

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH, "SMC" AT KOLKATA**

(समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य)

[Before Shri A. T. Varkey, JM]

**I.T.A. No. 1897/Kol/2018****Assessment Year: 2013-14**

|   |     |                           |
|---|-----|---------------------------|
| M/s. Laxmiwan Shoppers Pvt. Ltd.<br>[PAN: AACCL 2322 H] | Vs. | ITO, Ward – 6(4), Kolkata |
| Appellant   |     | Respondent                |

|                       |                                    |
|-----------------------|------------------------------------|
| Date of Hearing       | 20.02.2019                         |
| Date of Pronouncement | 15.05.2019                         |
| For the Appellant     | Shri Vinod Kumar Jain, FCA         |
| For the Respondent    | Shri Rabin Choudhury, ACIT, Sr. DR |

**ORDER**

This is an appeal preferred by the Assessee against the order of the CIT(A)-2, Kolkata dated 11.07.2018 for Assessment Year 2013-14.

- The only grievance of the assessee against the action of the Ld.CIT(A) in confirming the addition made by the AO of Rs. 5,80,953/- u/s 14A of the Act.
- Brief facts of the case is that the AO while going through the balance sheet noted that the assessee has made investment in equities and has failed to add proportionate expenditure incurred for earning exempt income as per section of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').
- When the AO gave show cause to the assessee as to why disallowance u/s 14A read with Rule 8D should not be resorted to, the AR of the assessee submitted that the assessee did not earning any exempt income this year and, therefore, the suo moto disallowance of Rs. 1,46,032/- should be accepted and no disallowance by applying Rule 8D should be made against the assessee. However, the AO did not agree and he took note of the CBDT Circular No. 5 of 2014 and made a disallowance of half percentage of average investment which comes to Rs. 5,80,953/- which was disallowed and added to the income of the assessee. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the action of the AO. Aggrieved the assessee is before us.

5. I have heard both the sides and perused the records. I note that the assessee has not earned any exempt income in this assessment year, however suo-moto disallowed Rs 1,46,032/-and, therefore, since there was no exempt income, there cannot be any disallowance u/s 14A of the Act resorted to by applying mechanically Rule 8D for that I rely upon the order of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs CIT 378 ITR 33 and delete the disallowance of Rs. 5,80,953/-.

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

Order is pronounced in the open court on 15 May, 2019

Sd/-

(Aby. T. Varkey)  
Judicial Member

Dated : 15 May, 2019  
Biswajit (Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Laxmiwan Shoppers Private Limited, C/o. RSVPC & Company, 41A, A.J.C. Bose Road, Suite No. 613, 6<sup>th</sup> Floor, Kolkata – 700 017.
2. Respondent – ITO, Ward-6(4), P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A),
4. CIT ,
5. DR,

/True Copy,

By order,

Assistant Registrar/H.O.O  
ITAT, Kolkata