

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member  
AND  
Shri S.Rifaur Rahman, Accountant Member**

**ITA No.787/Hyd/2018**  
(Assessment Year: 2014-15)

M/s. Dakshin Infrastructures Private Ltd Hyderabad PAN:AACCD4138P (Appellant)	Vs	Income Tax Officer Ward 17(1) Hyderabad (Respondent)
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For Assessee :	Shri T. Chaitanya Kumar
For Revenue :	Shri Nilanjan Dey, DR

Date of Hearing:	20.02.2019
Date of Pronouncement:	13.03.2019

**ORDER**

**Per Smt. P. Madhavi Devi, J.M.**

This is assessee's appeal for the A.Y 2014-15 against the order of the CIT (A)-5, Hyderabad, dated 23.02.2018.

2. Brief facts of the case are that the assessee company, engaged in the business of civil construction, filed its return of income for the A.Y 2014-15 electronically on 28.09.2014 declaring income of Rs.62,05,220/-. The case was selected for scrutiny under CASS and accordingly notice u/s 143(2) dated 07.09.2015 was issued and served on the assessee. During the assessment proceedings, the AO noticed that the assessee company has made investments in other companies to the tune of Rs.45,33,31,212/-.

Presuming that the company must have incurred some sort of administrative/managerial expenditure to manage the investments, the AO observed that the provision of section 14A r.w.r 8D is applicable and the disallowance of expenditure is to be made accordingly. Therefore, he worked out the disallowance of Rs.22,66,656/- under rule 8D(2)(iii) being 0.5% of the average value of the investment and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A), who confirmed the order of the AO and the assessee is in second appeal before us by raising the following grounds of appeal:

*“1. The order of the Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law to the extent it is prejudicial to the assessee.*

*2. The learned Commissioner of Income Tax (Appeals) erred in confirming the order of the assessing Officer without giving any further opportunity.*

*3. The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in holding that the provisions u / s 14 A of the 1. t act is applicable.*

*4. The learned Commissioner of Income Tax (Appeals) in confirming the action of the Assessing officer in making addition an amount of Rs.22,66,656/- u/s 14A of the I.T.Act .*

*5. The learned Commissioner of Income Tax (Appeals) ought to have considered the fact the appellants not received any exemption income.*

*6. Any other ground that may be urged at the time of hearing”.*

3. The learned Counsel for the assessee submitted that during the relevant A.Y, the assessee has not earned any dividend/exempt income and therefore, the provisions of section 14A are not applicable to this A.Y. He has filed copies of the

return of income, computation of total income for the A.Y 2014-15 along with financial accounts to demonstrate that the assessee has not earned any dividend/exempt income during the relevant A.Y. Thus, he prayed for deleting the additions made by the AO and confirmed by the CIT (A).

4. The learned DR, however, relied upon the orders of the authorities below.

5. Having regard to the rival contentions and the material on record, we find that the Hon'ble Delhi High Court in the case of Cheminvest Ltd vs. CIT reported in 378 ITR 33 (Del.) has held that if there is no dividend income (which is exempt from tax) earned during the relevant period, no disallowance u/s 14A can be made. This decision has been followed by us in a number of cases to which both of us are signatories. Therefore, respectfully following the decision of the Hon'ble Delhi High Court (cited supra), the appeal of the assessee is allowed.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 13<sup>th</sup> March, 2019.

**Sd/-**  
**(S.Rifaur Rahman)**  
**Accountant Member**

**Sd/-**  
**(P. Madhavi Devi)**  
**Judicial Member**

Hyderabad, dated 13<sup>th</sup> March, 2019.

***Vinodan/sps***

Copy to:

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- 2 ITO Ward 17(1) Hyderabad
- 3 CIT (A)-5 Hyderabad
- 4 Pr. CIT – 5 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

*By Order*