

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. 2289/DEL/2017
[A.Y 2012-13]

M/s Hindustant Thermal Projects Ltd
[Formerly known as Moser Baer Power
& Infrastructure Ltd
616A [16A], 6th Floor, Devika Tower
Nehru Place, New Delhi

Vs.

The D.C.I.T
Circle - 17(1)
New Delhi

PAN: AAFCM 6703 L

(Applicant)

(Respondent)

Assessee By : Shri Dinesh Verma, Adv
Department By : Shri S.N. Meena, Sr. DR

Date of Hearing : 27.01.2020
Date of Pronouncement : 27.01.2020

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] -33, New Delhi dated 12.01.2017 pertaining to assessment year 2012-13.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the disallowance made by the Assessing Officer 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. Facts emanating from the assessment order show that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has made investment in shares amounting to Rs. 6.47 crores. The Assessing Officer was of the firm belief that provisions of section 14A r.w.r 8D squarely apply and invoking the provisions of section 14A r.w.r 8D, the Assessing Officer computed the disallowance at Rs. 1,76,40,848/-.

4. The assessee carried the matter before the Id. CIT(A) but without any success.

5. Before us, the Id. counsel for the assessee stated that during the year under consideration, the assessee has not received any exempt income and, therefore, no disallowance is to be made u/s 14A of the Act.

6. We have given thoughtful consideration to the orders of the authorities below. There is no dispute that during the year the assessee did not earn any exempt income from tax. Since there is no exempt income earned by the assessee during the year, there cannot be any disallowance u/s 14A r.w.r 8D. This issue is by now well settled in favour of the assessee and against the revenue by the decision of the Special Bench of the Tribunal in the case of M/s Cheminvest Ltd 121 ITD 318 which was affirmed by the Hon'ble High Court of Delhi. Same view is taken by the Hon'ble Gujarat High Court in the case of Corrttech Energy (P) Ltd 372 ITR 97. In view of the above, the impugned disallowance is directed to be deleted. Accordingly, the Ground raised by the assessee is allowed.

9. In the result, the appeal of the assessee in ITA No. 2289/DEL/2017 is allowed.

The order is pronounced in the open court on 27.01.2020.

**Sd/-
[KULDIP SINGH]
JUDICIAL MEMBER**

**Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 27 January, 2020.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi