



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

**BEFORE SHRI R.C.SHARMA, AM  
&  
SHRI RAM LAL NEGI, JM**

**ITA No.1934/Mum/2018  
(Assessment Year 2013-14:)**

Deputy Commissioner of Income Tax – 2(2)(2) Room No.545, 5 <sup>th</sup> Floor Aayakar Bhavan M.K. Road, Churchgate Mumbai, Maharashtra	Vs.	M/s. Novelty Properties & Investment Private Limited Office No.1, Best Marg Next to Taj Mahal Hotel, Apollo Bunder Mumbai – 400 039
<b>PAN/GIR No.</b>		<b>AAACN2635D</b>
<b>Appellant)</b>	..	<b>Respondent)</b>

Revenue by	Ms. N. Hemalatha
Assessee by	Shri Manish V. Shah and Ms. Niyanta Mehta
<b>Date of Hearing</b>	<b>04/06/2018</b>
<b>Date of Pronouncement</b>	<b>12/06/2018</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the Revenue against the order of CIT(A)-5, Mumbai dated 18/12/2017 for A.Y.2013-14 in the matter of order passed u/s.143(3) of the Income Tax Act, 1961.

2. Following grounds have been taken by the Revenue:-

*"Whether on the facts and in the circumstances of the case and in law, the id, CIT(A) has erred in deleting addition made on account of disallowance u/s 14A r.w. Rule 8D(ii) of the Act relying on the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs. CIT(378 ITR 33) thereby granting relief to the assesses without appreciating the fact that the AO had correctly made the*

*disallowance u/s 14A r.w. rule 8D of the IT Act as per CBDT circular no, 5/2014 where it has clarified that section 14A of the IT Act provides for disallowance of the expenditure even where tax payer in a particular year has not earned any exempt income?"*

3. We have heard rival contentions and found that AO has made addition u/s.14A rw.R.8D.

4. By the impugned order CIT(A) deleted the addition after observing that assessee is having no exempt income. The precise observation of the CIT(A) was as under:-

*The Appellant submits that while calculating the 'average value of investments' for the purpose of disallowance under Rule 8D(2)(iii) of the Rules the investments not yielding tax exempt income must be excluded. In the instant case, none of the investments have yielded any tax exempt income during the year under consideration and therefore, the 'average value of investments' shall be computed at NIL, thereby resulting into a 'NIL' disallowance under Rule 8D(2) (iii)of the Rules.*

*In support of the said proposition, the Appellant would like to place its reliance on the decision of Hon'ble Delhi High Court in the case of ACB India Ltd. v. ACIT (ITA No.615/2014) wherein it was held that in computing 'the average value of investment', only the investments yielding non-taxable income have to be considered and not all investments. The relevant extract of the said decision is reproduced here under for ready reference;*

*"The AO, instead of adopting the average value of investment of which income is not part of the total income i.e. the value of tax exempt, investment, chose to factor in the total investment itself. Even though the CIT(Appels) noticed the exact value of the investment which yielded taxable income, he did not correct the error but chose to apply his own equity."*

*Further reliance is also placed on the decision of REI Agro v/s DCIT (ITA No. 1331 & 1423/Kol/2011)(2013) wherein the Hon'ble Kolkata Tribunal held as under:*

*"Thus, not all investments become the subject-matter of consideration when computing disallowance under section 14A read with rule 8D. The disallowance under section 14A read with rule 8D is to be in relation to the income which does not form part of the total income and this can be done only by taking into*

which has form part of the total income and this can be done only by taking into consideration the investment which has given rise to this income which does not form part of the total income. Under the circumstances, the computation of the disallowance under section 14A read with rule 8D(2)(iii), which is issue in the assessee's appeal, is restored to the file of the AO for recomputation in line with the direction given above. No disallowance under section 14A read with rule 8D(2)(i) and (if) can be made in this case."

Also, the **Hon'ble Mumbai Tribunal** in the case of **S. Krishnamurthy vs ACIT (ITA No. 6207/Mum/2012)(2016)** held that the disallowance has to be worked out on the basis of investments which" yielded dividend during the year and not by factoring in the total amount of investments.

In view of the above, the Appellant states that the investments not yielding any tax free income during the year under consideration, must not be taken into consideration for arriving at 'average value of investments' as required for computing disallowance under Rule 8D(2)(iii) of the Rules.

5. We had carefully gone through the decision of the Hon'ble Delhi High Court in case of Cheminvest Ltd., 378 ITR 33 wherein it was held that no disallowance u/s.14A can be made where there is no exempt income earned by the assessee in the relevant assessment year. Precise observation of the Hon'ble High Court was 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 said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year. Held, that no exempted income was earned by the assessee in the relevant assessment year and since the genuineness of the expenditure incurred by the assessee was not in doubt, no disallowance could be made u/s.14A."*

7. Furthermore, the proposition that no disallowance can be made u/s.14A in case there is no exempt income is also supported by the following judicial pronouncements.

1. *Joint Investments v. CIT (372 ITR 694 (Del)*
2. *Indus Valley Investments v DCIT being ITA No.3763/Del/2013 for A.Y.2009-10 dated 29/04/2015*
3. *M/s. Daga Global Chemicals vs. Asst. CIT being ITA No.5592/Mum/2012 dated 01/01/2015.*
4. *M/s. Slyvex Cable Co. Pvt. Ltd., v Dy. CIT being ITA No.8581/Mum/2011 for A.Y.2008-09 dated 24/02/2016.*

8. The fact that assessee was not in receipt of any exempt income during the year under consideration has not been denied by AO. Therefore, we do not find any infirmity in the order of CIT(A) for deleting the disallowance made u/s.14A in the absence of any exempt income.

**9. In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open court on this 12/06/2018

**Sd/-**  
**(RAM LAL NEGI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(R.C.SHARMA)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 12/06/2018

Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
**ITAT, Mumbai**