

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'A', NEW DELHI

BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER

ITA No. 6345/Del/2015

AY: 2011-12

&

ITA No. 6346/Del/2015

AY: 2012-13

Cosmos Industries Ltd. C/o Garg R Kumar & Associates Chartered Accountants 7-Advocate Chamber Raj Nagar Dt. Centre Above Dominos Pizza Ghaziabad PAN: AAACC6682R	vs.	Income Tax Officer Ward 3(4) New Delhi
(Appellant)		(Respondent)

Assessee by : Sh. Rakesh Garg & Sh. Ankit Garg, CAs.

Department by : Smt. Aastha Lakshmi, Sr.D.R.

Date of Hearing : 07/03/2019

Date of Pronouncement: 28/03/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeals have been filed by assessee against order dated 31/08/15 passed by Ld.CIT(A)-2, New Delhi for assessment year 2011-12 and 2012-13 on following grounds of appeal:

ITA No. 6345/Del/2015

1. *That under the facts and circumstances, the learned CIT(A) erred in law as well as on merits of case in sustaining addition made under section 14A of the Income Tax Act, 1961 read with Rule 8D of Rs. 2434230/- when the assessee has no exempt income. Where neither any expenditure is incurred nor earned an exempt income, disallowance under section 14A is not tenable.*
2. *Further that the learned CIT (A) has erred in law as well as on merits of case in trying to establish that assessee does not have interest free funds to cover the amount of investment. Investment was to the tune of Rs. 7.35 crores as against capital plus reserves of Rs. 11.88 crores as on 31.03.2012. Where interest free funds are available to the assessee and also raised loans, it can be presumed that investment were made from available interest free funds. If is established by various High courts that investment could be made out of interest free funds generated or available with the company if interest free funds are sufficient to meet the investments.*
3. *The learned CIT (A) was not justified even not discussing and ignoring the judgments of Hon'ble High courts of Allahabad, Bombay, Gujarat, Punjab & Haryana which were cited by assessee in its written submission. In these leading cases additions made on the same issue was deleted and it was held that In the absence of any tax free income, corresponding expenditure could not be worked out for disallowance and where assessee's own funds and non interest bearing funds exceeds the tax free securities.*
4. *The appellant claims to add amend or withdraw any of the ground of appeal on or before the date of hearing.*

ITA No. 6346/del/2015

1. *That under the facts and circumstances, the learned CIT(A) erred in law as well as on merits of case in sustaining addition made under section 14A of the Income Tax Act, 1961 read with Rule 8D of Rs. 4911451/- when the assessee has no exempt income. Where*

neither any expenditure is incurred nor earned an exempt income, disallowance under section 14A is not tenable.

2. Further that the learned CIT (A) has erred in law as well as on merits of case in trying to establish that assessee does not have interest free funds to cover the amount of investment. Investment was to the tune of Rs. 7.35 crores as against capital plus reserves of Rs. 11.88 crores as on 31.03.2012. Where interest free funds are available to the assessee and also raised loans, it can be presumed that investment were made from available interest free funds. If is established by various High courts that investment could be made out of interest free funds generated or available with the company if interest free funds are sufficient to meet the investments.

3. The learned CIT (A) was not justified even not discussing and ignoring the judgments of Hon'ble High courts of Allahabad, Bombay, Gujarat, Punjab & Haryana which were cited by assessee in its written submission. In these leading cases additions made on the same issue was deleted and it was held that In the absence of any tax free income, corresponding expenditure could not be worked out for disallowance and where assessee's own funds and non interest bearing funds exceeds the tax free securities.

4. The appellant claims to add amend or withdraw any of the ground of appeal on or before the date of hearing.

2. It has been submitted by parties before us that, solitary issue involved in both these appeals are in respect of disallowance computed by assessee under section 14 A read with Rule 8D (2) (ii) of Income Tax Rules.

2.1. We are therefore inclined to dispose of these appeals by way of common order. For sake of convenience, facts for assessment year 2011-12 are being considered.

3. Assessment year 2011-12

Brief facts of the case are as under:

During year under consideration assessee had shown investment of Rs. 6,50,15,930/-as on 31/03/11 and Rs. 25,33,430/-as on 01/04/10. Ld.AO called upon assessee to explain applicability of provisions of section 14A of the Income Tax Act, 1961 (the Act). Ld.A.O. while completing assessment made disallowance of Rs. 22,65,357/-under Rule 8D (2) (ii) and Rs.1,68,873/-under Rule 8D (2) (iii) of Income Tax Rules.

4. Aggrieved by order of Ld. AO, assessee preferred appeal before Ld.CIT(A) who dismissed appeals filed by assessee thereby upholding disallowance made by Ld. AO.

5. Aggrieved by order of Ld.CIT(A) assessee is in appeal before us now.

6. Admittedly, Ld.AR submitted that there is no dividend income earned by assessee during years under consideration. He placed reliance upon computation at page 2 of small paper book, wherein assessee declared agricultural income amounting to Rs.2,244/-. Further at page 3 profit and loss account for year ending 31/03/11 reveals that assessee earned interest income, agriculture income, profit on sale of assets and other income including balance written off under Scheduled 13.

6.1. It has been thus submitted by Ld.AR that assessee has not earned any dividend income during the year which is exempt from payment of tax for attributing any expenditure under Rule 8D of Income Tax Rules, 1963.

6.2. Ld. Sr.DR on the contrary placed reliance upon orders of authorities below.

7. We have perused submissions advanced by both sides in light of records placed before us.

8. On reading of para 3.2.3 of order passed by Ld.CIT(A) admittedly, there is no exempt income earned by assessee during year. Ld.CIT(A) proceeded to uphold disallowance on footing that it is not necessary that exempt income should be earned during that very year under consideration.

8.1. In our considered opinion this view of Ld.CIT (A) has been overturned by decision of *Hon'ble High Court* in case of *Chem Investment Ltd. vs CIT* reported in (2015) 61 taxman.com 118.

8.2. We refer to following observations by *Hon'ble Delhi High Court*:

23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression 'does not form part of the total income' in Section 14A of the 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 the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year."

8.3. Thus in our considered opinion interpretation of section 14 A by Ld. CIT(A) cannot be upheld. Respectfully following decision of Hon'ble Delhi High Court in case of *Chem Investment Ltd. vs CIT*, we allow grounds raised by assessee.

Accordingly grounds raised by assessee for A.Y. 2011-12 stands allowed.

8.4. For A.Y. 2012-13, the facts are identical and assessee has not earned any exempt income. We therefore following the decision of Hon'ble Delhi High Court in case of ChemInvest Ltd. Vs. CIT(supra) reject view of Ld.CIT(A).

Accordingly grounds raised by assessee for A.Y. 2012-13 stands allowed.

9. In the result appeals filed by assessee stands allowed for both the A.Yrs 2011-12 and 2012-13.

Order pronounced in open court on 28/03/2019.

Sd/-

(N.S. SAINI)
ACCOUNTANT MEMBER

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 28th March, 2019

- GMV

Copy forwarded to: -

Appellant
Respondent
CIT
CIT(A)
DR, ITAT

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By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	Date
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Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	