

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

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA Nos.-4216 & 4217/Del/2016
(Assessment Years: 2012-13 & 2013-14)**

DCIT Circle 10(2), New Delhi.	vs	GVK Project & Technical Services Ltd. 156-159, Paigah House, Sardar Patel Road, Secunderabad, Secunderabad AAACU9200F
Assessee by		Sh. Prashant Meharchandani, Adv.
Revenue by		Sh. Arun Kumar Yadav, Sr. DR

Date of Hearing	19.12.2017
Date of Pronouncement	22.12.2017

ORDER

PER K. NARSIMHA CHARY, J.M.

These two appeals relating to the years 2012-13 and 2013-14 are preferred by the Revenue challenging the deletion of addition made by the Assessing Officer by invoking Section 14A of the Income Tax Act, 1961 (for short called as the 'Act') read with Rule 8D of the Income Tax Rules, 1962 (for short "the Rules") by the Ld. CIT (A)-IV, New Delhi (for short hereinafter referred to as "Ld. CIT(A)") by way of order dated 11.05.2016 in Appeal No. 609/14-15/CIT (A)-IV and appeal no. 254/15-16/CIT (A)-IV.

2. Briefly stated facts, insofar as they are relevant for the disposal of this appeal are that the assessee is a company and it made certain investments during the years under consideration. When they have filed their returns of income for the assessment years 2012-13 & 2013-14, AO proposed to make addition by invoking Section 14A of the Act read with Rule 8D of the Rules. Assessee contended before the Ld. AO that they have not earned any exempt income during the year, as such, no disallowance could be made. However, AO brushed aside such a contention and referring to CBDT Circular No. 5 of 2014 dated 11.02.2014 and held that although the assessee company has not earned any exempt income during the year, disallowance is being made as the income as and when received would be exempted. In appeal Ld. CIT (A) while following the decision of the Hon'ble Jurisdictional High Court in Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del) held that if there is no exempt income there can be no question of making any disallowance. He, therefore, deleted the addition made on this account for both the assessment years. Hence, Revenue is in this appeal.

3. Ld. DR argued that Ld. CIT (A) was not right in ignoring the Board Circular No. 5 of 2014 dated 11.02.2014 while deleting the

addition made on account of Section 14A of the Act and as a matter of fact disallowance u/s 14A read with Rule 8D of the Rules can be made even where the tax payer has not earned any exempt income in a particular year. Per contra, placing reliance on the decisions reported in PCIT vs. IL & FS Energy Development Company Ltd. (2017) 84 taxman.com 186 (Del), Cheminvest (supra) and CIT vs. Wholesome India Pvt. Ltd. (2014) 90 CCH 81 (Del). Ld. AR submitted that where there is no exempt income there is no question of making any disallowance u/s 14A of the Act.

4. We have gone through the orders of the authorities below and also the decision relied upon by the assessee. The Hon'ble Jurisdictional High Court, referring the entire case law on this aspect and also while noticing the CBDT Circular No. 5 of 2014 dated 11.02.2014, was pleased to hold that the CBDT Circular cannot over ride the express provisions of Section 14A of the Act and Rule 8D of the Rules and where no exempt income was earned in relevant assessment year there could be no disallowance in terms of Section 14A of the Act read with Rule 8D of the Rules. In view of this clear and established legal position, we do not find any illegality or irregularity in the impugned

orders, as such, we uphold the same. Consequently, we dismiss the appeals of the Revenue.

5. In the result, the appeals of the Revenue are dismissed.

Order pronounced in the open court on 22.12.2017

Sd/-

(N.K. SAINI)
ACCOUNTANT MEMBER

Dated: 22.12.2017

*Kavita Arora

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI