

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5163/MUM/2016  
Assessment Year: 2012-13**

ACIT-9(3)(2)  
418, Aayakar  
Bhavan, 4<sup>th</sup> floor,  
M.K. Marg,  
Mumbai-400020.

**Appellant**

Vs. M/s Future Human  
Development Ltd.  
Knowledge House, Off  
Jogeshwari Vikhroli Link  
Rd, Shyam Nagar,  
Mumbai-400060.  
**PAN No. AAACF9652Q**  
**Respondent**

Revenue by : Mr. Saurabh Kumar Rai, DR  
Assessee by : Ms. Namrata Kasale, AR

Date of Hearing : 02/11/2017  
Date of pronouncement : 15/11/2017

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the Revenue. The relevant assessment year is 2012-13. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-16, Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The sole ground raised by the Revenue in this appeal is that the Ld. CIT(A) has erred in granting relief to assessee u/s 14A when the

assessee has used common pool of funds for making investments and running business, wherein, it is impossible to conclude that funds were specifically used for business, as claimed by the assessee, even though the assessee has not been able to prove by filing documentary evidence that only own funds were used for making investments in shares for earning exempt income.

3. Briefly stated, the facts of the case are that the assessee-company had not earned any exempt income during the impugned assessment year. However, the Assessing Officer (AO) made a disallowance of Rs.47,48,343/- u/s 14A r.w. Rule 8D of the Income Tax Rules, 1962.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) has followed the judgment of the Hon'ble Delhi High Court in *Cheminvest Ltd. vs. CIT* in ITA No. 749/2014 (Del) and the order of the ITAT Mumbai in *J.M. Financial vs. ACIT* dated 30.04.2014 and *Garware Wall Ropes Ltd. vs. ACIT* dated 21.02.2014 and deleted the above disallowance of Rs.47,48,343/-.

5. On the other hand, the Ld. DR supports the order passed by the AO. He relies on the Circular No. 5/2014 issued by CBDT which reads as under:

“The usage of term ‘includible’ in the Heading to section 14A of the Act and also the heading to Rule 8D of I.T. Rules, 1962 which indicates that it is not necessary that exempt income should be necessarily be included in a particular year’s income, for disallowance to be triggered. Also section 14A of the Act does not use the word “income of the year” but “income under the Act”. This also indicates that for invoking disallowance u/s 14A, it is not

material that assessee should have earned such exempt income during the financial year under consideration.”

6. We have heard the rival submissions and perused the relevant materials on record. The facts remains that in the instant case the assessee-company has not earned any exempt income during the financial year 2011-12 relevant to the assessment year 2012-13. In the case of *CIT v. Shivam Motors (P) Ltd.* (2015) 55 taxmann.com 262 (All), it has been held that in absence of any tax free income earned by the assessee, disallowance u/s 14A could not be made. In a similar vein, it has been held in *Cheminvest Ltd.* (supra) that section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

Respectfully following the above judgments, we hold that the Ld. CIT(A) has rightly deleted the disallowance of Rs.47,48,343/- made by the AO u/s 14A r.w. Rule 8D.

7. In the result, the appeal is dismissed.

**Order pronounced in the open Court on 15/11/2017.**

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 15/11/2017

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**