

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 5259/MUM/2017 (A.Y: 2010-11)**

Income Tax Officer – 6(3)(2) R.No. 503, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Indokem Ltd., 410/411, Khatau House, Ground floor, Mogul Lane, Mahim Mumbai – 400 016  <b>PAN: AAACI 2959 M</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by** : **Shri Nitesh S. Joshi**  
**Department by** : **Shri Abi Rama Kartikeyan**  
  
**Date of Hearing** : **15.11.2018**  
**Date of Pronouncement** : **30.01.2019**

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income–tax (Appeals)-12, Mumbai [hereinafter in short “Ld.CIT(A)”] dated 01.05.2017 for the Assessment year 2010-11.

2. The Revenue has raised the following grounds in its appeal: -

“1. “On the facts and circumstances of case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 64,82,047/- being disallowance u/s. 14A r.w.r.8D of the Act without appreciating the fact that disallowance of expenditure U/S.14A r.w.r.8D of the Act has been confirmed by herself in the assessee's own case for

A.Y.2011-12 wherein the facts regarding investment and funds available are identical to the year under consideration.

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 64,82,047/- being disallowance u/s. 14A r.w.r.8D of the Act without appreciating the fact that disallowance of expenditure U/S.14A r.w.r.8D of the Act is applicable even where tax payer in a particular year has not earned any exempt income."

3. At the outset, Ld. Counsel for the assessee submitted that the issue is squarely covered in favour of the assessee in assessee's own case wherein it has been held that when there is no exempt income there cannot be any disallowance u/s. 14A r.w. Rule 8D of the Act.

4. Ld. DR vehemently supported the orders of the Assessing Officer.

5. We have carefully perused the orders passed by the Coordinate Bench in assessee's own case in ITA.No.1414/MUM/2016 dated 15.06.2018 for the A.Y. 2011-12 and find that the issue has been decided in favour of the assessee, observing as under: -

"10. We have heard both the parties and perused the material available on record. At the time of hearing, the learned AR for the assessee submitted that the issue is covered in favour of the assessee by the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd [2015] 378 ITR 33 (Del), wherein it has been categorically held that section 14A will not apply if no exempt income is received or receivable during the relevant previous year. There is no dispute with regard to the fact that the assessee has not earned any exempt income during the year under consideration. Although the assessee has claimed exemption u/s. 10(34) for dividend income received from co-operative bank, such claim has been withdrawn before the Assessing Officer by stating that dividend received from co-operative bank is not exempted u/s. 10(34) and the claim made in the return of income by mistaken facts has been withdrawn. We further observed that the Hon'ble Delhi High Court in the case of Cheminvest Ltd (supra), in para 23 observed that the expression 'does not part of total income' in section 14A 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 said income. In other words, section 14A will not apply if no exempt income is received or receivable during the relevant previous year. In this case, on perusal of facts, we find that the assessee has not earned any exempt

*income, which form part of total income. Therefore, we are of the considered view that the Assessing Officer has erred in computing disallowance u/s. 14A by invoking Rule 8D(2)(ii) of the Income tax Rule, 1962. Hence, we direct the Assessing Officer to delete the additions made u/s. 14A of the Income tax Act, 1961."*

6. It is not in dispute that during this Assessment year assessee has not earned any exempt income. Thus, respectfully following the same we uphold the order of the Ld.CIT(A).

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on the 30<sup>th</sup> January, 2019

Sd/-  
**(G. MANJUNATHA)**  
**ACCOUNTANT MEMBER**  
Mumbai / Dated 30/01/2019  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**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.

//True Copy//

BY ORDER

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