

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT
AND
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

**ITA No. 6534/Del/2017
Assessment Year: 2013-14**

DCIT, Circle 1(1),
Gurgaon.

vs.

DLF Universal Ltd.
9th Floor, DLF Centre
Sansad Marg, New Delhi.
PAN : AAACJ1655P

(Appellant)

(Respondent)

Appellant by: Sh. Sampooranand, Sr. DR

Respondent by: Sh. Satyajeet Goel, C.A.

Date of hearing: 28.01.2021

Date of order : 28.01.2021

ORDER

PER MAHAVIR PRASAD, J.M.

This appeal has been preferred by the Revenue against the order dated 21.08.2017 of the Id. CIT(A) in appeal No. 13/16-17 A.Y. 2013-14, arising out of assessment order dated 08.03.2016. Revenue has taken following grounds of appeal :

"1. Ld. CIT(A) has erred on fact and in law in restricting the disallowance to Rs.4,30,621/- from Rs.2,53,10,424/- made by the Assessing Officer under section 14A of the Income Tax Act, 1961.

2. *Ld. CIT(A) has erred on fact and in law in ignoring CBDT Circular No. 5 of 2014 dated 11.02.2014 clarifying that disallowance under Rule 8D read with Section 14A of the Income Tax Act is to be made even where taxpayer in a particular has not earned any exempt income.*

3. *That the appellant craves for the permission to add, delete or amend grounds of appeal before or at the time of hearing of appeal."*

2. The facts of the case are that the assessee is engaged in carrying out the business of real estate development as stated in the Memorandum of Articles of the assessee-company. The assessment in the case of appellant-company was completed at a total income of (-) Rs.364,56,79,110/- by the Assessing Officer vide order dated 08.03.2016 u/s. 143(3) of the Act, thereby making addition/disallowance of Rs.2,53,10,424/- u/s. 14A read with Rule 8D. The assessee company has itself offered for assessing a sum of Rs.6,37,302/- on account of direct expenses attributable to earning of tax free dividend income of Rs.4,30,621/-.

3. Thereafter, assessee preferred first statutory appeal before the Id. CIT(A) who allowed the appeal of the assessee holding that the total tax free dividend income earned by the assessee is Rs.4,30,621/- and the disallowance in the assessee's case U/s. 14A read with Rule 8D shall, therefore, be not more than Rs.4,30,621/-. Ld. DR has nothing to controvert. The Revenue preferred second statutory appeal before us against the order of the Id. CIT(A).

4. We have gone through the relevant record and the impugned order. As mentioned in the impugned order, it is not in dispute that the assessee had exempt income to the tune of Rs.4,30,621/-. At the outset, the Id. AR argued that the present case is squarely covered by the ITAT order dated 21.03.2018 in assessee's own case and in similar facts and circumstances in ITA No. 5618/Del/2014 for assessment year 2010-11, wherein relief was granted to the assessee by the co-ordinate Bench with the following observations :

"4. We have heard both the sides and perused the relevant material on record. It is an admitted position that the assessee earned exempt dividend income of Rs.4,30,621/- as has been recorded on page 2 of the assessment order. The Hon'ble jurisdictional High Court in Principal CIT vs. Empire Package Pvt. Ltd. (2016) 286 CTR 457 (P&H), considered the following question raised by the Revenue :-

"Whether in the facts and circumstances of the case, the Hon'ble ITAT is justified in law to hold that the disallowance made u/s 14A read with Rule 8D cannot exceed the exempt income in the absence of any such restriction being there in the relevant section or Rule?"

5. *The Hon'ble High Court did not admit the appeal of the Revenue by holding that the aforesaid question is not a substantial question of law. Accordingly, the appeal of the Department was dismissed.*

6. *We find that the Hon'ble Delhi High Court also in the case Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del) has held that if there is no exempt income, there can be no question of making any disallowance u/s 14A. Similar view has been taken by the Hon'ble Delhi High Court in CIT vs. Holcim India P. Ltd. (2014) 90CCH 081-Del-HC. The net effect of these decisions is that the disallowance u/s 14A gets restricted to the extent of exempt income, even if the provisions of the section are attracted. In view of the above precedents, which are squarely applicable to the facts of the instant case, we limit the disallowance to the extent of*

exempt income of Rs.4,30,621/-. The impugned order is modified pro tanto.

7. In the result, the appeal of the Revenue is dismissed and that of the assessee is partly allowed.

The order pronounced in the open court on 21.03.2018.”

5. Thus, in parity of the aforesaid order of the Co-ordinate Bench, we dismiss the appeal of Revenue.

6. In the Result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 28/01/2021.

Sd/-
(G.S. PANNU)
VICE – PRESIDENT

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Dated: 28/01/2021
'aks'