

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

**Before Sh. Bhavnesh Saini, Judicial Member**

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

**(E-Court Module)**

**ITA No. 3575/Del/2017 : Asstt. Year : 2011-12**

Addl. CIT, Special Range-6, New Delhi	Vs	M/s MMTC Ltd., Core-1, Scope Complex, Lodhi Road, New Delhi-110003
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACM1433E</b>		

**Assessee by : Sh. Rohit Jain, Adv.**

**Revenue by : Ms. Pamita M. Biswas, CIT DR**

<b>Date of Hearing: 23.07.2020</b>	<b>Date of Pronouncement: 28.07.2020</b>
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**ORDER**

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

The present appeal has been filed by the revenue against the order of the Id. CIT(A)-6, Delhi dated 02.03.2017.

2. Following grounds have been raised by the revenue:

*"1. Whether on facts and in circumstances of the case the Ld. CIT(A) is legally justified in not upholding the disallowance amounting to Rs. 20,79,24,177/- u/s 14A of the Income Tax Act 1961 (the Act) read with rule 8D of the Income Tax Rules (the Rule) without considering legislative intent of introducing section 14A by the Finance Act 2001 as clarified by the CBDT Circular No. 5/2014 dated 10.02.2014?"*

*2. Whether on facts and in circumstances of the case the Ld. CIT(A) is legally justified in not upholding the disallowance u/s 14A of the Act read with rule 8D of the Rule amounting to Rs. 20,79,24,177/- without*

*considering legal principles that allowability / disallowability of expenditure under the Act is not conditional upon the earning of the income as upheld by Hon'ble Supreme Court in case of CIT Vs Rajendra Prasad Moody (1978) 115 ITR 519?*

*3. Whether on facts and in circumstances of the case the Ld. CIT(A) is legally justified in not upholding the disallowance u/s 14A of the Act read with rule 8D of the Rule amounting to Rs. 20,79,24,177/- without considering ratio decidendi as upheld in case of CIT Vs Walfort Share and Stock Brokers P Ltd [2010] 326 ITR 1 (SC) and Maxopp Investment Vs CIT [2012] 347 ITR 272 (Delhi) on application of provisions of section 14 A of the Act?*

*4. Whether on facts and in circumstances of the case the Ld. CIT(A) is legally justified in allowing relief to the assessee on the basis of its earlier orders in the assessee's own case despite the fact that principle of res-judicata is not applicable to Income Tax proceedings as each assessment year is a separate year?"*

4. All the grounds relates to deletion of the disallowance made by the Assessing Officer u/s 14A of the Income Tax Act, 1961. The short issue involved in the case is that whether any disallowance is allowable in the absence of earning of exempt income?

5. Brief facts of the case are that the assessee company is a public limited company incorporated on 26.09.1963 under the Companies Act, 1956 is a Government of India Public Sector Enterprises under Ministry of Commerce. During the year, the assessee has not earned any exempt income. 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.

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 no disallowance is warranted in cases where no exempt income has been earned by the assessee. 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. **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."***

7. Having heard the arguments of both the parties, we hereby uphold the principle that no taxation arises wherein the assessee has not earned any exempt income. Reliance is further placed on the following case laws:

- *CIT Vs Holcim India Pvt. Ltd. in ITA Nos.486 & 299/2014 (Del. HC)*
- *CIT Cheminvest Ltd. in ITA No. 749/2014 dated 02.09.2015 (Del. HC)*
- *ACIT Vs Bharat Hotels Ltd. (ITAT Delhi)*
- *CIT Vs Shivam Motors Pvt. Ltd. in ITA No. 88/2014 (All. HC)*
- *CIT Vs Cortech Energy Pvt. Ltd. 223 Taxman 130 (Guj.)*
- *CIT Vs Lakhani Marketing INC*
- *CIT Vs Delite Enterprises*
- *CIT Vs Hero Cycles Ltd. 323 ITR 518 (P&H)*
- *CIT Vs Winsome Textile Industries Ltd. 391 ITR 204*

8. Hence, following the established judicial pronouncements, we hereby decline to interfere with the order of the Id. CIT (A) in deleting the disallowance made by the Assessing Officer in the absence of claim of any exempt income.

9. In the result, the appeal of the revenue is dismissed.  
Order Pronounced in the Open Court on 28/07/2020.

Sd/-

**(Bhavnes Saini)**  
**Judicial Member**

**Dated: 28/07/2020**

\*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**