

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (D), KOLKATA
[Before Shri P.M. Jagtap, Vice President & Shri S.S. Godara, JM]**

I.T.A. No. 1391/Kol/2018
Assessment Year: 2014-15

JCIT, OSD, CC - 1(3) Kolkata.....Appellant
110, Shantipally, 3rd Floor,
Kolkata - 700 107.

M/s. Gangadhar Developers Pvt. Ltd.....Respondent
Kapil Centre, 2nd Mile Sevoke Road,
Salugara, Jalpaiguri, W.B. - 734 401.
[PAN: AACCG 0424 H]

Appearances by:

Shri I, Jamir, SR. DR, JCIT appearing on behalf of the Revenue.
Shri Subash Agarwal, Advocate appearing on behalf of the Assessee.

Date of concluding the hearing : February 13, 2019

Date of pronouncing the order : April 24, 2019

ORDER

Per P.M. Jagtap, Vice President (KZ)

This appeal filed by the revenue is directed against the order of Ld. CIT(A) whereby he deleted substantially the disallowance made by the AO u/s 14A of the Act read with Rule 8D.

2. The assessee in the present case is a company which is engaged in the business of property development. The return of income for the year under consideration was filed by it on 30.03.2015 declaring a total income of Rs. 6,54,20,080/-. As noted by the AO during the course of assessment proceedings, the assessee company had made a substantial investment in the shares of other group companies. According to the AO, even if no dividend income was earned by the assessee on the said investment, disallowance u/s 14A for expenses incurred in relation to the exempt income was liable to be made. Since no such disallowance was offered by the assessee, the AO

applied Rule 8D to work out the expenses incurred by the assessee in relation to the earning of exempt income at Rs. 1,43,60,206/- and disallowance to that extent was made by him u/s 14A.

3. The disallowance made by the AO u/s 14A read with Rule 8D was challenged by the assessee in the appeal filed before the Ld. CIT(A) and by following the decision of the Tribunal in assessee's own case for A.Y. 2012-13, the Ld. CIT(A) held that the investment made by the assessee in the shares of other group concerns being strategic in nature, the disallowance u/s 14A could be made only on account of other expenses as per clause (iii) of sub-rule (2) of Rule 8D. He accordingly directed the AO to restrict the disallowance u/s 14A only to that extent. Aggrieved by the order of the Ld. CIT(A), the Revenue has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. Although the learned DR has strongly relied on the order of the Assessing Officer in support of the Revenue's case on this issue, the learned counsel for the assessee has supported the impugned order of the Ld. CIT(A) on the issue under consideration by relying on the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs CIT 378 ITR 38 wherein it was held that no disallowance u/s 14A could be made if no exempt income was actually earned by the assessee in the relevant year. Since no exempt income in respect of dividend was actually earned by the assessee during the year under consideration, we respectfully follow the decision of Hon'ble Delhi High Court in the

case of Cheminvest Ltd. (supra) and uphold the impugned order of the Ld. CIT(A) to the extent of relief given by him to the assessee on the issue of disallowance u/s 14A.

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

Order Pronounced in the Open Court on 24th April, 2019.

Sd/-
(S.S. Godara)
JUDICIAL MEMBER

Sd/-
(P.M. Jagtap)
VICE PRESIDENT

Dated: 24/04/2019

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Gangadhar Developers Pvt. Ltd., Kapil Centre, 2nd Mile Sevoke Road, Salugara, Japaiguri, WB-734 401.
2. JCIT, OSD, CC – 1(3), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata