

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4164/Del./2016  
(ASSESSMENT YEAR : 2011-12)**

**ITA No.5013/Del./2016  
(ASSESSMENT YEAR : 2013-14)**

**ITA No.6402/Del./2017  
(ASSESSMENT YEAR : 2014-15)**

ACIT, Circle 15 (1),  
New Delhi.

vs. M/s. LG Chemical India Pvt. Ltd.,  
3B, 3<sup>rd</sup> Floor, Arjun Nagar,  
Safdarjung Enclave,  
New Delhi – 110 029.

**(PAN : AAACL1995J)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vishal Kalra, Advocate  
Shri S.S. Tomar, Advocate

REVENUE BY : Smt. Naina Soin Kapil, Senior DR

Date of Hearing : 25.07.2019

Date of Order : 29.07.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Since common questions of facts and law have been raised in the aforesaid appeals, the same are being disposed off by way of composite order to avoid repetition of discussion.

2. Appellant, ACIT, Circle 15 (1), New Delhi (hereinafter referred to as the 'Revenue') by filing the present appeal sought to set aside the impugned orders dated 10.05.2016, 18.07.2016 & 01.08.2017 passed by the Commissioner of Income-tax (Appeals)-5, New Delhi qua the assessment years 2011-12, 2013-14 & 2014-15 respectively on the identical ground that :-

***“That on the facts and circumstances of the case, ld. CIT (A)-05, New Delhi has erred in deleting the addition of Rs.63,16,500/- made by the AO, u/s 14A of the I.T. Act, 1961 in view of the CBDT Circular No.5/2014 dated 11.02.2014.”***

3. Briefly stated the facts necessary for adjudication of the issue at hand are : During assessment proceedings, Assessing Officer (AO) noticed that the assessee has made investment in LG Polymers India Pvt. Ltd. in AYs 2011-12, 2013-14 & 2014-15, the average of which has been computed at Rs.1,26,33,00,000/-. AO by invoking the provisions contained under section 14A of the Income-tax Act, 1961 (for short 'the Act') read with Rule 8D of the Income-tax Rules, 1962 (for short 'the Rules') and relying upon the CBDT Circular No.5/2014 dated 11.02.2014 and ***Daga Capital Management Pvt. Ltd. 312 ITR (AT) 01 (Delhi)(SB)*** and ***Cheminvest Ltd. vs. ITO (2009) 317 ITR (AT) 86 (Delhi)(SB)***, made disallowance of Rs.63,16,500/- each for AYs 2011-12, 2013-14 & 2014-15.

4. Assessee carried the matter by way of appeals before the ld. CIT (A) who has deleted the addition made by the AO u/s 14A of the Act by

partly allowing the appeals. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeals.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Ld. DR for the Revenue challenging the impugned orders relied upon the orders passed by the AO as well as on CBDT Circular No.5/2014 dated 11.02.2014. However, on the other hand, in order to repel the arguments addressed by the Id. DR for the Revenue, Id. AR for the assessee contended that when no dividend/exempt income has been earned by the assessee during the years under assessment, no disallowance can be made u/s 14A of the Act and further contended that the identical issue has been decided by the coordinate Bench of the Tribunal in *assessee's own case for AY 2010-11 in ITA No.1819/Del/2015 order dated 03.05.2016*.

7. Undisputedly, no dividend/exempt income has been earned by the assessee during the years under assessment and this fact is proved from the audited balance sheet as on 31.03.2011, 31.03.2013 & 31.03.2014, available at pages 1 to 12, 36 to 55 and 84 to 101 of the paper book respectively. It is settled principle of law that when there is no dividend/exempt income earned by the assessee during the year under assessment, no disallowance u/s 14A can be made. Moreover, in

AY 2010-11, identical issue has been decided by the coordinate Bench of the Tribunal in favour of the assessee by following the decision of *Hon'ble Delhi High Court in case of Cheminvest vs. CIT – 61 taxmann.com 118 (Del.)*.

8. In these circumstances, AO proceeded to invoke provisions contained u/s 14A r/w Rule 8D on the basis of conjectures and surmises in mechanical manner by holding that the expenses may not be directly incurred for earning tax free income but the expenses which can be attributed to such income are to be disallowed and relied upon the CBDT Circular No.5/14 dated 11.02.2014, we are of the considered view that disallowance u/s 14A cannot be made in mechanical manner particularly when no investment has been made by the assessee during the years under assessment nor any dividend/exempt income has been earned.

9. Hon'ble Delhi High Court in case of the *Pr. CIT vs. IL&FS Energy Development Company Ltd. – (2017) 399 ITR 483 (Delhi)* decided the identical issue by discussing circular (supra) in favour of the assessee and the ratio of the judgment (supra) for ready perusal is extracted as under :-

*“Section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (CBDT Circular v. rule 8D) - Assessment year 2011-12 - Whether CBDT Circular No.5/2014 dated 11-2-2014 cannot override express provisions of section 14A, read with rule 8D - Held, yes - Whether where no exempt income was earned in relevant assessment year, merely*

*because tax auditor had suggested in tax audit report that there ought to be such disallowance, it could not be a ground to make disallowance in terms of section 14A, read with rule 8D - Held, yes [Para 23] [In favour of assessee]”*

10. So, finding no illegality or perversity in the deletion of disallowance made by the AO u/s 14A by Id. CIT (A), all the aforesaid appeals filed by the Revenue are hereby dismissed.

**Order pronounced in open court on this 29<sup>th</sup> day of July, 2019.**

**Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 29<sup>th</sup> day of July, 2019  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-5, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**