

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "C" : DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER  
ITA.No.7843/Del./2017  
Assessment Year 2013-2014

The ACIT, Circle-11(2), New Delhi	vs.	M/s. Him Urja Pvt. Ltd., S-321, Panchsheel Park, New Delhi – 110 017. PAN AAACH7036E
(Appellant)		(Respondent)

For Revenue :	Shri Bhagwati Charan, Sr. DR
For Assessee :	Shri Gautam Jain, Advocate

Date of Hearing :	03.11.2020
Date of Pronouncement :	03.11.2020

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-35, New Delhi, Dated 05.10.2017, for the A.Y. 2013-2014, challenging the Order of the Ld. CIT(A) in deleting the addition of Rs.3,05,66,905/- made by A.O. on account of disallowance made under

section 14A of the I.T. Act, 1961 read with Rule 8D(2)(iii) of I.T. Rules, 1962.

2. We have heard the Learned Representative of both the parties through video conferencing and perused the material available on record.

3. Briefly the facts of the case are that the assessee company is engaged in identifying the location, designing, construction, commissioning, generation and distribution of Hydro-electric Power. The assessee filed return of income at loss of Rs.5,90,06,240/-. The A.O. noted that assessee company has made investment of Rs.38.65 crores in the unquoted shares of M/s. Melkhet Power Private Limited for earning of dividend income. However, the assessee has not received any dividend income during the year. The A.O, however, by applying Rule 8D of the I.T. Rules, 1962, made the disallowance of the impugned amount under section 14A of the I.T. Act, 1961.

3.1. The assessee challenged the addition before the Ld. CIT(A). The written submissions of the assessee on merit

is reproduced in the appellate order. The assessee has also submitted before the Ld. CIT(A) that as there was no exempt income earned by assessee during the relevant previous year, no disallowance under section 14A could be made. The assessee relied upon Judgment of the Hon'ble Delhi High Court in the case of Chemninvest Ltd., vs., CIT-IV 61 taxmann.com 118 (Del.). The Ld. CIT(A) following this decision of the Hon'ble Delhi High Court deleted the entire addition. His findings in para 4.4.2 is reproduced as under :

*“4.4.2. In view of submissions of appellant and judicial pronouncement it is observed that the decision by the Hon'ble ITAT Delhi has been reversed by the Hon'ble Delhi High Court in the same case i.e. Chemninvest Ltd. vs. CIT-IV 61 Taxmann.com 118 (Delhi) vide order dated 02.09.2015 holding that "the the expression 'does not form part of the total income' in section 14A envisages that there should be an actual receipt of 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. In other words, section 14A will not apply if no exempt income is received or receivable during the relevant previous year. [Para 23]."* In the said judgment the Hon'ble Delhi High Court followed the case of *CIT vs. Holcim India P. Ltd.* 57 Taxmann.com 28 (2015) Delhi and distinguished the decision of *Maxopp Investment Ltd.* 347 ITR 272. Appellant has also relied upon various judgments in his favour on the same lines. Since, there is no claim of exempt income by the appellant during the year, the ratio laid down by Hon'ble Delhi High Court is squarely applicable in the case of appellant and accordingly no additions are called for. Hence, Ground nos. 1 to 4 are allowed."

4. After considering the rival submissions, we are of the view that the Departmental appeal has no merit. It is an undisputed fact that assessee has not received any dividend income during the year which fact is also mentioned by the

A.O. in the assessment order. Therefore, the issue is covered in favour of the assessee by the Judgment of the Hon'ble Delhi High Court in the case of Chemninvest Ltd., vs., CIT-IV (supra). Thus, Departmental appeal has no merit and the same is accordingly dismissed.

5. In the result, appeal of the Department dismissed.

Order pronounced in the open Court.

Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 03<sup>rd</sup> November, 2020

VBP/-  
Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'C' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.