

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI G.S. PANNU (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 7332/MUM/2017
Assessment Year: 2014-15**

The DCIT, Central Cir. 5(3), Room No. 1906, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	M/s Shree Krishna Silk Industries Pvt. Ltd., 2 nd Floor, Kamat Indl. Estate, Veer Sawarkar Marg, Prabhadevi, Mumbai - 400025 PAN: AAACS5165K
(Appellant)		(Respondent)

Revenue by : Ms. N. Hemalatha (DR)
Assessee by : Shri Salil Kapoor (AR)

Date of Hearing: 11/04/2018
Date of Pronouncement: 18/04/2018

ORDER

PER RAM LAL NEGI, JM

The revenue has filed the present appeal against the order dated 13.10.2017 passed by the Ld. Commissioner of Income Tax (Appeals)-53, Mumbai, for the assessment year 2014-15, whereby the Ld. CIT (A) has allowed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee company engaged in the business of manufacturing of knitting fabrics, hosiery and garments, filed its return of income for the assessment year 2014-15 declaring the total income of Rs. 2,89,840/-. Since, the case was selected for scrutiny, notice u/s 143 (2) and 142 (1) were issued. In response to the said notices, the authorized representative of the assessee appeared before the AO and furnished the requisite details. It was seen that the assessee company had made investment

of Rs. 72,39,86, 658/-/, however, in the computation of income, the assessee had not made any disallowance u/s 14A. Accordingly, the assessee was asked to explain as to why disallowance u/s 14A should not be made. The authorized representative submitted that since the assessee did not earn any income which is exempt under any of the provisions of Act, the assessee is not required to make any disallowance u/s 14A. The AO rejecting the contention of the assessee applied the provisions of section 14A read with rule 8D of the Income Tax Rules and disallowed an expenditure of Rs. 36,19,933/- i.e. 0.5% of the average investments.

3. In the first appeal, the Ld. CIT (A) after hearing the assessee in the light of the material on record set aside the findings of the AO and directed the AO to delete the disallowance made u/s 14A of the Act by following the order of his predecessor passed in the assessee's own case for the assessment year 2012-13.

4. Aggrieved by the impugned order passed by the Ld. CIT (Appeals), the revenue has preferred this appeal before the Tribunal on the following effective grounds:-

1. *“On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition u/s 14A of the Income Tax Act, 1961 ignoring that the provisions of Section 14A which apply even if no exempt income has actually been earned or received during the year in any form whatsoever.*
2. *“On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition u/s 14A of the Income Tax Act, 1961 by ignoring the provisions of CBDT Circular No. 5/2014 dated 11.02.2014 wherein, it has been clarified that the Rule 8D r.w.s. 14A provides for disallowance of expenditure even where the assessee in particular has not earned exempt income.*

3. *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition u/s 14A of the Income Tax Act, 1961 relying upon the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. overlooking the fact that the above decision has not been accepted by the revenue and SLP has been filed before the Hon'ble Supreme Court and same is pending?*

5. Before us, the Ld. Departmental Representative (DR) relying on the assessment order passed by the AO submitted that since the AO has computed the disallowance in accordance with rule 8D of the Income Tax Rules, the Ld. CIT(A) has wrongly deleted the disallowance made by the AO. The Ld. DR further submitted that the Ld. CIT(A) has passed the impugned order ignoring the fact that the department has filed SLP against the decision of the Hon'ble Delhi High Court rendered in the case of Cheminvest Ltd. relied upon by the Ld. CIT (A).

6. On the other hand, the Ld. counsel for the assessee submitted that since, the findings of the Ld.CIT (A) is in accordance with the law laid down by the Hon'ble Delhi High Court in the case of Cheminvest Ltd. 378 ITR 33, there is no legal or factual infirmity in the said order to interfere with. The Ld. counsel further pointed out that the said decision of the Delhi High Court has been followed by the Mumbai Bench of the ITAT in so many cases.

7. We have heard the rival submissions and also perused the orders passed by the authorities below including the cases relied upon by the authorities below. The Ld. CIT (A) has decided the identical issue in favour of the assessee by following the decision of the then CIT (A) passed in assessee's own case for the assessment year 2012-13. We further notice that the CIT (A) has decided the identical issue by following the order of

the Hon'ble Delhi High Court in the case of Cheminvest Ltd.(supra) wherein it has been held 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 in relation to the said income. In other words, section 14A will not apply if no exempt income is received or receivable during the relevant previous year. We further notice that the coordinate Bench has decided the identical issue in favour of the assessee in ACIT Central Circle-33, Mumbai vs. M/s Archana Syntex Pvt.Ltd. ITA No. 7291/Mum/2011 A.Y. 2008-09 by following the judgment of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. (supra). Admittedly, the assessee has not earned any exempt income during the year relevant to the assessment year under consideration. The revenue did not contend that the operation of the decision of the Hon'ble Delhi High Court referred above has been stayed by the Hon'ble Supreme Court. Hence, following the judgment of the Hon'ble Delhi High Court aforesaid, we uphold the findings of the Ld. CIT (A) and dismiss the sole ground of appeal of the revenue.

In the result, appeal filed by the revenue for assessment year 2014-2015 is dismissed.

Order pronounced in the open court on 18th April, 2018.

Sd/-

(G.S. PANNU)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 18/04/2018

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**