

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B +SMC": NEW DELHI  
BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 4431/Del/2018  
(Assessment Year: 2008-09)

Milan Dairy Food (P) Ltd, 22/218, West Patel Nagar, New Delhi PAN: AACCM5333P	Vs.	ACIT, Circle-5(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri V. Raja Kumar, Adv
Revenue by:	Shri Umesh Takyar, Sr. DR
Date of Hearing	31/10/2019
Date of pronouncement	27/01/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against provision of section 14A applied. The registry noted that the appeal of the assessee is delayed 884 days. The reasons given by the assessee in the application that the company general manager retired from the service of the company and the now incumbent did not get linked with the pending task and therefore appeal could not be filed. The appeal was filed when counsel at the time of penalty proceedings informed the assessee. As nobody is benefitted by delaying filing of appeal and the reasons shown by the assessee is also supported that employee details of retired employee, we condone the delay.
2. The order of the 1d CIT(A)-19, New Delhi dated 30.10.2015 for the Assessment Year 2008-09.
3. The assessee has raised the following grounds of appeal:-
  - “1. On the facts and in the circumstances of the case and in law, the 1d CIT(A) erred in confirming the addition made by the Assessing Officer by invoking the provision of Section 14A of the Income Tax Act, 1961 even though there was no exempt income earned during the relevant year. The action being arbitrary, erroneous and unlawful must be quashed with directions for appropriate relief.”
4. Assessee filed his return of income of Rs. 2879610/- wherein, the addition of Rs. 217272/- was made u/s 14A of the Act. The assessee preferred

appeal which reached the level of the ITAT. The ITAT remitted the matter back to the file of the ld AO. The ld AO passed fresh assessment order u/s 254 read with section 143(3) of the Act on 07.03.2014 wherein, he once again made an addition of Rs. 217272/-. The assessee preferred an appeal before the ld CIT(A). The ld CIT(A) dismissed the appeal of the assessee. Hence, assessee is in appeal before us.

5. The assessee submitted that it has not incurred any expenditure on investment in shares and it has also not earned any exempt income. Despite this fact the addition was made by the ld AO and confirmed by the ld CIT(A).
6. The ld AR reiterated the submission before the ld AO.
7. The ld DR supported the orders of the lower authorities.
8. We have carefully considered the rival contentions assessee has contested before the lower authorities that it has not earned any exempt income during the year. The above fact is not disputed. It is now an established fact by plethora of judicial precedents if there is no exempt income there cannot be any disallowance u/s 14A of the Act. In view of this the disallowance made by the ld AO and sustained by the ld CIT(A) deserves to be quashed.
9. In the result the appeal filed by the assessee is allowed.  
Order pronounced in the open court on 27/01/2020.

-Sd/-  
(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 27/01/2020  
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi