

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

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
SH. KULDIP SINGH, JUDICIAL MEMBER**

ITA No.4417/Del/2016
Assessment Year: 2012-13

ACIT Circle – 52 (1) New Delhi	Vs	M/s. Oil Industry Development Board, 301, World Trade Centre, Babar Road, New Delhi PAN No. AAAJO0032A
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Paramita M. Biswas, CIT DR
Respondent by	Sh. Sushil Kumar Gupta, CA

Date of hearing:	06/06/2019
Date of Pronouncement:	12/06/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the revenue is directed against the order dated 02.05.2016 of the CIT(A)-18, New Delhi relating to A. Y. 2012-13.

2. The only effective ground raised by the revenue reads as under :-

“1. The Ld. CIT(A) has erred in deleting the addition of Rs.4,65,04,000/- made by the AO on account of 14A of the Act.”

3. Facts of the case, in brief, are that the assessee Oil Industries Development Board (herein after referred as OIIB) is an autonomous institution under the aegis of Ministry of Petroleum, Oil & Natural Gas constituted by an act of Parliament called Oil Industries (Development) Act, 1974 and is engaged in providing financial assistance for the development of oil industry. It filed its return of income on 29.09.2012 declaring income of Rs.4,68,01,50,851/-. The Assessing Officer during the course of assessment proceedings noted that the assessee has made investment in shares/ securities amounting to Rs.35,882 lacs & Rs.150,134 lacs as on first and last day of the year, respectively. The above investment is capable of yielding income which is exempt u/s. 10 of the IT Act. In view of this, the assessee was asked to furnish reasons as to why provision of section 14A of the Income Tax Act, 1961 may not be invoked and disallowance as per rule 8D(2) of the Income Tax Rules, 1962 may not be made. Rejecting the various explanation given by the assessee and relying on various decision the Assessing Officer applying provisions of Rule 14A r/w Rule 8D made addition of Rs.465.04 lacs.

4. In appeal the Ld. CIT(A) following his order for A. Y. 2011-12 deleted the addition by observing as under :-

5.24.4 " I have carefully considered the matter in the light of the foregoing.

Apart from the decisions relied on which support the contention of the AR, I

find that in the recent decision of Cheminvest Ltd of Hon'ble Delhi High Court in [2015] 61 taxmann.com 118 (Delhi) , the question of law before the Hon'ble HC was:

“Whether disallowance under section 14 A of the act can be made in a year in which no exempt income has been earned or received by the assessee?”

In answering the said question, the Hon'ble High Court at para 23 of the order has held:

In the context of the facts enumerated hereinbefore, the court answers the question by holding that the expression “does not form part of the total income” in section 14 A 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 14 A will not apply if no exempt income is received or receivable during the relevant previous year.

5.2.4.5 It is not possible to accept that no expenditure has been made in managing the shares of Rs.3,588 crore., particularly when the P & L account shows huge establishment and administrative expenses, part of which could be attributed to such investment.

However, in view of the judgement of the Hon'ble Delhi High Court in M/s Cheminvest Ltd(Supra),the addition in this case would not be sustained. The same is directed to be deleted....”

5.2.5 Following the same reasoning and in view of AR's arguments (see para 1.3 of the assessment order) claiming that no dividend was earned during the year and which has not been disputed by the AO, the addition is deleted.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We have

also considered the various decisions cited before us. We find the Tribunal in assessee's own case for A. Y. 2010-11 upheld the order of CIT(A) in deleting the addition by observing as under :-

*12. The AO disallowed an amount of Rs. 1,62,49,000/- u/s 14A by rejecting the contentions raised by the assessee that no expenses have been incurred by the assessee to earn the exempt income during the year under assessment. CIT (A) observed that "it cannot be ruled out that there is a proximate relationship between office establishment expenditure and interest expenditure to the investment resulting income not chargeable to tax. " Ld. CIT (A) relied upon order passed by the Tribunal in case of **Cheminvest Limited vs. ITO - 124 TTJ 577 (Del.) (SB)** by holding that, "if an expenditure is incurred in relation to income which does not form part of total income, it has to suffer disallowance irrespective of the fact whether any income is earned or not. " However, this decision has been overruled by the Hon'ble Delhi High Court in **Cheminvest Ltd. vs. CIT. (2015) 378ITR 33 (Delhi)**. So, in these circumstances, we are of the considered view that when the assessee has not earned any exempt income during the year under assessment, no disallowance is permissible u/s 14A of the Act. So, in these circumstances, this issue is also set aside to the AO to decide accordingly in view of the decisions rendered by Hon'ble Delhi High Court in the case titled as **Cheminvest Limited (supra)** in favour of the assessee.*

7. It is pertinent to mention here that the decision of the Tribunal was upheld by the Hon'ble Delhi High Court and the SLP filed by the Revenue was dismissed by Hon'ble Supreme Court. We find the Ld. CIT(A) deleted the disallowance made by the Assessing Officer u/s 14A r/w. Rule 8D on the ground that the assessee has not earned any dividend income during the year. The Ld. DR also could not controvert the above factual findings

given by the CIT(A), therefore, following the decision of Hon'ble Delhi High Court in the case of Cheminvest Limited (supra), we hold that no disallowance u/s. 14A r/w. Rule 8D is called for when the assessee has not received any dividend income during the year. The order of the CIT(A) is accordingly upheld and ground raised by the revenue is dismissed.

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 12.06.2019.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Neha
Date:- 12.06.2019

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	13.06.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	