

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C', NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3935/Del/2016
Assessment Year: 2012-13

Asstt. Commissioner of Income Tax, Circle-12(1), New Delhi	Vs.	M/s. Incredible Capital Ltd., 8/19, Ground Floor, Smile Chamber, WEA, Karol Bagh, New Delhi
PAN :AABCI4307C		
(Appellant)		(Respondent)

Appellant by	Smt. Rinku Singh, Sr.DR
Respondent by	Shri Lalit Mohan, CA

Date of hearing	02.05.2019
Date of pronouncement	08.05.2019

ORDER

PER O.P. KANT, A.M.:

The present appeal by the Revenue is directed against the order of Learned Commissioner of Income Tax (Appeals) -4, New Delhi, dated 19.04.2016 for the assessment year 2012-13. The Revenue raised following grounds of appeal:

- 1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made of Rs.4,56,123,938/- on account of disallowance made u/s 14A.*
- 2. The appellant craves leave for reserving the right to amend, modify, add or forego any ground(s) of appeal at any time before or during the hearing of appeal.*

2. The facts in brief of the case are that the assessee is a company engaged in the business of providing financial services and other allied activities. The assessee filed its return of income on 29.03.2013 declaring total income of Rs.59,83,260/-. The case was selected for scrutiny. During the course of assessment proceedings, the AO observed that the assessee company has paid interest of Rs.4,56,23,938/-, which included interest of Rs.81,78,225/- on term loan of Rs.2,74,45,713/- to others. The AO further held that the interest paid by the assessee during the year under consideration is related to investment in shares, income from which does not or shall not form part of total income for the purpose of taxation under the Income-tax Act, 1961 (in short 'the Act'). Section 14A of the Act regulates the expenditure which was incurred in relation to exempt income. By virtue of this section, no deduction is allowable in respect of expenditure incurred by the assessee on account of income which does not or shall not form part of the total income under the Act. Consequently, he made addition of Rs.4,56,23,938/-. Aggrieved, the assessee filed appeal before the CIT(A), who deleted the addition observing as under:

"4. I have carefully considered the submissions of the Id. AR, assessment order and case law cited by him. The AO stated that interest paid by the assessee is related to the investment in shares, income from which does not or shall not form part of total income for the purpose of taxation under the Income Tax Act, 1961. He therefore held that section 14A of the LT. Act, 1961 regulates the expenditure which was incurred in relation to exempt income and by virtue of this section no deduction is allowable in respect of expenditure incurred by the assessee on account of income which does not or shall not form part of the total income under the Act. He relied upon the decision of Special Bench, New Delhi in the case of M/s Cheminvest Ltd. ITA No. 87/D/2008 wherein it has been held that the disallowance u/s 14A is to be made even if no exempt

income has resulted or earned by the assessee in the year under consideration. The AO thus computed the disallowance at Rs. 4,56,23,938/- being the expenditure on interest incurred and claimed by the appellant company. The appellant stated that it had no dividend income and therefore as per judgment of Hon'ble Delhi High Court in the case of CIT v Holcim India (P) Ltd. 272 CTR 282 no disallowance should be made. Further no expenditure was incurred and also the AO did not record any satisfaction before proceeding to make the disallowance.

The decision of Hon'ble Delhi high Court in the case of CIT vs. Holcim India (P) Ltd. is in favour of the appellant. Further the decision relied upon by the AO stand reversed by the judgment of Hon'ble Delhi high Court in the case of Cheminvest Ltd. vs. CIT 61 taxmann.com 118. Thus respectfully following above binding judgements and since the appellant does not have any dividend income no disallowance under section 14A can be made. Further in the case of CIT vs. Taikisha Engineering India Ltd. 370 ITR 338(061.), Hon'ble Court followed the case of Maxopp Investment Ltd. vs. CIT 347 ITR 272 (Del.), which also goes in favour of appellant. Thus whenever the issue of 14A arises the AO should ascertain the correctness of the claim of the appellant in respect of expenditure incurred or not incurred in relation to income which does not form part of the total income under the Act. In case the AO is satisfied with the claim of the appellant, the AO should accept the claim of the appellant so far as the quantum of disallowance is concerned. In case the AO after giving the appellant an opportunity of being heard, is not satisfied with the correctness of the claim of the appellant, he should reject the claim after giving reasons. The AO is to then determine the amount of expenditure incurred in relation to income which does not form part of the total income. The language of sub section 14A(1) is abundantly clear that relation has to be seen between the exempt income and expenditure incurred in relation to it.

In the instant case there is no satisfaction recorded by the AO in terms of section 14A(3) of the Act and thus on this ground alone disallowance is not tenable. The disallowance of Rs 4,56,23,938/- is therefore deleted. Thus ground of appeal is allowed.”

2.1 Aggrieved with the order of the learned CIT(A), the Revenue is before us.

3. The sole issued involved in the appeal is with respect to the addition of Rs.4,56,23,938/-made under Section 14A of the Act.

4. The assessee has submitted that he did not earn any dividend income during the year under consideration. In view of decisions of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs. CIT, 378 ITR 33, no disallowance can be made in the hands of the assessee.

5. Learned DR relied on the order of the Assessing Officer.

6. We have heard the rival submissions of the parties and perused the relevant material on record. We find that the decision relied upon by the AO stands reversed by the judgment of Hon'ble Delhi High Court in the case of Cheminvest Ltd. (supra), wherein it is held that "*Section 14A will not apply if no exempt income is received or receivable during the relevant previous year*". The relevant finding of the decision of the Hon'ble Delhi High Court is reproduced as under:

"22. In the impugned order, the ITAT has referred to the decision in Maxopp Investment Ltd. (supra) and remanded the matter to the AO for reconsideration of the issue afresh. The issue in Maxopp Investment Ltd. (supra) was whether the expenditure (including interest on borrowed funds) in respect of investment in shares of operating companies for acquiring and retaining a controlling interest therein was disallowable under [Section 14 A](#) of the Act. In the said case admittedly there was dividend earned on such investment. In other words, it was not a case, as the present, where no exempt income was earned in the year in question. Consequently, the said decision was not relevant and did not apply in the context of the issue projected in the present case.

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.

24. Consequently, the impugned order of the ITAT is set aside and the appeal is allowed in the above terms. This Court should not be understood to have expressed any opinion on the issue of whether for the AY in question the interest expenditure incurred by the Assessee would be allowable as business expenditure under Section 36 (1)(iii) of the Act."

7. Thus, respectfully following the above ratio, we hold that in case when there is no dividend income in the hands of the assessee, no disallowance can be made. Accordingly, we uphold the order of the learned CIT(A).

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

Order is pronounced in the open court on 8th May, 2019.

**Sd/-
[BHAVNESH SAINI]
JUDICIAL MEMBER**

**Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER**

Dated: 8th May, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi