

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "बी" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

**आयकर अपील सं. / ITA No.1242/PUN/2017**

**निर्धारण वर्ष / Assessment Year : 2013-14**

The Dy. Commissioner of Income Tax,  
Circle 9, Pune

.... अपीलार्थी/Appellant

Vs.

M/s. KSH International Pvt. Ltd.,  
Gat No.11/3, 11/4,  
Vill-Birdewadi, Chakan,  
Tal-Khed, Pune – 410501

.... प्रत्यर्थी / Respondent

PAN:AAACB1897K

अपीलार्थी की ओर से / Appellant by : Shri Prashant Gadekar  
प्रत्यर्थी की ओर से / Respondent by : Shri A.N. Kothary

**आयकर अपील सं. / ITA No.1266/PUN/2017**

**निर्धारण वर्ष / Assessment Year : 2012-13**

Magarpatta Township Development &  
Construction Co. Ltd.,  
13, Megaspaces, Sholapur Bazar Road,  
Off East Street, Camp,  
Pune - 411001

.... अपीलार्थी/Appellant

PAN: AABCM2461K

Vs.

The Dy. Commissioner of Income Tax,  
Circle – 3, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri D.R. Barve  
प्रत्यर्थी की ओर से / Respondent by : Shri Pankaj Garg

**आयकर अपील सं. / ITA No.1240/PUN/2017**  
**निर्धारण वर्ष / Assessment Year : 2012-13**

M/s. Nyati Builders Pvt. Ltd.,  
Nyati Commerce House,  
Kalyani Nagar, Yerawada,  
Pune - 411006

.... अपीलार्थी/Appellant

PAN: AAACN6418N

Vs.

The Dy. Commissioner of Income Tax,  
Circle – 2, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Krishna Gujarathi  
प्रत्यर्थी की ओर से / Respondent by : Shri Pankaj Garg

सुनवाई की तारीख / <b>Date of Hearing : 17.07.2019</b>	घोषणा की तारीख / <b>Date of Pronouncement: 01.08.2019</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

Out of this bunch of appeals, one appeal filed by Revenue and other two appeals filed by different assessee are against respective orders of CIT(A), Pune, relating to assessment years 2013-14 and 2012-13 against respective orders passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The appeal in ITA No.1242/PUN/2017 is an appeal filed by Revenue and the other two appeals are filed by different assessee against disallowance made under section 14A of the Act. Though the appeals relate to different assessee but the issue raised in all these appeals is identical, hence we

proceed to decide all the appeals by this consolidated order for the sake of convenience.

3. The issue raised in this bunch of appeals is whether in case there is no exempt income in the hands of assessee, does it warrant any disallowance under section 14A of the Act or not?

4. First, we take up the appeal of Revenue in the case of M/s. KSH International Pvt. Ltd., wherein the following ground of appeal has been raised:-

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition on account of disallowance u/s 14A when the vide CBDT Circular No.5/2014, dated 11.02.2014 has clarified that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.*

5. The case of Revenue in the facts of assessee was that the assessee had made huge investments in equity shares and preference shares in its sister concerns and also in other public limited companies. It was further noted during the course of assessment proceedings by the Assessing Officer that the assessee had debited substantial interest expenses and hence, show cause notice was issued to the assessee as to why any disallowance should not be made under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules'). The case of assessee was that no disallowance under section 14A of the Act could be made where the exempt income earned by assessee was nil. This plea of assessee was not accepted by Assessing Officer and vide para 4.1 of assessment order, he holds that where the assessee had made investments in assets, income of which would not form part of total income and where there was huge liability of interest expenses,

then mandatory provisions of Rule 8D of the Rules are to be applied. He worked out the disallowance at ₹ 75,15,975/-.

6. The CIT(A) accepted the plea of assessee that where it had not earned any exempt income during the year, then no disallowance under section 14A of the Act is to be made. Reliance was placed on the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs. CIT (2015) 378 ITR 33 (Del) and also on various other decisions, which were relied upon by the learned Authorized Representative for the assessee.

7. The Revenue is in appeal against aforesaid finding of CIT(A).

8. The learned Authorized Representative for the assessee before us has pointed out that in a later decision, the Hon'ble Delhi High Court i.e. in Pr.CIT Vs. Oil Industries Development Board in ITA 197/2018 vide judgment dated 16.02.2018 applied the proposition laid down in Cheminvest Ltd. Vs. CIT (supra), wherein it was ruled that in the absence of any exempt income, disallowance under section 14A of the Act was not permissible and the appeal of Revenue was dismissed. The Revenue filed Special Leave Petition before the Hon'ble Supreme Court and vide judgment dated 08.02.2019 in item No.33 Court No.11 Section XIV, in Special Leave Petition (Civil) Diary Nos.2755/2019, it was held that *In view of the decision of this Court in Commissioner of Income Tax 5, Mumbai vs. Essar Teleholdings Ltd. through its Manager (2018) 3 SCC 253, we see no reason to entertain this special leave petition under Article 136 of the Constitution of India.* The said Special Leave Petition admittedly, was arising out of impugned final judgment and order dated 16.02.2018 in ITA No.197/2018 passed by the Hon'ble Delhi High Court.

9. In view of categorical finding of the Hon'ble Delhi High Court, which has further been upheld by the Hon'ble Supreme Court by dismissal of Special Leave Petition, we hold that in the absence of earning of any exempt income during the year under consideration, there is no merit in making any disallowance under section 14A of the Act read with Rule 8D of the Rules. The ground of appeal raised by Revenue is thus, dismissed.

10. In ITA Nos.1266/PUN/2017 and 1240/PUN/2017 the assessee is in appeal against orders of authorities below in making the aforesaid disallowance under section 14A of the Act and the assessee has challenged the orders of authorities below that in the absence of any exempt income during the year under consideration, no disallowance is warranted under section 14A of the Act read with Rule 8D of the Rules.

11. The issue raised in ITA Nos.1266/PUN/2017 and 1240/PUN/2017 is similar to the issue raised in ITA No.1242/PUN/2017 and our decision in ITA No.1242/PUN/2017 shall apply *mutatis mutandis* to ITA Nos.1266/PUN/2017 and 1240/PUN/2017.

12. In the result, the appeal of Revenue is dismissed and appeals of assessee are allowed.

Order pronounced on this 1<sup>st</sup> day of August, 2019.

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 1<sup>st</sup> August, 2019.

GCVSR

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-13 / CIT(A)-7/  
CIT(A)-2, Pune;
4. The PCIT-5 / PCIT-6 / PCIT-2, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR  
'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune