

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH 'A', CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य  
BEFORE: SHRI SANJAY GARG, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ ITA No.1234/Chd/2016

निर्धारण वर्ष / Assessment Year : 2011-12

M/s A.B. Grains Spirit (P) Ltd., First Floor, Sector 32-C, Chandigarh	बनाम	The Income Tax Officer, Ward 1(4), Chandigarh.
स्थायी लेखा सं./PAN NO: AAFCA4588D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

&

आयकर अपील सं./ ITA No.113/Chd/2017

निर्धारण वर्ष / Assessment Year : 2011-12

The D.C.I.T., Circle-1(1), Chandigarh.	बनाम	M/s A.B. Grains Spirit (P) Ltd., First Floor, Sector 32-C, Chandigarh
स्थायी लेखा सं./PAN NO: AAFCA4588D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri T.N. Singla, CA  
राजस्व की ओर से/ Revenue by : Smt.Chanderkanta, Sr.DR

सुनवाई की तारीख/Date of Hearing : 05.11.2018  
उदघोषणा की तारीख/Date of Pronouncement: 08.01.2019

**आदेश/Order**

**PER ANNAPURNA GUPTA, AM:**

The impugned cross appeals by the assessee and the Revenue have been filed against the order of the Commissioner of Income Tax (Appeals)-2, Amritsar, Camp at Chandigarh (in short CIT(A) dated 25.10.2016 passed u/s 250 (6) of the Income Tax Act, 1961 (in short referred to as 'Act').

2. The learned counsel for assessee filed an application of even date i.e. 5.11.2018 for seeking permission to withdraw his appeal. The learned D.R. did not have objection against the same. The appeal of the assessee is therefore dismissed as withdrawn.

3. We shall now be taking up the appeal of the Revenue in ITA No.113/Chd/2017.

4. The sole issue relates to deletion of disallowance of expenses made u/s 14A of the Act, read with Rule 8D of the Income Tax Rules, 1962 and the only effective ground raised by the Revenue reads as under:

*“2. The Ld.CIT(A) has erred in deleting the addition on disallowance of Rs.49,90,041/- u/s 14A r.w.s. 8D on account of investment in unquoted shares amounting to Rs.19,16,82,500/- the income earned (if any) from which is exempt from tax, without taking cognizance of Circular No. 5 of 2014 of CBDT on this issue?”*

5. Briefly stated, the Assessing Officer had observed that the assessee had made investment in unquoted shares of Rs.19,16,82,500/-, dividend income from which was exempt from tax. He, therefore, disallowed expenses amounting to Rs.49,90,041/- under section 14A of the Act computed as per Rule 8D of the Income Tax Rules, 1961.

6. The Ld.CIT (A) deleted the disallowance so made on noting that no exempt income was earned by the assessee and following the decision of the Hon'ble Punjab & Haryana High Court in the case of Hero Cycles Limited in ITA No. 331 of 2009 dated 4.11.2009 and the decision of the I.T.A.T.,

Chandigarh Bench in the case of ETE Electrogears Pvt. Ltd. in ITA No.314/Chd/2016 dated 11.8.2016 holding that no disallowance under section 14A is warranted where no exempt income has been earned.

7. Before us the Ld. D.R. relied upon the order of the Assessing Officer while the Ld. counsel for the assessee relied upon the order of the CIT (A) and further pointed out that the Hon'ble Jurisdictional High Court in the case of CIT Faridabad Vs. Lakhani Marketing INC. (1970) 208 (O&M) decided on 2.4.2014 has categorically held that unless and until there is receipt of exempt income in the concerned assessment year, section 14A of the Act cannot be invoked.

8. We have heard the rival contentions and perused the orders of authorities below. We do not find any merit in the present appeal. The issue regarding disallowance of expenses to be made in the absence of any exempt income earned has been settled in favour of the assessee by the Hon'ble Jurisdictional High Court in the case of Lakhani Marketing INC. (supra).

9. The Ld. D.R. has not brought to our notice any contrary decision of the Hon'ble Jurisdictional High Court or of the Hon'ble Apex Court in this regard. In view of the same, we see no reason to interfere in the order of the CIT (A) in deleting the disallowance made u/ 14A in the present case on finding that no exempt income was earned by the assessee during the year which fact has also remained

uncontroverted before us. In view of the same, ground No.2 of the appeal raised by the Revenue is dismissed.

10. In effect, the appeal of the Revenue is dismissed.

11. In the result, the appeal of the assessee is dismissed as withdrawn and the appeal of the Revenue is dismissed.

Order pronounced in the Open Court.

Sd/-  
संजय गर्ग  
(SANJAY GARG )  
न्यायकि सदस्य/ Judicial Member  
दिनांक /Dated: 8<sup>th</sup> January, 2019  
\*रती\*

Sd/-  
अन्नपूर्णा गुप्ता  
(ANNAPURNA GUPTA)  
लेखा सदस्य/ Accountant Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar