

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

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

ITA No.2184/Del/2017
Assessment Year: 2012-2013

M/s. Sunrays Properties & Investment Co. Pvt. Ltd. 414/1, 4 th Floor, DDA Comm, Complex, Distt. Center, Janakpuri, New Delhi PAN No. AAACS3655C (APPELLANT)	Vs.	ITO Ward – 24(3) New Delhi (RESPONDENT)
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Appellant by	Sh. Manu K. Giri, Advocate
Respondent by	Sh. S. S. Rana, CIT DR

Date of hearing:	04/12/2019
Date of Pronouncement:	06/12/2019

ORDER

PER R.K PANDA, AM:

This appeal filed by the assessee is directed against the order dated 18.01.2017 of the CIT(A)-15, New Delhi relating to A.Y.2012-13.

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

1. *That the learned Commissioner of Income Tax (Appeal), erred in rejecting assessee's contention that the disallowance should be*

restricted to Rs.3,41,12,414/- being the amount of exempt dividend income earned by the appellant company during the year under assessment against the disallowance of Rs. 12,30,89,691/- u/s 14A r. w. r. 8 D of the Income Tax Act made by Assessing Officer, whereas the disallowance, in view of the decisions of the jurisdictional Delhi High Court holding that the disallowance u/s 14A cannot exceed the amount of exempt income earned by the assessee.

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of dealing in shares, accepting and making inter corporate deposits and other line of activities as provided in MOA of the company. It filed its return of income on 29.09.2012 declaring loss of Rs.33,87,215/-. During the course of assessment proceedings the AO noticed from the P & L account of the assessee that the assessee has earned dividend income of Rs.3,41,12,414/-. He, therefore, asked the assessee to explain as to why the disallowance u/s. 14 A of the IT Act should not be made for earning the exempt income. In response to the same, the assessee filed a detailed working for disallowance u/s. 14A and calculated the same at Rs.12,12,09,906/-. The AO computed such disallowance at Rs.12,30,89,691/-. After considering the disallowance already computed by the assessee at Rs.12,12,09,906/-, the AO made further disallowance of Rs.18,79.758/- to the total income of the assessee.

4. The assessee filed on appeal before the CIT(A) challenging the addition. It also took an additional ground by stating that the

disallowance u/s.14A cannot exceed the exempt income. However, the Ld. CIT(A) rejected the ground raised by the assessee and upheld the disallowance so made by the AO.

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

6. The Ld. Counsel for the assessee at the outset filed the copy of the decision of the Tribunal in assessee's own case for the A.Y.2009-10 and submitted that on identical circumstances the Tribunal has directed the AO to make the disallowance to the extent claimed by the assessee as exempt. He accordingly submitted that this being a covered matter in favour of the assessee, the ground raised by the assessee should be allowed.

7. The Ld. DR on the other hand supported the order of the CIT(A).

8. After hearing both the sides we find the actual dividend earned by the assessee in the instant case is only Rs.3,41,12,414/-. The Hon'ble Delhi High Court in the case of CIT Vs. Holcim India Private Limited reported in 90 CCH 81 has held that the disallowance u/s. 14 A cannot exceed the actual dividend earned by the assessee. We further find the Tribunal in assessee's own case for the assessment year 2009-10 vide ITA No.353/Del/2014 order dated 17.02.2017 has observed as under :-

5. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the disallowance made by the AO is more than the exempted income claimed by the assessee. On a similar issue the ITAT Delhi Bench 'D' in the aforesaid referred to case of *M/s Global Capital Ltd., New Delhi Vs ACIT, Circle-12(l), New Delhi (supra)* by following the earlier decision dated 29.04.2015 of the ITAT 'C' Bench, New Delhi in the case of *Indus Valley Investment & Finance (P) Ltd. Vs DCIT in ITA No. 3763/Del/2013 for the assessment year 2009-10*, observed as under:

“3. We have heard the rival submissions and carefully perused the relevant material placed on record. At the very outset, learned counsel of the assessee submitted a copy of the order of the ITAT Delhi 'C' Bench in I.T.A. No.3763/Del/2013 for assessment year 2009-10 dated 29.4.15 in the case of *Indus Valley Investment & Finance (P) Ltd. vs DCIT* and submitted that in the similar set of facts and circumstances, the Tribunal in the case of assessee's group company has directed that the disallowance u/s 14A should not exceed the exempt income and therefore, the disallowance was restricted to the exempt income. Learned counsel of the assessee has drawn our attention towards para 4 of the Tribunal order (supra).

4. Learned Departmental Representative strongly supported the orders of the authorities below, however, he fairly accepted that in the similar set of facts and circumstances, the amount of disallowance has been restricted to the exempt income.

5. Firstly, it would be appropriate to reproduce the relevant part of the order of the Tribunal (supra) which has been relied by the learned counsel of the assessee which reads as follows

“4. We have heard the rival submissions and perused the relevant material on record. It is observed that the total exempt income earned by the assessee is to the tune of Rs.25.38 lac, against which an addition of Rs. 1.05 crore has been made. The Hon'ble Delhi High Court in *Joint Investment Pvt. Ltd. Vs. CIT*, vide its judgment dated 25.2.2015, has held that the disallowance u/s 14A cannot exceed the amount of exempt income. The Hon'ble Delhi High Court in the case of *CIT vs. Holcim India Pvt Ltd. (2014) 90 CCH 081-DEL-Hon'ble*

High Court, has held that there can be no disallowance u/s 14A in the absence of any exempt income. The rationale behind these judgments is that the amount of disallowance u/s 14A should not exceed the exempt income. Since the total exempt income in the instant case is Rs.25,38,020/-, we direct that the disallowance u/s 14A be restricted to Rs.18,01,968/- (Rs.25,38,020-Rs.7,36,052/-). The remaining amount of disallowance is directed to be deleted. ”

6. *In view of above, it is observed that in the similar set of facts and circumstances, the total exempt income earned by the present assessee is Rs.13,35,040 against which an addition of Rs.21,87,713 has been made by the Assessing Officer u/s 14A of the Act. As noted by the Coordinate Bench of this Tribunal that in the case of Joint Investment (P) Ltd. vs CIT (supra), the Hon 'ble Delhi High Court has held that the disallowance u/s 14A of the Act should not exceed the exempt income. The Tribunal also noted that the Hon 'ble Delhi high Court in the case of CIT vs Holcim India Pvt. Ltd. (supra) held that there can be no disallowance u/s 14A in the absence of any exempt income. I.T.A. No. 6586/Del/2013 Assessment year: 2009-10 Finally, the ratio laid down by the .Jurisdictional High Court noted that the disallowance should not exceed the exempt income during the relevant financial period. In the present case, since the total exempt income of the assessee is Rs. 13,35,040 and the assessee had suo inoto offered disallowance of Rs. 1,81,388 under Rule 8D(2)(Hi) of the Income Tax Rules, 1962 being 0.5% of the average value of the investment in the shares of Apollo Tyres Ltd. on which such dividend income was earned. Hence, we direct the Assessing Officer that the disallowance u/s 14A be restricted to Rs. 11,53,752 (Rs. 13,35,040 - Rs.1,81,388) and the remaining amount of disallowance is directed to be deleted. ”*

7. *We, therefore, respectfully following the aforesaid referred to order dated 27.11.2015 in ITA No. 6586/Del/2013 for the assessment year 2009-10 in the case of M/s Global Capital Ltd., New Delhi Vs ACIT, Circle-12(l), New Delhi, direct the AO to make the disallowance to the extent of the income claimed by the assessee as exempt.”*

9. Since the actual dividend income earned by the assessee is only Rs.3,41,12,414/-, therefore, the disallowance u/s. 14 A cannot exceed the actual dividend income received. We, therefore, set aside the order of the Ld. CIT(A) and allow the ground raised by the assessee.

10. In the result, the appeal filed by the assessee is allowed.
Order pronounced in the open court on 06.12.2019

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 06.12.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	04.12.2019
Date on which the typed draft is placed before the dictating Member	05.12.2019
Date on which the approved draft comes to the Sr.PS/PS	06.12.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	06.12.2019
Date on which the fair order comes back to the Sr. PS/ PS	06.12.2019
Date on which the final order is uploaded on the website of ITAT	06.12.2019
Date on which the file goes to the Bench Clerk	06.12.2019
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	