

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

**ITA NOs. 7073, 7074 & 7092/MUM/2017  
(A.Ys: 2014-15, 2012-13 & 2013-14)**

Dy. Commissioner of Income Tax Central Circle – 8(2) Room No. 658, 6 <sup>th</sup> Floor Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Associate Holdings Pvt. Ltd. 85-A, Associate House, Mustafa Bazar, Mumbai  <b>PAN: AAACA 5289 N</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**CO Nos. 30, 31 & 32/MUM/2019  
[ARISING OUT OF ITA NOs. 7074, 7092 & 7074/MUM/2017  
(A.Ys: 2012-13, 2013-14 & 2014-15)]**

M/s. Associate Holdings Pvt. Ltd. 85-A, Associate House, Mustafa Bazar, Mumbai  <b>PAN: AAACA 5289 N</b>	v.	Dy. Commissioner of Income Tax Central Circle – 8(2) Room No. 658, 6 <sup>th</sup> Floor Aayakar Bhavan, M.K. Road, Mumbai-400 020
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by** : **Shri K. Gopal &  
Ms. Neha Paranjpe**

**Department by** : **Shri Anadi Varma**

**Date of Hearing** : **01.05.2019**

**Date of Pronouncement** : **08.05.2019**

## ORDER

### PER C.N. PRASAD (JM)

1. These three appeals and cross objections are filed by the Revenue and assessee for the A.Ys. 2012-13, 2013-14 & 2014-15 against different orders of the Ld. Commissioner of Income-tax (Appeals)-50, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 20.04.2016.

2. In all these appeals the Revenue has raised the following common ground except for the figures: -

(i) *"Whether on facts and circumstances of the case and in law, the Ld CIT(A) erred in restricting the disallowance u/s 14A to the extent of exempt income and thereby deleting the addition of Rs. 2,20,11,094/- made by the Assessing Officer ignoring the fact that the Assessing Officer has rightly made a disallowance u/s 14A as per working of Rule 8D of the Income Tax Act, 1962".*

3. At the outset, Ld. Counsel for the assessee submitted that on identical issue came up for hearing before the Tribunal for the A.Y. 2011-12 in ITA.No. 7255/MUM/2017 and CO.No. 29/MUM/2019 and by order dated 08.03.2019, the Tribunal upheld the order of the Ld.CIT(A) in restricting the disallowance u/s. 14A r.w. Rule 8D to the dividend income earned by the assessee during the Assessment year. Ld. Counsel for the assessee submits that cross objection was dismissed as not pressed. He pleaded that the same may be followed for these Assessment Years also which are under appeal now.

4. Ld. DR however strongly supporting the orders of the Assessing Officer also placed reliance on the decisions in the cases of Lally Motors India (P.) Ltd v. PCIT [170 ITD 370 (ASR)], in the case of J.H. Fin Vest (P.) Ltd. v. DCIT [148 ITD 326 (Del)] and Doubledot Finance Ltd v. DCIT [65 SOT 324 (Mum)].

5. We have heard the rival submissions, perused the orders of the Authorities below. On a perusal of the decision of the Coordinate Bench, we find that identical issue came up for hearing for the A.Y. 2011-12 wherein the Tribunal sustained the order of the Ld.CIT(A) in restricting the disallowance u/s. 14A r.w.r. 8D to the dividend income earned by the assessee during the relevant Assessment year. While holding so, the Tribunal concluded as under: -

*“6. We have gone through the entire material on record in the light of the rival contentions of the parties. The only grievance of the revenue is that the Ld. CIT (A) has wrongly restricted the disallowance made u/s 14A read with rule 8D to the exempt income earned by the assessee during the previous year. The Ld. CIT (A) has restricted the disallowance to the exempt income by following the decisions of the Hon’ble High Delhi Court. The operative part of the order of the Ld. CIT (A) reads as under:-*

*“5.3 I have considered the stand of the A.O as well as the submissions of the appellant. It has been explained by the Id. A/R that during the year the appellant has received exempt income of Rs. 50,545/-. As per decision of Hon’ble Delhi High Court in the case of Cheminvest Ltd. as well as other judicial pronouncements relied by the Ld. A/R. In view of the facts and circumstances of the case, as well as judicial pronouncements, the addition made u/s 14A for the present assessment year is restricted to the exempt income of Rs. 50,545/-.*

7. *In the case of Cheminvest Ltd. vs. Commissioner of Income Tax (supra) the Hon’ble Delhi High Court has held that section 14A will not apply if no exempt income is received or receivable during the previous year. In the case of Joint Investment P. Ltd. vs. Commissioner of Income Tax*

(supra), the Hon'ble Delhi High Court has laid down the principle of law that the disallowance u/s 14 A read with Rule 8D cannot exceed the exempt income. The relevant para of the order of the Hon'ble High Court reads as under:-

*"9. In the present case, the AO has not firstly disclosed why the appellant/assessee's claim for attributing Rs. 2,97,440 as a disallowance under s. 14A had to be rejected Taikisha Engg. India Ltd. (supra) says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assesses's claim or explanation. The second aspect is there appears to have been no scrutiny of the accounts by the AO an aspect which is completely unnoticed by the CIT (A) and the Tribunal. The third, and in the opinion of this Court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is Rs. 48,90,000, the disallowance ultimately directed works out to nearly 110 per cent of that sum, i.e. Rs. 52,56,197. By no stretch of imagination can s. 14A or r. 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in s. 14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case."*

*8. In the present case, the assessee has earned the exempt income of Rs. 50,445/- during the previous year, against which the AO made disallowance of Rs. 1,10,39,577/- u/s 14A read with rule 8D. In the first appeal the Ld. CIT(A) has restricted the disallowance to the amount of exempt income. Under these circumstances, we are of the considered view that the order passed by the Ld. CIT (A) is in accordance with the principles of law laid down by the Hon'ble High Court in the case of Joint Investment Pvt. Ltd. vs. CIT (supra). Hence, we do not find any reason to interfere with the findings of the Ld. CIT (A). We accordingly uphold the findings of the Ld. CIT (A) and dismiss the sole ground of appeal of the revenue."*

6. In view of the order of the Tribunal for the A.Y. 2011-12 and the facts being identical, we uphold the order of the Ld.CIT(A) in restricting the disallowance u/s. 14A r.w. Rule 8D to the dividend income earned by the assessee during these three Assessment years which are under appeal before us. Accordingly, we sustain the order of the Ld.CIT(A) and uphold

the findings. Grounds raised by the Revenue are dismissed. The cross objections filed by the assessee are dismissed as not pressed.

7. In the result, appeals of the Revenue and cross objections of the assessee are dismissed.

Order pronounced in the open court on the 08<sup>th</sup> May, 2019

Sd/-  
**(MANOJ KUMAR AGGARWAL)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 08/05/2019  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**