

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

**Before Sh. Amit Shukla, Judicial Member**

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

**(Through Video Conferencing)**

**ITA No. 4806/Del/2017 : Asstt. Year : 2013-14**

DCIT, Circle-11(1), New Delhi	Vs	Hero Fin Corp Ltd., 34, Community Centre, Basant Lok, Vasant Vihar, New Delhi-110057
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACH0157J</b>		

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

**Revenue by : Sh. Ved Prakash Mishra, Sr. DR**

**Date of Hearing: 14.01.2021**

**Date of Pronouncement: 05.03.2021**

**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)-18, New Delhi dated 08.05.2017.

2. Following grounds have been raised by the revenue:

*"1. Whether on the facts & circumstances of case, the Id. CIT(A) is correct in deleting the disallowance u/s 14A of Rs.26,87,782/- ignoring the fact that the disallowance u/s 14A is not dependent on the exempt income earned during the year?*

*2. Whether on the facts & circumstances of case, the Id. CIT(A) is correct in deleting the disallowance of expenses claimed against lease rent of Rs.2,15,51,400/-."*

**Disallowance u/s 14A:**

3. On the facts of the case, the Id. CIT (A) deleted the addition made by the AO u/s 14A of the Income Tax Act, 1961 on the grounds that the assessee has earned tax free dividend income of Rs.61,650/- only and the company had sufficient own funds to invest. The revenue filed appeal on the grounds that the disallowance u/s 14A is not dependent on the exempt income.

4. While making the disallowance, the AO held as under:

*On going through the simple and plain language, it is abundantly clear that the relation has to be seen between the exempt income and the expenditure incurred in relation **to it and not vice versa**. What is relevant is to work out the expenditure in relation to the exempt income and the expenditure incurred in relation to it and not vice versa. What is relevant here is whether the expenditure incurred by the assessee has resulted into earning of exempt income or taxable income. **From the three clauses of Rule 8D it clearly emerges that stipulation of section is to compute the amount of expenditure, which is not allowable u/s 14A as is relatable to the exempt income and not in considering all the expenses one by one for ascertaining if either of them have resulted into exempt income and thereafter considering such amount as disallowable u/s 14A of I. Tax Act.***

5. Perused the details available on record. Gone through the rationale and reasoning given by the Id. CIT (A), accepting the

submission of the assessee which is being reproduced for ready reference and convenience.

"1. That the appellant had sufficient fund of its own and therefore there is no nexus between investments and the interest bearing funds.

2. In fact the appellant did not make any net fresh investment during the year under consideration. It only sold the current investment held in mutual funds which was duly reported in the financial statement of the appellant company.

3. The appellant cited the judicial pronouncements of Bombay High Court in 313 ITR 340 wherein the Hon'ble Court has held that even if the appellant had borrowed funds during the year, but otherwise had sufficient interest free funds available to meet, investment it can be presumed that investment were made from interest free funds.....

6. There must be actual incurring of expenditure and the expenditure must have clear relationship with exempt income. Section 14A cannot be invoked to disallow expenditure on the basis of assumption.

7. Where the assessee claims that no part of expenditure was incurred or points out and certain expenditure on having been incurred in relation to income which does not form part of total income, the Assessing Officer has to, before making any disallowance u/s 14A of the Act, record his satisfaction giving reason for not agreeing the claim of the assessee. The reasons, satisfaction recorded must justify the ground on which the claim of the appellant is not accepted. Reliance is placed on the decision of Delhi High Court in the case of Maxopp Investments.

8. Without prejudice to the above the disallowance u/s 14A cannot exceed the exempt income (372 ITR 694 Delhi High Court)."

6. The facts have not been disputed by either of the parties.

7. Keeping in view the settled position of the law, we are unable to agree with the inference of the Assessing Officer and decline to interfere with the order of the Id. CIT (A).

**Lease Rentals:**

8. The assessee is earning lease rent from the lease charges of cars, plant & machinery given on hire to M/s Hero MotoCorp. Ltd. The AO held that the income of the hire charges are to be chargeable under the head "income from other sources" but not under the head "business and profession". The AO held that the assessee is NBFC and doing finance activities and earning of lease rent from plant & machinery is not the business of the assessee company.

9. The Id. CIT (A) deleted the addition holding that the revenue having accepted all along that the lease rental income earned as business income cannot suddenly change the tract and consider the business income as income from other sources. The Id. CIT (A) held that it becomes all the more relevant when the exercise to changes the heads business or other sources is purely academic having no impact on the revenue. The Assessing Officer has not brought out any new facts or circumstantial to justify the change in opinion regarding head of income. Therefore, disallowance made by the AO in the impugned order is deleted.

10. Having gone through the rationale given by the Assessing Officer which is not the correct position of the law, the order of

the Id. CIT (A) giving relief based on the stand of the revenue for the earlier years and on going through the provisions of Section 71, we hold that such change of head of income is an infructuous academic exercise and accordingly the appeal filed by the revenue is hereby dismissed.

11. In the result, the appeal of the revenue dismissed.

Order Pronounced in the Open Court on 05/03/2021.

Sd/-

**(Amit Shukla)**  
**Judicial Member**

**Dated: 05/03/2021**

\*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**