

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. N. K. Saini, AM and Smt. Beena A. Pillai, JM

ITA No. 2312/Del/2016 : Asstt. Year : 2012-13

DCIT, Circle-16(1), New Delhi	Vs	M/s Manpower Group Services India Pvt. Ltd. (Formerly Known as Manpower Services India Pvt. Ltd.), 371, Aggarwal Millennium Tower-II, Netaji Subhash Place, Pitampura, New Delhi-110034
(APPELLANT)		(RESPONDENT)
PAN No. AABCM6914F		

Assessee by : None

Revenue by : Sh. Kaushlendra Tiwari, Sr. DR

Date of Hearing : 26.12.2017

Date of Pronouncement : 28.12.2017

ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 25.02.2016 of ld. CIT(A)-19, New Delhi

2. Nobody was present on behalf of the assessee, we therefore, proceeded the *ex-parte* order qua the assessee and the appeal has been decided after considering the submissions of the ld. DR.

3. Following grounds have been raised in this appeal:

“1. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) justified in deleting

the addition of Rs. 42,66,721/- made by AO u/s 14A of the Income Tax Act, 1961 (Act) read with Rule 8D of the Income Tax Rules, 1962 (Rules)?

2. Whether on facts and circumstances of the case and in law, the CIT(A) is justified in not upholding disallowance of Rs. 42,66,721/- made by the AO u/s 14A of the Act without considering legislative intend of introducing section 14A by the Finance Act 2001 as clarified by the CBDT Circular No. 5/2014 dated 10.02.2014?

3. Whether on facts and on circumstances of the case and in law, the CIT(A) is justified in not upholding disallowance of Rs. 1,34,19,838/- made by the AO u/s 14A of the Act without considering a legal principle that allowability of expenditure under the Act is not conditional upon the earning of the income as upheld by Hon'ble Supreme Court in case of CIT Vs. Rajendra Prasad Moody [1978] 115 ITR 519?

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

5. That the grounds of appeal are without prejudiced to each other.

6. That the appellant craves leave to add, alter, amend or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”

4. From the above grounds, it is gathered that only grievance of the department relates to the deletion of

addition made by the AO u/s 14A of the Income Tax Act, 1961 (hereinafter referred to as the Act) r.w. Rule 8D of the Income Tax Rules, 1962.

5. Facts of the case in brief are that the assessee was engaged in the business of providing temporary staffing solutions, personnel recruitment and placement services, executive search, consulting and related services. The assessee e-filed the return of income claiming gross losses of Rs.41,62,938/- on 28.11.2012. Later on, the case was selected for scrutiny. The AO during the course of assessment proceedings noticed that the assessee had invested Rs.60,15,00,000/- in shares & securities and the income earned from these investments will not form the part of total income under the Act. Thus, as per the provisions of Section 14A of the Act, disallowance was required to be made as per Rule 8D of the Income Tax Rules, 1962. However, the assessee had not made any disallowance. The AO disallowed a sum of Rs.42,66,721/-.

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the investment of Rs.60,15,00,000/- was being carried forward and had not shown in the books of account and that the assessee had not

received any dividend nor claimed any amount received by the assessee company as dividend. It was further stated that the similar addition made in the previous year has been decided in favour of the assessee by the ld. CIT(A) vide order dated 21.05.2015.

7. The ld. CIT(A) after considering the submissions of the assessee deleted the addition by following the judgment of the Honøble Jurisdictional High Court in the case of Cheminvest Ltd. Vs CIT-IV (2015) 378 ITR 33 (Del.)

8. Now the department is in appeal.

9. We have considered the submissions of the ld. DR and the material on record. In the present case, the contention of the assessee that no exempt income was received during the year under consideration has not rebutted. On a similar issue the Honøble Jurisdictional High Court in the case of Cheminvest Ltd. Vs CIT-IV held as under:

“The expression "does not form part of the total income" in section 14A of the Income-tax Act, 1961, 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 income. In other words,

section 14A will not apply if no exempt income is received or receivable during the relevant previous year.”

10. We, therefore, by keeping in view the ratio laid down in the aforesaid referred to case, do not see any merit in the appeal of the department and are of the confirmed view that the Id. CIT(A) was fully justified in deleting the disallowance made by the AO u/s 14A of the Act r.w.r. 8D of the Income Tax Rules, 1962, since no exempt income was claimed by the assessee.

11. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 28/12/2017)

Sd/-

(Beena A. Pillai)

JUDICIAL MEMBER

Sd/-

(N. K. Saini)

ACCOUNTANT MEMBER

Dated: 28/12/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR