

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव,लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos. 985 & 986/PUN/2016

निर्धारण वर्ष / Assessment Years : 2009-10 & 2012-13

Avinash Bhosale Infrastructure  
Pvt. Ltd.,  
2, ABIL House, Ganesh Khind  
Road, Range Hill Corner,  
Pune-411 007  
PAN : AABCA5452C

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-1(1), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak  
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 11.09.2018

घोषणा की तारीख / Date of Pronouncement : 29.11.2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM**

These two appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-1, Pune for the assessment years 2009-10 & 2012-13, respectively. Both the impugned orders are of even date i.e. 01.02.2016.

2. Since the issue raised in both the appeals is identical i.e. disallowance u/s.14A r.w.r 8D, these appeals are taken up together for adjudication and are disposed of vide this common order.

3. Shri Nikhil Pathak appearing on behalf of the assessee submitted that the assessee is a Private Limited company and is engaged in the business of building, operating infrastructure facilities etc. In assessment year 2009-10, the Assessing Officer vide order dated 06.02.2015 passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') made disallowance of Rs.5,12,810/- u/s.14A r.w.r.8D. The ld. AR submitted that during the period relevant to the assessment year under appeal, the assessee has not earned any exempt income. The ld. AR contended that where no exempt income has been earned by the assessee, no disallowance u/s.14A r.w.r. 8D is warranted.

3.1 The ld. AR further submitted that in assessment year 2012-13 as well, the Assessing Officer made disallowance of Rs.52,14,723/- u/s.14A r.w.r.8D. The assessee in the period relevant to assessment year 2012-13 also has not earned any exempt income, therefore, no disallowance u/s.14A r.w.r.8D is warranted.

4. On the other hand, Shri Pankaj Garg representing the Department vehemently defended the impugned order. The ld. DR submitted that disallowance under Rule 8D is mandatory where the assessee has made investment irrespective of the fact whether the assessee has earned dividend income from the investment or not. The ld. DR placed reliance on the CBDT Circular No.5/2014 dated 11.02.2014 and the decision of Amritsar Bench of

the Tribunal in the case of Lally Motors India (P) Ltd. Vs. Pr. Commissioner of Income Tax reported as 170 ITD 370.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below. The solitary issue raised in both the appeals is with respect to disallowances made u/s.14A r.w.r.8D as under:

<u>Assessment year</u>	<u>Disallowance</u>
2009-10	Rs.5,12,810/-
2012-13	Rs.52,14,723/-

A perusal of the assessment orders for the respective assessment years show that disallowance has been made under clause (iii) of Rule 8D(2) i.e. .5% of the average value of investment. It is an undisputed fact that in both the assessment years under appeal, the assessee has not earned any exempt income. We find that the Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs. Commissioner of Income Tax, 378 ITR 33 (Delhi) has held that where no exempt income has been earned by the assessee in the relevant assessment year, no disallowance u/s.14A is to be made. Similar view has been taken by the Hon'ble Madras High Court in the case of Redington (India) Ltd. Vs. Additional Commissioner of Income Tax reported as 392 ITR 633 and the Hon'ble Gujarat High Court in the case of Commissioner of Income Tax Vs. Corrttech Energy P. Ltd. reported as 372 ITR 97. Thus, in view of unrebutted facts and in the light of judgments mentioned above, we are of considered view that no disallowance under Rule 8D is called for in the impugned assessment years. Accordingly, the impugned orders for assessment years 2009-10 and 2012-13 are set aside and both the appeals of assessee are allowed.

6. In the result, both the appeals of the assessee are allowed.

Order pronounced on Thursday, the 29<sup>th</sup> day of November, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव / D. KARUNAKARA RAO)	(विकास अवस्थी / VIKAS AWASTHY)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29<sup>th</sup> November, 2018.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फाइल / Guard File.

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आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.