

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'SMC', KOLKATA
[Before Shri P.M. Jagtap, AM]**

I.T.A. No. 1373/Kol/2017
Assessment Year: 2011-12

I.T.O. Ward 3(1).....Appellant
Aayakar Bhawan, 4th Floor,
Room No. 17,
P-7, Chowringhee Square,
Kolkata - 700 069.

M/s. Progro Stocks Pvt. Ltd.,.....Respondent
9/2, Lalbazar Street,
Kolkata - 700 001
[PAN: AABCP 5332 JJ]

Appearances by:

Shri S.M. Tauheed, Addl. CIT appearing on behalf of the Revenue.
Shri Subash Agarwal, Advocate appearing on behalf of the Assessee.

Date of concluding the hearing : February 12, 2018

Date of pronouncing the order : February 19, 2018

ORDER

This appeal filed by the revenue is directed against the order of Ld. CIT (Appeals) - 1, Kolkata dated 26.04.2017 and in the solitary ground raised therein, the revenue has challenged the action of the Ld. CIT(A) in deleting the disallowance of Rs. 2,16,006/- made by the A.O. under section 14A read with rule 8D of the Income Tax Rules, 1962.

2. The assessee in the present case is a company which filed its return of income for the year under consideration on 20.03.2013 declaring its total income at nil. During the course of assessment proceedings, it was noticed by the A.O. that the assessee company has made substantial investment in unquoted shares. Since the income from the said investment in the form of dividend was exempt from tax, the assessee was called upon by the A.O. to explain as to why

disallowance under section 14A should not be made on account of expenditure incurred in relation to the said investment. In reply, it was explained by the assessee that there was no exempt dividend income received by it during the year under consideration and therefore the provisions of section 14A were not applicable. This explanation of the assessee was not found acceptable by the A.O. and he proceeded to make a disallowance of Rs. 2,61,006/- under section 14A read with rule 8D in the assessment completed under section 143(3) vide an order dated 14.03.2003.

3. Against the order passed by the A.O. under section 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) disputing the disallowance made by the A.O. under section 14A rule Rule 8D and after considering the submissions made by the assessee as well as the material available on record, the Ld. CIT(A) deleted the said disallowance for the following reasons given in his impugned order:

"I have considered the A.Os finding and perused the written submissions and judicial decisions relied upon by the appellant. The A.O is found to have mechanically invoked the provisions of section 14A r.w. Rule BD to compute the disallowance of administrative expenditure amounting to Rs.403394/-, which was restricted to the total expenditure Incurred i.e, Rs.261006/-.The Appellant's A/R has mainly contended through the written submissions that the provisions of section 14A are only applicable in cases wherein the appellant had earned exempt income during the relevant assessment year, whereas the appellant did not earn any exempt income and the provisions of section 14A could not be invoked by the A.O. for this proposition, the A.R has relied upon the decisions of the Hon'ble Allahabad High Court in the case of CIT vs. M/s. Shivam Motors (P) Ltd, order dated 05.05.2014, held that Sec 14A provides that if there is any income which does not form part of the income under the Act, the expenditure which is incurred for earning the income is not an allowable deduction. In absence of any tax free income, the corresponding expenditure could not be worked out for disallowance. Reliance was also placed upon the judgment in the case of CIT vs. Cortech Energy Pvt. Ltd., order dated 24.03.2014, the Hon'ble Gujarat High Court held that no free income & no claim for exemption is made. (iii) That the I.T.A.T, Special Bench, Delhi's decision in the case of Cheminvest Ltd. and has held that disallowance u/s.

14A cannot be made if exempt income is not received or receivable during the relevant previous year reported in 378 ITR 33 (Del).

In view of the above discussion, it is observed that admittedly the income of income from other sources of Rs,2,58,000/- disclosed by the appellant company was not in the nature of any exempt income or by way of dividend. In view of the factual matrix of the case and the ratio of the cited case laws i.e. Hon'ble Allahabad High Court in the case of CIT vs. M/s. Shivam Motors (P) Ltd(supra), CIT vs. Cortech Energy Pvt. Ltd by the Hon'ble Gujarat High Court and in Cheminvesi Ltd(supra), which are found to be applicable to the facts of the instant case, it is held that the A.O was not justified in invoking the provisions of section 14A r.w. Rule 8D and making the impugned disallowance of expenditure of Rs.2,61,006/-. The A.O is directed to delete the disallowance of Rs.2,61,006/-. These grounds are allowed."

Aggrieved by the order of the Ld. CIT(A), the revenue has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the learned representative of both the sides, the solitary issue involved in this appeal of the revenue is squarely covered in favour of the assessee inter alia by the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. 373 ITR 33 wherein it was held that disallowance under section 14A could not be made if no exempt income was received or receivable during the relevant previous year. Respectfully following the said decision of the Hon'ble Delhi High Court, we upheld the impugned order of the Ld. CIT(A) deleting the disallowance made by the A.O. under section 14A and dismiss this appeal of the revenue.

5. In the result, the appeal of the revenue is allowed.

Order Pronounced in the Open Court on 19th February, 2018.

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 19/02/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Progro Stocks Pvt. Ltd., 9/2, Lalbazar Street, Kolkata -700 001.
2. ITO, Ward 3(1), Aayakar Bhawan, 4th Floor, P-7, Chowringhee Square, Kolkata – 700 069
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata