

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER**  
**AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.874/Ind/2018**

**Assessment Year 2013-14**

DCIT-(Central)-2,  
Indore

V/s M/s. Keti-KJ Construction  
(India) Ltd,  
31/6, Vatsalya Chambers,  
Sneh Nagar, Indore

(Revenue)

(Respondent)

**PAN AAECK0182G**

Revenue by	Shri R.P. Mourya , Sr.DR
Assessee by	Shri Pankaj Shah, CA
Date of Hearing	29.07.2019
Date of Pronouncement	31.07.2019

**ORDER**

**PER MANISH BORAD, AM.**

The above captioned appeal at the instance of revenue pertaining to Assessment Year 2013-14 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-III, Indore (in short 'CIT(A)'), dated 23.08.2018, which is arising out of order u/s 144 of the Income Tax Act (In short the 'Act') dated 01.03.2016 framed by ACIT-(Central)-2, Indore.

2. Brief facts of the case as culled out from the records are that the assessee is a company engaged in the business of various civil construction activities viz. road building, water supply work etc. The assessee company filed its return declaring total loss of Rs. 2,13,74,983/- on 30.09.2013. The return processed u/s 143(1) of the Act. The case was manually selected for scrutiny. Notice u/s 143(2) of the Act was served upon the assessee on 11.09.2014. Thereafter a notice u/s 142(1) of the Act along with questionnaire were issued on 07.09.2015. As the assessee company did not comply to the notices/questionnaire issued by the Ld. A.O, the income of the assessee was assessed ex-parte u/s 144. Income assessed at Rs. (-) 35,87,790/- after disallowing Rs.1,55,20,966/- u/s 14A of the Act and also making adhoc disallowance at Rs.22,66,225/- out of the expenses. Aggrieved assessee preferred appeal before Ld. CIT(A) challenging the additions. Ld. CIT(A) deleted the addition of Rs.1,55,20,966/- made u/s 14A and partly allowed the adhoc disallowance of Rs.22,66,225/-.

3. Now the Revenue is in appeal challenging the deletion of disallowance of Rs.1,55,20,966/- raising following grounds of appeal;

*“On the facts and in the circumstances of the case, the Ld. CIT(Appeals) erred in law in deleting the disallowance of expenditure of Rs.1,55,20,966/- made by the assessing officer u/s 14A r.w.r 8D without appreciating the facts and evidences mentioned in the assessment order by the assessing officer”.*

4. Ld. Departmental Representative vehemently argued and supported the order of Ld. A.O.

5. Per contra Ld. Counsel for the assessee submitted that no exempt income has been earned by the assessee and therefore in view of the following judgments no disallowance u/s 14A of the Act is called for;

(i) Hon'ble Supreme Court of India in the case of PCIT vs GVK Project and Technical Services Ltd (2019) 106 taxman.com 181(SC)

(ii) Co-ordinate Bench of Indore in the case of ACIT v/s Ravi Seeds and Research Pvt. Ltd ITA Nos. 976 & 978/Ind/2016 order dated 18.7.2018.

(iii) Hon'ble High Court of Delhi in the case of Cheminvest v/s CIT (2015) 61 taxmann.com 118 (Del).

6. We have heard rival contentions and perused the records placed before us. Revenue is aggrieved with the finding of Ld. CIT(A)

deleting the disallowance u/s 14A of the Act at Rs.1,55,20,966/-.

There is no dispute to the fact that 'no exempt income' has been earned by the assessee during the year. Hon'ble High Court of Delhi in the case of *Cheminvest v/s CIT (2015) 61 taxmann.com 118 (Del) (supra)* has laid down the ratio that Section 14A of the Act will not apply if no exempt income is received or receivable during the year. We observe that same issue was raised in the case of *ACIT v/s Ravi Seeds and Research Pvt. Ltd (supra)* which was authored by us and similar view was taken by us observing as follows;

*"6. We have heard both the parties and perused the material available on record. After going through the judgment of the Hon'ble High Court of Delhi in the case of Cheminvest Limited (supra), we find that the Hon'ble High Court has categorically held that "the expression 'does not form part of the total income' in Section 14A of the Act 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." We, therefore, respectfully following the judgment of the Hon'ble High Court of Delhi (supra) hold that since during the year, under consideration, no exempt income has been earned by the assessee, no disallowance u/s 14A of the Act was called for. In this view of the matter, the orders of the authorities below are set aside and the ground of appeal taken by the assessee is allowed"*

7. We therefore respectfully following the judgment of Hon'ble High Court in the case of Cheminvest v/s CIT (2015) 61 taxmann.com 118 (Del) (*supra*) are of the considered view that Ld. CIT(A) has rightly deleted the disallowance u/s 14A and therefore no interference is called for in the finding of Ld. CIT(A). Sole ground raised by the revenue is dismissed.

8. In the result the appeal of the revenue stands dismissed.

The order pronounced in the open Court on 31.07.2019.

Sd/-

Sd/-

**( KUL BHARAT )**  
**JUDICIAL MEMBER**

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक /Dated : 31 July, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By order  
Assistant Registrar, ITAT, Indore