

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

Before Smt. Diva Singh, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1516/Del/2017 : Asstt. Year : 2012-13

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| DCIT, Circle-11(1), New Delhi | Vs | M/s Innus Infrastructure Pvt. Ltd., M-62 & 63, First Floor, Connaught Palace, New Delhi |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. AACCI1776N | | |

Assessee by : Ms. Neha Gupta, CA

Revenue by : Sh. S. N. Meena, Sr. DR

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| Date of Hearing: 03.03.2020 |
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| Date of Pronouncement: 06.03.2020 |
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the orders of the Id. CIT(A)-18, New Delhi dated 08.12.2016.

2. The ground relates to deletion of the disallowance made by the Assessing Officer u/s 14A of the Income Tax Act, 1961.

3. The short issue involved in the case is that whether the disallowance u/s 14A be more than the exempt income earned?

4. Brief facts of the case are that the assessee company is engaged in the business of development of infrastructure to undertake infrastructure project and to purchase, sell, develop, construct, acquire residential or commercial projects. It was submitted that the assessee company invested Rs.125,01,00,000/- at the beginning of the year and

Rs.45,01,00,000/- at the end of the year in the equity shares and received dividend income of Rs.5,32,425/- during the year under consideration. The Assessing Officer has disallowed an amount of Rs.3.40 crores u/s 14A of the Income Tax Act, 1961. The Id. CIT (A) has deleted the addition based on the judgment of Hon'ble Jurisdictional High Court in the case of Cheminvest Ltd. Vs CIT 378 ITR 33.

5. Aggrieved the revenue filed appeal before us.

6. The issue of disallowance of expenses u/s 14A relating to income not includable in the total income of the assessee has been dealt in various cases by the Tribunal and the High Courts wherein it was held that the disallowance cannot exceed the dividend income earned. For the sake of ready reference, the relevant portion of the order of the Hon'ble Jurisdictional High Court in the case of Cheminvest Ltd. Vs CIT 378 ITR 33 (Del.) is reproduced below:

"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. [2015] 57 taxmann.com 28. 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 assessment year? The Court referred to the decision of this Court in Maxopp Investment Ltd.'s case (supra) and to the decision of the Special Bench of the ITAT in this very case i.e. Cheminvest Ltd. v. ITO [2009] 121 ITD 318. The Court also referred to three decisions of different High Courts which have decided the issue

against Revenue. The first was the decision in CIT v. Lakhani Marketing Inc. [2014] 226 Taxman 45/49 taxmann.com 257 of the High Court of Punjab and Haryana which in turn referred to two earlier decisions of the same Court in CIT v. Hero Cycles Ltd. [2010] 323 ITR 518/189 Taxman 50 and CIT v. Winsome Textile Industries Ltd. [2009] 319 ITR 204. The second was of the Gujarat High Court in CIT v. Corrttech Energy (P.) Ltd. [2014] 223 Taxman 130/45 taxmann.com 116 and the third of the Allahabad High Court in CIT v. Shivam Motors (P.) Ltd. [2015] 230 Taxman 63/55 taxmann.com 262.

Further, in the case of Joint Investment Pvt. Ltd. Vs CIT 59 Taxmann 295, the Hon'ble Jurisdictional High Court held that the disallowance cannot exceed, the amount of exempt income earned.

7. Hence, following the established judicial pronouncement, we hereby decline to interfere with the order of the Id. CIT (A) in deleting the disallowance made by the Assessing Officer.

8. In the result, the appeal of the revenue is dismissed.
Order Pronounced in the Open Court on 06/03/2020.

Sd/-

(Diva Singh)
Judicial Member

Dated: 06/03/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR