

**IN THE INCOME TAX APPELLATE TRIBUNAL “C”  
BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JM &  
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 6969/Mum/2018  
(निर्धारणवर्ष / Assessment Year: 2014-15)

Pony Infrastructure & Contractors Ltd. Ground Floor, D. B. House, Gen. A. K. Vaidya Marg, Goregoan(East), Mumbai-400 063	<b>बनाम/ Vs.</b>	ITO – 13(1)(4), Room No. 216 B, 2 <sup>nd</sup> floor, Aayakar Bhavan, Maharshi Karve Marg, Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN No. AACCD4446N		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri K. G. Bohra, AR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri Kumar Padmapani Bohra, DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	19.12.2019
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	22.01.2020

आदेश / ORDER

**PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):**

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-21, Mumbai, in short ‘Ld. CIT(A)’ dated 18.07.18 for AY 2014-15.

2. The issue in the present appeal is, whether in absence of any exempt income earned during the year, disallowance u/s 14A r.w.r. 8D of the Act can be made?

3. The brief facts of the case are that assessee filed its return of income on 22.11.14 declaring total income at Rs. 6,48,660/- as per normal provision of Income Tax. The return was processed u/s 143(1). Subsequently, the case was selected for scrutiny under CASS and accordingly, notices u/s 143(2) and 142(1) were issued and served on the assessee. In response, AR of the assessee filed the relevant information as called for. After considering the submission of assessee, AO passed assessment order u/s 143(3) of the Act determining the total income at Rs. 39,29,340/- by making disallowances u/s 14A r.w.r. 8D of the Act.

4. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties, partly allowed the appeal filed by the assessee.

5. Now before us, the assessee has preferred the appeal against the order of Ld. CIT(A).

6. At the outset, Ld. AR appearing on behalf of the assessee submitted during this year, assessee has not earned any exempt income, hence no disallowance u/s 14A r.w.r 8D can be made. Further he submitted the issue is squarely covered by the order of Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vrs. CIT (ITA No. 749/2014) and Hon'ble High Court of Judicature at Bombay in the case of PCIT vrs. Ballarpur Industries Ltd. (ITA No. 51 of 2016), wherein the Hon'ble High Courts have passed orders on identical ground in favour of the assessee.

7. On the other hand, Ld. DR supported the orders passed by the revenue authorities.

8. We have heard counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal has already been decided by the

Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vrs. CIT (ITA No. 749/2014), wherein it was held as under:-

*15. Turning to the central question that arises for consideration, the Court finds that the complete answer is provided by the decision of this Court in CIT v. Holcim India (P) Ltd. (decision dated 5th September 2014 in ITA No. 486/2014). In that case a similar question arose, viz., whether the ITAT was justified in deleting the disallowance under [Section 14A](#) of the Act when no dividend income had been earned by the Assessee in the relevant AY? The Court referred to the decision of this Court in Maxopp Investment Ltd. (supra) and to the decision of the Special Bench of the ITAT in this very case i.e. [Cheminvest Ltd. v. CIT](#) (2009) 317 ITR 86. The Court also referred to three decisions of different High Courts which have decided the issue against Revenue. The first was the decision in [Commissioner of Income Tax, Faridabad v. M/s. Lakhani Marketing Incl.](#) (decision dated 2nd April 2014 of the High Court of Punjab and Haryana in ITA No. 970/2008) which in turn referred to two earlier decisions of the same Court in [CIT v. Hero Cycles Limited](#) [2010] 323 ITR 518 and [CIT v. Winsome Textile Industries Ltd.](#) [2009] 319 ITR 204. The second was of the Gujarat High Court in [Commissioner of](#)*

*Income Tax-I v. Corrttech Energy (P) Ltd. [2014] 223 Taxmann 130 (Guj.) and the third of the Allahabad High Court in Commissioner of Income Tax, Kanpur v. Shivam Motors (P) Ltd. (decision dated 5th May 2014 in ITA No. 88/2014). These three decisions reiterated the position that when an Assessee had not earned any taxable income in the relevant AY in question "corresponding expenditure could not be worked out for disallowance.*

9. We also draw strength from the decision of Hon'ble High Court of Judicature at Bombay in the case of PCIT vrs. Ballarpur Industries Ltd. (ITA No. 51 of 2016), wherein it was held as under:-

*On hearing the learned Counsel for the Department and on a perusal of the impugned orders, it appears that both the Authorities have recorded a clear finding of fact that there was no exempt income earned by the assessee. While holding so, the Authorities relied on the judgment of the Delhi High Court in Income Tax Appeal No. 749/2014 {CHEMINVEST LIMITED vs. COMMISSIONER OF INCOME TAX (2015) 378 ITR 0033 (Delhi)}, which holds that the expression "does not form part of the total income" in Section 14A of the*

*Income Tax Act, 1961 envisages that there should be an actual receipt of the income, which is 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.*

*The Income Tax Appellate Tribunal held that the provisions of Section 14A of the Income Tax Act, 1961 would not apply to the facts of this case as no exempt income was received or receivable during the relevant previous year. It is not the case of the Assessing Officer that any actual income was received by the assessee and the same was includible in the total income. In the facts of the case, the Authorities held that since the investments made by the assessee in the sister concerns were not the actual income received by the assessee, they could not have been included in the total income.*

*The findings of facts recorded by both the Authorities do not give rise to any substantial question of law.*

*Since no substantial question of law arises in this income tax appeal, the income tax appeal is dismissed with no order as to costs.*

10. Therefore, respectfully following the aforesaid decisions which is applicable *mutatis mutandis* in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, we **allow** the grounds raised by the assessee by deleting the disallowance made u/s 14A r.w.r. 8D of the Act.

11. In the net result, the appeal filed by the assessee stands **allowed.**

*Order pronounced in the open court on 22<sup>nd</sup> Jan 2020.*

<i>Sd/-</i> (Saktijit Dey) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 22.01.2020
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File  
**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**