

**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. 2101/Mum/2017**

**(निर्धारण वर्ष / Assessment Year 2013-14)**

The Dy. Commissioner of Income Tax,  
Circle 7(3)(2)

Room No. 669A, Aayakar Bhavan, M.K.  
Road, Churchgate, Mumbai-20

..... (अपीलार्थी / Appellant)

Vs.

M/s Purple Medical Solutions Pvt. Ltd.  
65-66, Avior, Nirmal Galaxy, L.B.S. Road,  
Mulund (W), Mumbai-80

..... (प्रत्यर्थी / Respondent)

**स्थायी लेखा सं./PAN NO. AAACP3664L**

अपीलार्थी की ओर से / Appellant by	:	Shri Abi Rama Karthikeyan, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Nimesh Chotani, AR

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)(2)/967/2015-16 dated 15.12.2016. The assessment was framed by the Dy. Commissioner Of Income Tax, Circle-



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7(3)(2), Mumbai (in short 'DCIT'/ 'AO') for the A.Y. 2013-14 vide order dated 30.01.2016 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, 1963 (hereinafter 'the Rules'). For this Revenue has raised the following three grounds: -

*"1. whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing relief in respect of disallowance u/s 14A r.w. Rule 8D which was made after considering factual and legal aspects involved in the case".*

*2. whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in deleting disallowance of Rs.80,55,516/- u/s 14A r.w. Rule 8D without appreciating the fact that during assessment proceedings the assessee itself furnished calculation of disallowance of Rs.6,28,350/-.*

*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. 80,55,516/- made by the Assessing Officer u/s 14A of the I.T. Act, 1961 read with rule 8D without appreciating the facts brought out by the AO and considering the fact that the Section 14A was intended to cover even those situation whether there is a possibility of exempt income being earned in future and it is not necessary for exempt income to have been included*



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*in the income of a particular year for the disallowance to be triggered.”*

3. At the outset, it is noticed that the assessee has not earned any exempt income and not claimed any exempt income in the return of income. This specific contention was raised before CIT(A), who reproduced assessee's contention in Para 4 as under: -

*“4. Appellants contentions - The AR explained that the appellant had not earned even a rupee of exempt income during the relevant previous year. He contended that the AO was perhaps influenced by the large investments of ₹ 12.03 crores made by the appellant in equity shares. However, the potential dividend-earning capabilities of any investments would be of no concern it comes to computation of disallowance under section 14A of the Act read with rule 8D of the Rules. Accordingly, he pleaded that the entire add addition made by the AO under section 14A of the Act should be deleted.”*

4. When this was pointed out the learned Counsel made statement at bar that no exempt income was earned by assessee and nothing exempt was claimed in the return of income. When this was pointed out to the learned Sr. Departmental Representative he could not controvert the above contention.

5. After hearing the rival contentions and going through the facts and circumstances of the case, 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, wherein this issue has considered 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 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.”*

6. 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 during the previous



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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.

**7. 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*

**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