whatsoever has been earned by the assessee during the year. The AO has made disallowance under section 14A after following the decision of ITAT Special Bench in Cheminvest Ltd. However, this decision of Special Bench has been specifically turned down / reversed by Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs CIT, reported in 2015] 378 JTR 33 (Del), wherein the Hon'ble High Court has, opined that, if no exempt income has been earned by the assessee in the relevant assessment year then, no disallowance should be made. The relevant observation of the Hon'ble High Court, reversing the decision of the Special Bench read', as under:-*

*19. In light of the clear exposition of the law in Holcim India (P) Ltd (supra) and in view of the admitted factual position in this case that the Assessee has made strategic investment in shares of*

*Max India Ltd.; that no exempted income was earned by the Assessee in the relevant AY and since the genuineness of the expenditure incurred by the Assessee is not in doubt, the question framed is required to be answered in favour of the Assessee and against the Revenue.*

20. *Since the Special Bench has relied upon the decision of the Supreme Court in Rajendra Prasad Moody (supra), it is considered necessary to discuss the true purport of the said decision. It is noticed to begin with that the issue before the Supreme Court in the said case was whether the expenditure under Section 57 (iii) of the Act could be allowed as a deduction against dividend income assessable under the head "income from other sources". Under Section 57 (iii) of the Act deduction is allowed in respect of any expenditure laid out or expended wholly or exclusively for the purpose of making or earning such income. The Supreme Court explained that the expression "incurred for making or earning such income, did not mean that any income should in fact have been earned as a condition precedent for claiming the expenditure. The Court explained:*

*'What s. 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that is relevant in determining the applicability of s. 57(iii) and that purpose must be making or earning of income. s. 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of S. 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit .by way of return in the shape of income. The plain natural construction of the language of S. 57(iii) irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure.'*

21. *There is merit in the contention of Mr. Vohra.that the decision of the Supreme Court in Rajendra Prasad .Moody (supra) was rendered in the context of allowability of deduction under Section 57(iii) of the Act, where the expression used is "for the purpose of making or earning such*

*income". Section 14A of the Act on the other hand contains the expression "in relation to income which does not form part of the total income. The decision in Rajendra Prasad Moody (supra) cannot be used in the reverse to contend that even if no income has been received, the expenditure incurred can be disallowed under Section 14A of the Act.*

*22. In the impugned order, the ITAT has referred to the decision in Maxopp Investment Ltd. (supra) and remanded the matter to the AO for reconsideration of the issue afresh. The issue in Maxopp Investment Ltd. (supra) was whether the expenditure (including interest on borrowed funds) in respect of investment in shares of operating companies for acquiring and retaining a controlling interest therein was disallowable under Section 14 A of the Act. In the said case admittedly there was dividend earned on such investment. In other words, it was not a case, as the present, where no exempt income was earned in the year in question. Consequently, the said decision was not relevant and did not apply in the context of the issue projected in the present case.*

*23. In the context of the facts enumerated herein before 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".*

*6. Thus, respectfully following the aforesaid decision of Hon'ble Dehi High Court we hold that, no disallowance under section 14A can be made, because there is no exempt income during the year and accordingly, the provisions of section 14A(1) will not get triggered. Accordingly, the grounds raised by the assessee are allowed. Similarly, there would be no adjustment of disallowance on this score in the book profit under section 15JB."*

7. In this view of the matter and also consistent with the view taken by the co-ordinate bench in assessee's own case for the earlier year, we are of the view that there cannot be any disallowance u/s 14A r.w.r. 8D, if there is no exempt income earned during the relevant financial year. Therefore, we direct the AO to delete addition made u/s 14A r.w.r. 8D of I.T. Rules, 1962.

8. Coming to appeal for AY 2013-14, in this case, facts are identical to the assessment order for AY 2012-13, except to the extent of exempt income. During the financial year relevant to AY 2013-14, the assessee has earned exempt income of Rs.30,524 from investments. The Ld.AR referring to the decision of co-ordinate bench in assessee's own case for the assessment year

2011-12 in IT No.5787/Mum/2014 submitted that disallowance u/s 14A cannot exceed the exempt income which in this year is only Rs.30,524. We find that the co-ordinate bench has considered a similar issue for the preceding year in assessee's own case in ITA No.5787/Mum/2014 wherein after considering the decision of Hon'ble Delhi High Court in the case of Chemivest Ltd vs CIT (supra) held that the disallowance u/s 14A cannot exceed the exempt income. We further notice that the Hon'ble Delhi High Court in the case of Joint Investments Pvt Ltd vs CIT (2015) 372 ITR 694 (Del) has taken a similar view. After considering the relevant provisions observed that the window for disallowance was indicated in section 14A and was only to the extent of disallowing expenditure incurred by the assessee in relation to the tax exempt income. This proportion or portion of the exempt income surely cannot swallow the entire amount. Therefore, considering the decision of Hon'ble Delhi High Court in the case of Chemivest Ltd vs CIT (supra), we are of the view that disallowance u/s 14A cannot exceed the exempt income. In this case, the assessee has exempt income of Rs.30,524 as against which the AO has disallowed Rs.2,43,49,537. Therefore, we direct the AO to restrict disallowance u/s 14A to the extent of exempt income earned by the assessee.

**9.** In the result, appeal filed by the assessee in ITA No.5792/Mum/2016 is allowed and appeal in ITA No.5834/Mum/2016 is partly allowed.

Order pronounced in the open court on 08<sup>th</sup> November, 2017.

Sd/-

sd/-

(Saktijit Dey)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 08<sup>th</sup> November, 2017

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai