

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C", BENCH MUMBAI**

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER.**

**ITA No. 943/Mum/2017
(Assessment Year: 2012-13)**

Mr. Omprakash Basantlal Goenka, 101, 10 th Floor, Somerset House, Sofia College Lane, Warden Road, Mumbai-400026,	Vs.	Dy. Commissioner of Income-tax, Central Circle- 2(4), Mumbai.
PAN No. : AAECPG3845J		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Kumar Padmapani Bora (D.R)
Date of Hearing	23-01-2020
Date of Pronouncement	13/02/2020

ORDER

PER AMARJIT SINGH, J.M.

The assessee has filed the present appeal against the order dated 29-11-2016 passed by the CIT(Appeals)-48, Mumbai relevant to the assessment year 2012-13. The assessee has raised the following grounds:

1. *The Ld. CIT(Appeals) erred in confirming the addition made by Ld. D.C.I.T. on account of disallowance of Rs.1,47,11,057/- u/s 14A r.w.r. 8D.*
2. *The Ld. CIT(Appeals) erred in holding that expenses attributed towards earning exempt income even when there were no nexus.*
3. *The Ld. CIT(Appeals) erred in considering the facts that the major investment were made for acquiring strategic business stake."*

2. Brief facts of the case are that the assessee filed his return of income on 30-09-2012 declaring total income to the tune of Rs.6,91,34,050/- for the

assessment year 2012-13. The return was processed u/s 143(1) of the I.T. Act. Thereafter the case was selected for scrutiny. Notices u/s 143(2) and 142(1) were issued and served upon the assessee. During the year under consideration, the assessee has earned income under the head Business and Profession and Other Sources. The assessee has also earned income under the head Salary from M/s Mirah Decor Ltd. On verification, it was found that the assessee has earned the dividend income and long term capital gains which is exempt from tax which was claimed as exempt u/s 10(34) of the Act. The assessee has debited the interest on loan paid in a sum of Rs.7,88,64,921/-. The assessee has also shown its investment in a sum of Rs.33,18,79,749/-. The AO has applied the provision u/s 14A read with Rule 8D. Notice was given and after reply of the assessee, the expenditure to earn the exempt income was assessed in a sum of Rs.1,47,11,057/-. After some more disallowances, the income of the assessee was assessed in a sum of Rs.34,13,45,107/-. Feeling Aggrieved, the assessee filed an appeal before the CIT(Appeals) The CIT(Appeals) dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

3. We have heard the arguments advanced by the learned representative of the Department and has gone through the case file carefully. We noticed that the assessee did not appear before us despite issuance of notice. The assessee has earned the dividend income and long term capital gains which is exempt from tax. The AO disallowed the expenses to earn the exempt income in a sum of Rs.1,47,11,057/ which was confirmed by the CIT(A). The disallowance u/s 14A should not be more than the exempt income. The Hon'ble Delhi High Court in the case of **Joint Investment Pvt. Ltd. Vs. CIT (2015) 372 ITR 694** has held that the disallowance u/s 14A r.w. Rule 8D should only be to the extent of tax exempt income. We further note that the Hon'ble Delhi High Court in the case of **Holcim India Pvt. Ltd. (2014) 272 CTR 282 (Del.)** there can be no disallowance u/s 14A r.w. r 8D in absence of exempt income. The concept behind this judgement is that the amount of disallowance cannot exceed the

exempt income. Taking into account all these facts and circumstances and in view of the decisions of Hon'ble Delhi High Court mentioned above, we restore the matter back to the AO to re-compute the disallowance u/s 14A to the extent of exempt income. We direct accordingly.

4. In the result, the appeal filed by the assessee is hereby allowed partly for statistical purposes.

Order pronounced in the open court on this 13 /02/2020

Sd/-

(R.C. SHARMA)
ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)
JUDICIAL MEMBER

Mumbai; Dated :13 /02/2020.

Wakode, Sr.P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai