

**आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।**

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

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री एन. के. प्रधान लेखा सदस्य के समक्ष ।

**BEFORE SRI MAHAVIR SINGH, JM AND SRI N.K. PRADHAN, AM**

आयकर अपील सं./ ITA No. 2270/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

Dy. Commissioner of Income Tax

Circle 7(3)(1), Room No. 669A, Aayakar ..... (अपीलार्थी / Appellant)  
Bhavan, M.K. Road, churchgate, Mumbai-20

Vs.

Patliputra Highway Limited

Gammon House, Veer Savarkar Marg, ..... (प्रत्यर्थी / Respondent)  
Prabhadevi, Mumbai-25

स्थायी लेखा सं./PAN NO. AACCG3533H

अपीलार्थी की ओर से / Appellant by	:	Shri Abi Rama Karthikeyan, DR
प्रत्यर्थी की ओर से / Respondent by	:	None

सुनवाई की तारीख / Date of hearing:	21-08-2018
घोषणा की तारीख / Date of pronouncement :	21-08-2018

**आदेश / ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-13, Mumbai [in short CIT(A)], in appeal No. CIT(A)-13/DCIT-7(3)(1)/855/2015-16 dated 30.01.2017. The assessment was framed by the Dy. Commissioner Of Income Tax, Circle-7(3)(1), Mumbai (in short 'DCIT'/ 'AO') for the A.Y. 2012-13 vide order



dated 26.03.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of expenses relatable to exempt income under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (hereinafter the 'Rules'). For this assessee has raised the following three grounds: -

*"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 3,42,91,368/- made by the Assessing Officer u/s.14A of the Income Tax Act,1961 read with Rule SD of Income Tax Rules,1962,without appreciating the facts brought out by the Assessing Officer and considering the fact that Section 14A was intended to cover those situation where there is a possibility of exempt income being earned in future and it is not necessary for exempt income to have been included in the income of a particular year for the disallowance to be triggered.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowances of Rs. 3,42,91,368/- u/s.14A of the Act read with Rule 8D of the Rules without considering CBDT Circular No.5/2014 dated 11.02.2014 on the issue involved.*

*3. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowance of Rs.3,42,91,368/-determined as per*



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*computation envisaged in rule SD after invoking provisions of Section 14A of the Act.”*

3. Briefly stated facts are that the AO has noted the fact that the assessee has not earned any exempt income during the year and he recorded the fact that during the year under consideration the assessee has not shown any dividend income received on the investments. However, the investments made by the assessee had potential of earning exempt income. As the assessee has not earned any exempt income and not claimed any exempt in the return of income, we find that this issue is now covered by the decision of Hon'ble Bombay High Court, Nagpur Bench in the case of Pr. CIT vs. Ballarpur Industries Limited in Income Tax Appeal No. 51 of 2016 has considered this issue and finally following the judgment of Hon'ble Delhi High Court in the case of Cheminvest Limited vs. CIT (2015) 378 ITR 33 (Delhi) held as under: -

*“On hearing the learned Counsel for the Department and on a perusal of the impugned orders, it appears that both the Authorities have recorded a clear finding of fact that there was no exempt income earned by the assessee. While holding so, the Authorities relied on the judgment of the Delhi High Court in Income Tax Appeal No. 749/2014, which holds that 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 the 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. The Income Tax Appellate Tribunal held that the provisions of Section 14A of the Income Tax Act, 1961 would not apply to the facts of this case as no exempt income*



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*was received or receivable during the relevant previous year. It is not the case of the Assessing Officer that any actual income was received by the assessee and the same was includible in the total income. In the facts of the case, the Authorities held that since the investments made by the assessee in the sister concerns were not the actual income received by the assessee, they could not have been included in the total income.”*

4. Since the issue is covered by the decision of Hon'ble Bombay High Court in the case of Ballarpur Industries Limited (supra) and the fact that the assessee has not earned any exempt income and not claimed any exempt income in the return of income during the previous year relevant to this assessment year, no disallowance can be attributed to the exempt income. Hence, we confirm the order of CIT(A) deleting the disallowance. This issue of Revenue's appeal is dismissed.

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

Order pronounced in the open court on 21-08-2018.

Sd/-

(एन. के. प्रधान /N.K. PRADHAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 21-08-2018

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS



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**आदेश की 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 (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai