

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 1359/DEL/2017
[A.Y 2011-12]

The A.C.I.T
Circle 12(2)
New Delhi

Vs.

M/s International Hospital Ltd
C/o Escorts Heart Institute &
Research Centre, Okhla Road
New Delhi

PAN: AAACI 9712 A

(Applicant)

(Respondent)

Assessee By : Shri R.M.Mehta, CA

Department By : Ms. Sushma Singh, Sr. DR

Date of Hearing : 09.12.2019

Date of Pronouncement : 10.12.2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against the order of the
Commissioner of Income Tax [Appeals] - 19, New Delhi dated
13.12.2016 pertaining to assessment year 2011-12.

2. The solitary grievance of the Revenue is that the Id. CIT(A) erred in deleting the disallowance of Rs. 13,65,85,862/- made u/s 14A of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] read with Rule 8D of the Income tax Rules, 1962.

3. Briefly stated, the facts of the case are that the assessee company operates in hospital and health care industry and is engaged in the business of running a multi-speciality hospital under the brand name of 'Fortis Hospital'.

4. During the course of scrutiny assessment proceedings, the assessee was asked to give calculation of disallowance u/s 14A of the Act r.w.r 8D of the Rules. In its reply, the assessee emphatically stated that no dividend income has been earned, therefore, disallowance u/s 14A of the Act was made.

5. The Assessing Officer was not convinced with this reply of the assessee and was of the firm belief that the provisions of section 14A of the Act r.w.r. 8D of the Rules squarely apply on the facts of the case.

6. Drawing support from the decision of the Special Bench of the Tribunal in the case of *M/s Cheminvest Ltd* 317 ITR 86 [AT], the Assessing Officer computed the disallowance and made addition of Rs. 13,65,85,862/-.

7. The assessee agitated the matter before the ld. CIT(A) and vehemently contended that since there was no exempt income earned by the assessee during the year, there is no question of any disallowance u/s 14A of the Act.

8. After considering the facts and submissions, the ld. CIT(A) deleted the addition observing that the decision of the Special Bench of the Tribunal in the case of *Cheminvest Ltd* [supra] has been reversed by the Hon'ble High Court of Delhi in 61 Taxmann 118 and following the decision of the Hon'ble High Court, the ld. CIT(A) deleted the disallowance.

9. Before us, the ld. DR strongly supported the findings of the Assessing Officer and placed reliance on the decision of the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd* 402 ITR 640.

10. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

11. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that during the year under consideration, no exempt income was earned by the assessee. It is equally true that the decision of the Special Bench of the Tribunal in the case of Cheminvest Ltd [supra] has been reversed by the Hon'ble High Court of Delhi [supra] wherein the Hon'ble High Court has held that the expression "does not form part of 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 disallowance of any expenditure incurred in relation to the said income.

12. In other words the Hon'ble High Court held that section 14A of the Act will not apply if no exempt income is received or receivable during the relevant previous year. Similar view has been taken by the Hon'ble Gujarat High Court in the case of Corrttech Energy (P) Ltd 372 ITR 97.

13. The decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd [supra] has not considered whether there can be any disallowance if no exempt income is earned. Therefore, the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd would do no good to the Revenue.

14. Respectfully following the decision of the Hon'ble High Court of Delhi, we decline to interfere with the findings of the ld. CIT(A).

15. In the result, the appeal of the Revenue in ITA No. 1359/DEL/2017 is dismissed.

The order is pronounced in the open court on 10.12.2019.

Sd/-

**[SHRI KULDIP SINGH]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 10th December, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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