

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER**

**ITA NO. 4307/MUM/2018 (A.Y: 2014-15)**

|   |    |   |
|---|----|---|
| M/s. Mukand Global Finance Limited<br>3 <sup>rd</sup> Floor, Bajaj Bhavan<br>226 Jamnalal Bajaj Marg<br>Nariman Point, Mumbai – 400 021<br><br><b>PAN: AAACM 8348 N</b> | v. | Asst. Commissioner of Income-Tax - 3(2)(1)<br>Room No. 608, Aayakar Bhavan<br>M.K. Road, Mumbai-400 020 |
| <b>(Appellant)</b>  |    | <b>(Respondent)</b>   |

**Assessee by** : **Shri M.A. Gohel**  
**Department by** : **Shri Chaitanya Anjaria**

**Date of Hearing** : **12.06.2019**

**Date of Pronouncement** : **12.06.2019**

**ORDER**

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

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)– 8, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 17.04.2018 for the A.Y. 2014-15.
2. The only issue in the appeal of the assessee is in respect of disallowance made u/s. 14A of the Act while computing the normal income as well as Book Profit u/s. 115JB of the Act.

3. At the outset Ld. Counsel for the assessee submits that assessee during the year earned dividend income of ₹.56,250/- and this fact was also recorded by the Assessing Officer in Para No 4.1 of his order. He submits that assessee has made suomoto disallowance of ₹.56,250/- being the expenditure incurred for earning dividend income restricting to the dividend income. Therefore, he submits that no further disallowance should be made u/s. 14A of the Act.

4. Ld. DR vehemently supported the orders of the authorities below.

5. Heard rival submissions, perused the orders of the authorities below. I agree with the submissions of the Ld. Counsel for the assessee that since assessee himself made suomoto disallowance to the extent of dividend income earned i.e. ₹.56,250/- there shall not be any further disallowance u/s. 14A r.w. Rule 8D of I.T. Rules.

6. In the case of Joint Investments Pvt. Ltd. v. CIT [372 ITR 694] the Hon'ble Delhi High Court held that the disallowance u/s. 14A of the Act should not exceed the exempt income. The Revenue filed SLP against this decision and the Hon'ble Supreme Court dismissed the SLP filed by the Revenue. Similar view has been taken by the Hon'ble Delhi High Court in the case of Cheminvest Limited v. CIT [378 ITR 33].

7. In the case of ACIT v. M/s. Ballarpur Industries Ltd., in ITA.No. 346 to 379/NAG/2014 dated 04.12.2015 the Nagpur Bench of the Tribunal following the decision of the Hon'ble Delhi High Court in the case of Cheminvest v. CIT (supra) held as under: -

*"6. We have heard both the sides at some length and carefully perused the orders of the authorities below in the light of the precedence cited. As far as the exemption for the years under consideration were concerned, it was an admitted factual position that the AO has not mentioned any such amount. Meaning thereby, there was no exempt income earned by the assessee for the years under consideration. In reply to one of our questions, the learned AR, Mr. K. P. Dewani has also made a statement at Bar that no dividend was declared, hence, there was no earning of exempted dividend income. He has also clarified that for the purpose of invocation of the provisions of section 14A of the IT Act, the AO has applied the formula only in respect of disallowance of proportionate interest expenditure. There was no allegation of the AO that the exempt income was earned by the assessee. In the light of the undisputed finding on facts, we have perused the decision of the Hon'ble Courts. We may like to mention that a view has been expressed consistently that if there is no exempted profit then there is no question of invocation of the provisions of section 14A of the IT Act but, we have also carefully perused that very decision of the Tribunal namely Cheminvest Ltd. (supra) was reversed by the Hon'ble Delhi High Court, copy placed in the compilation. The Hon'ble Delhi High Court in ITA No.749/2014 vide order dated 02-09-2015 titled as "Cheminvest Ltd. Vs CIT" has decided the substantial question of law that whether disallowance u/s 14A of the Act can be made in a year in which no exempt income has been earned or received by the assessee. The Final verdict was as under: -*

*"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."*

*7. In short, in a situation when that very order of the Tribunal which was the basis for invocation of the provisions of Section 14A of the IT Act got reversed by the Hon'ble Delhi High Court, hence, the very said basis do not survive any more. As a result, we hereby confirm the findings of the learned CIT (A) on this issue. We hereby also hold that in view of the numbers of decisions on this issue in favour of the tax payers, we find no force in this ground of appeal of the Revenue. The same is dismissed."*

8. This decision of the Tribunal has been affirmed by the Hon'ble Bombay High Court in the case of Pr.CIT v. M/s. Ballarpur Industries Limited in ITA.No. 51 of 2016 dated 13.10.2016 by rejecting the appeal of the Revenue and held that no substantial question of law arises. While holding so the Hon'ble High Court observed as under: -

*“On hearing the learned Counsel for the Department and on a perusal of the impugned orders, it appears that both the Authorities have recorded a clear finding of fact that there was no exempt income earned by the assessee. While holding so, the Authorities relied on the judgment of the Delhi High Court in Income Tax Appeal No. 749/2014, which holds that the expression “does not form part of the total income” in Section 14A of the Income Tax Act, 1961 envisages that there should be an actual receipt of the 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. The Income Tax Appellate Tribunal held that the provisions of Section 14A of the Income Tax Act, 1961 would not apply to the facts of this case as no exempt income was received or receivable during the relevant previous year. It is not the case of the Assessing Officer that any actual income was received by the assessee and the same was includible in the total income. In the facts of the case, the Authorities held that since the investments made by the assessee in the sister concerns were not the actual income received by the assessee, they could not have been included in the total income.*

*The findings of facts recorded by both the Authorities do not give rise to any substantial question of law.*

*Since no substantial question of law arises in this income tax appeal, the income tax appeal is dismissed with no order as to costs.”*

9. The Hon'ble Jurisdictional High Court held that if there is no exempt income there cannot be any disallowance. Respectfully following the said decision, I direct the Assessing Officer to delete the disallowance made u/s. 14A r.w. Rule 8D of I.T. Rules as the assessee itself restricted the disallowance to the entire dividend income. Grounds raised by the assessee are allowed.

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

Order pronounced in the open court on the 12<sup>th</sup> June, 2019

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 12/06/2019  
Giridhar, Sr.PS

**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**