

आयकर अपीलीय अधिकरण “D” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 4658/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

The Dy. Commissioner of Income Tax, Central Circle 1(4), Room No.902, Pratistha Bhavan, 9 th Floor, Old CGO Building Annexe, Mumbai-400 020	Vs.	M/s D.B. Hospitality Pvt. Ltd. D.B. House, Gen A.K. Vaidya Marg, Goregaon (E), Mumbai-400 063.
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AACCN1891R		

अपीलार्थी की ओर से / Appellant by	:	Shri Abirama Karthikeyan, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri V.R. Gajaria, AR

सुनवाई की तारीख / Date of hearing:	20.03.2019
घोषणा की तारीख / Date of pronouncement :	01.04.2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

This appeal filed by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-47, Mumbai [in short CIT(A)], Appeal No. CIT(A)-47/AP.21/15-16 vide order dated 30.03.2017. The



Assessment was framed by the Dy. Commissioner Income Tax, Circle-1(4), Mumbai (in short 'DCIT/ITO/ AO') for the A.Y. 2012-13 vide order dated 24.03.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of expenses relatable to exempt income on the ground that the assessee has not earned any exempt income during the year under consideration. For this Revenue has raised the following ground: -

"i. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 7,55,68,875/- u/s 14A on the ground that dm11 assessee did not earn any exempt income during the year without appreciating that the disallowance u/s 14A was required to be made irrespective of whether if the assessee had earned exempt income during the year or not."

ii. On the facts and circumstances of the case and in law, the Id. CIT(A) erred deleting the disallowance u/s 14A for the A.Y.-2012-13 without appreciating the fact that the circular No.5 of 2014 dated 11th February, 2014, issued by Central Board of Direct Taxes clearly provides for disallowance of expenditure even



where taxpayer in a particular year has not earned any exempt income."

3. At the outset, the learned Counsel for the assessee took us through the Para 4 of the order of the AO, wherein the AO has categorically noted that the assessee has not earned any exempt income and the relevant para reads as under: -

"4. On verification of the details of investment it is found that the assessee company has made certain investments which may result exempt income, however, the assessee company has not earned any exempt income during the year but there are investments which are likely give exempt income in the hands of the assessee....."

4. The learned Counsel for the assessee from the very ground raised by Revenue stated that this is only issue. On the other hand, the learned Sr. Departmental Representative relied on the assessment order.

5. We have heard rival contentions and gone through the facts and circumstances of the case. We are of the view that once the assessee has not earned any exempt income, the issue is squarely covered by the decision of Hon'ble Bombay High Court, Nagpur Bench in the case of Pr. CIT vs. Ballarpur Industries Limited in Income Tax Appeal No. 51 of 2016, wherein this issue has been considered and finally following the judgment of Hon'ble Delhi High Court in the case of Cheminvest Limited vs. CIT (2015) 378 ITR 33 (Delhi) held as under: -



“On hearing the learned Counsel for the Department and on a perusal of the impugned orders, it appears that both the Authorities have recorded a clear finding of fact that there was no exempt income earned by the assessee. While holding so, the Authorities relied on the judgment of the Delhi High Court in Income Tax Appeal No. 749/2014, which holds that the expression “does not form part of the total income” in Section 14A of the Income Tax Act, 1961 envisages that there should be an actual receipt of the 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. The Income Tax Appellate Tribunal held that the provisions of Section 14A of the Income Tax Act, 1961 would not apply to the facts of this case as no exempt income was received or receivable during the relevant previous year. It is not the case of the Assessing Officer that any actual income was received by the assessee and the same was includible in the total income. In the facts of the case, the Authorities held that since the investments made by the assessee in the sister concerns were not the actual income received by the assessee, they could not have been included in the total income.”

6. As the issue is squarely covered by the decision of Hon’ble Bombay High Court holding that once there is no exempt income claimed



ITAs No. 4658/Mum/2017

by the assessee no disallowance can be made under the provisions of section 14A of the Act read with rule 8D of the Rules. Hence, we confirm the order of CIT(A) deleting the addition. This issue of Revenue's appeal is dismissed.

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

Order pronounced in the open court on 01-04-2019.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 01-04-2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai