

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “सी”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH ‘C’, NEW DELHI**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री एन.काबिल्लैया, लब्धा सदस्य का समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM & SH. N.K.BILLAIYA, AM**

**आयकर अपील सं. / ITA No.329/Del/2017**

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

The ACIT,  
Circle-12(1), Room No.-405,  
C.R.Building, New Delhi.

..... प्रत्यर्थी / Respondent

vs

IL & FS Energy Development Co.Ltd.,  
A-268, 1<sup>st</sup> Floor, Bhisim Pitamah Marg,  
Defence Colony, New Delhi-110024.  
PAN-AABCI6885K

.....अपीलार्थी / Appellant

अपीलार्थी की ओर स□/ Appellant by : Sh. A.K.Saroha, CIT DR

प्रत्यर्थी की ओर स□/ Respondent by : None

सुनवाई की तारीख / Date of Hearing : 19.12.2019	घोषणा की तारीख / Date of Pronouncement: 19 .12.2019
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by Revenue is against order of CIT(A)-12, New Delhi dated 28.10.2016 relating to assessment year 2012-13 against the order passed under section 143(3) of the Income Tax Act, 1961 (in short “Act”).

2. Despite service of notice, none appeared on behalf of the assessee nor any application was filed seeking adjournment.

3. However, on perusal of the record, we find that only issue raised in this appeal is against the disallowance made u/s 14A of the Act by the Assessing Officer at approx.Rs.11.02 crores, which was reversed by the CIT(A) on the ground that the assessee during the year under consideration had not earned any dividend income. The CIT(A) relied on the ratio laid down by the Hon'ble Delhi High Court in Cheminvest Ltd. vs CIT, 378 ITR 33 (Delhi). The Revenue is in appeal against the order of CIT(A).

4. We find that the issue raised in the present appeal stands squarely covered by the decision of the Hon'ble Delhi High Court in Cheminvest Ltd. vs CIT (supra) wherein it has been laid down that where the assessee has made strategic investment in which it had not earned any exempted income and genuineness of expenditure was not in doubt, no disallowance u/s 14A read with Rule 8D could be made. The relevant findings of the Delhi High Court are as under:-

*“Expression ‘does not form part of the total income’ in section 14A envisages that there should be an actual receipt of income which was 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.”*

5. The CIT(A) has relied on the decision of Hon'ble High Court in para 9.5 in view of the issue being decided by the Jurisdictional High Court. We find no merit in the present appeal filed by the Revenue.

6. In the result, appeal of Revenue is dismissed.

Order pronounced in the open court on 19<sup>th</sup> day of December, 2019.

**Sd/-**

**(N.K.BILLAIYA)**  
लखा सदस्य/ACCOUNTANT MEMBER

**Sd/-**

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

दिल्ली / दिनांक Dated : 19<sup>th</sup> December, 2019.

\* Amit Kumar \*

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)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली  
**Assistant Registrar, ITAT, Delhi**