

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting disallowance made u/s 14A despite the fact that assessee's investment at the year end stood at Rs.1112 crores, and as per circular No. 5/2014 dt. 11.02.2014. the expenses relatable to earning exempt income have to be considered for disallowance, irrespective of whether any such income was earned during the year or not."*

3. In this appeal, the solitary dispute raised by the assessee arises from the action of CIT(A) in deleting the addition made by the Assessing Officer u/s 14A of the Act amounting to Rs.3,16,59,443/-. Notably, the CIT(A) has deleted the addition finding that during the year under consideration there was no exempt income claimed by the assessee and thus, there was no necessity of invoking Sec. 14A of the Act.

4. Before us, the Id. DR has not assailed the finding of the CIT(A) to the effect that there was no exempt income earned during the year under consideration. As a consequence, we find that the CIT(A) made no mistake in deleting the addition inasmuch as the same is in conformity with the judgment of the Hon'ble Delhi High Court in the case of *Cheminvest Ltd. v. CIT [2015] 61 taxmann.com 118 (Delhi)*.

5. Before parting, we may also make an observation that right from the stage of assessment, assessee has, *inter-alia*, canvassed against invoking of Sec. 14A of the Act by pointing out that in this year it has not earned any income which is exempt from tax. At the time of hearing, the learned representative supported the said assertion by referring to the Profit & Loss Account, wherein also no such income has been reported. In fact, in the course of hearing, the learned representative relied upon the decision of the

Tribunal in the assessee's own case for the immediately preceding Assessment Year of 2010-11 in ITA No. 3829/Mum/2015 dated 25.05.2017, which has also been rendered on similar lines.

6. At the time of hearing, the Id. DR relied upon the CBDT Circular no. 5/2014 dated 11.02.2014 to put forth that invocation of Sec. 14A of the Act is permissible even in the absence of exempt income during a particular year. In our considered opinion, the said Circular of CBDT does not distract from the legal position laid down by the Hon'ble Delhi High Court in the case of *Cheminvest Ltd. (supra)*, and we further noticed that our co-ordinate Bench in assessee's own case for Assessment Year 2010-11 (*supra*) has considered the said Circular and thereafter, applied the ratio of Hon'ble Delhi High Court and deleted the addition.

7. In view of the aforesaid discussion, we hereby affirm the order of CIT(A) and appeal of the Revenue is dismissed.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 21st March, 2018.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 21st March, 2018

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai