

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "C": NEW DELHI ]**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)**

ITA No. 4313/Del/2017  
(Assessment Year: 2013-14)

ACIT, Circle : 13 (2), New Delhi. (Appellant)	Vs.	M/s. Jindal Petroleum Ltd., Jindal Centre, 12 – Bhikaji Cama Place, New Delhi – 110 066. <b>PAN : AACCJ0610J</b> (Respondent)
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Assessee by :	None
Department by :	Ms. Shivani Basal, Sr. D.R.;
Date of Hearing	09/06/2021
Date of pronouncement	14/07/2021

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-5, New Delhi, dated 26.04.2017, for assessment year 2013-14.
2. Revenue has raised the following grounds of appeal:-

*“ 1. Whether, in facts and circumstances of the case and in law, the CIT (A) is justified in not upholding disallowance of Rs.55,06,261/- u/s 14A of Income Tax Act, 1961 without considering legislative intent of introducing section 14A by the Finance Act, 2001 as clarified by the CBDT Circular No. 5/2004 dated 10.02.2014?*

*2. Whether in facts and circumstances of the case and in law, the CIT (A) is justified in not upholding disallowance of Rs.55,06,261/- u/s 14A of the Act 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 the case of CIT vs Rajendra Prasad Moody [1978] 115 ITR 519?*

*3. Whether in facts in circumstances of the case and in law, the CIT (A) is justified in not upholding disallowance of Rs.55,06,261 u/s 14A of the Act*

*without considering ratio decidendi as upheld in case of Maxopp Investment vs. CIT [2012 347 ITR 272 (Delhi)] on application of provisions of section 14A of the Act?*

4. *That on the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the addition of Rs.74,52,504/- made by AO on issue of disallowance on account of excess depreciation.*

5. *That on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the addition of Rs.52,54,295/- made by the AO on issue disallowance on account of pre-operative expenses. “*

3. The ld. CIT (Appeals) deleted the disallowance under Section 14A of the Income Tax Act, 1961 (the Act) as there was no exempt income earned during the year and further deleted the disallowance of Rs.52,54,295/- on account of pre-operative expenses. He allowed depreciation on software @ 60 % based on his reading of the depreciation schedule that computer and software are allowed 60 % depreciation. On these issues, the Revenue is aggrieved by the order of the ld. CIT (Appeals).
4. Brief facts of the case shows that assessee is a company which is providing services to Jindal Petroleum Georgia Ltd. It filed return on 28.11.2013 at a loss of Rs.67,78,020/-. The assessment order under Section 143(3) of the Act was passed on 30.03.2015 wherein disallowance under Section 14A of Rs.55,06,261/- was made by the Assessing Officer applying the provisions of Rule 8D under Section 14A of the Act, assessee submitted that it did not earn any exempt income. 5. The second disallowance was with respect to the pre-operative expenditure of Rs. 52,54,295/-, which was claimed in the profit and loss account. The third issue was that assessee has claimed depreciation on software at the rate of 60% whereas the learned assessing officer allowed it at the rate of 15%.
6. On appeal, CIT (Appeals) deleted the disallowance under Section 14A of the Act as no exempt income is earned by the assessee. On the issue of pre-operative expenses, she noted that the assessee itself had disallowed Rs.52,54,295/- while computing taxable income for the assessment year. Therefore, she held that once again disallowance made by the Assessing Officer is double addition of the same amount, hence deleted. On the issue of depreciation on software learned CIT appeal held that the depreciation is provided at the rate of 60% on computer and software. Therefore revenue is in appeal against the order of the learned CIT – A.
8. On appeal by the Revenue, the ld. DR supported the orders of the lower authorities.

9. None appeared on behalf of the assessee; therefore, the issue is decided on the merits of the case.
10. Ground No. 1 – 3 are with respect to the disallowance under Section 14A of the Act applying provisions of Rule 8D. Admitted fact shows that there is no exempt income earned by the assessee during the year. Therefore, in the absence of any exempt income, no disallowance can be made under Section 14A of the Act. Such is the mandate of the Hon'ble Delhi High Court in the case of Cheminvest Limited Vs. CIT (2015) 378 ITR 33 (Del). Therefore, there is no infirmity in the order of the Id. CIT (Appeals), hence these grounds are dismissed.
11. Ground No. 4 is on the issue of excess depreciation claimed by the assessee. Assessee Company has claimed depreciation @ 60% on computer soft-ware where the Assessing Officer allowed to the extent of 15%. The Id. CIT (Appeals) held that computer including computer soft-ware at sub item No. (5) of head No. III of Machinery and Plant provides for depreciation @ 60%. Therefore, we do not find any infirmity in the order of the Id. CIT (Appeals) in allowing depreciation @ 60% on computer soft-ware. Accordingly ground No. 4 of the appeal is dismissed.
12. Ground No. 5 is with respect to disallowance of pre-operative expenditure of Rs. 52,54,295/- which was already disallowed by the assessee in its computation of total income while working out taxable income. The Id. Assessing Officer once again made an addition despite already disallowance made by assessee in its computation of total income and the same is deleted by the CIT (Appeals) treating that it is double disallowance. We do not find any infirmity in the order of the Id. CIT (Appeals) on this count. Therefore, ground No. 5 is dismissed.
13. In the result, appeal of the Id. Assessing Officer is dismissed.

Order pronounced in the open court on 14/07/2021.

**Sd/-**  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated : 14/07/2021.

\*MEHTA\*

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

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	14.07.2021
Date on which the typed draft is placed before the dictating member	14.07.2021
Date on which the typed draft is placed before the other member	14.07.2021
Date on which the approved draft comes to the Sr. PS/ PS	14.07.2021
Date on which the fair order is placed before the dictating member for pronouncement	14.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	14.07.2021
Date on which the final order is uploaded on the website of ITAT	14.07.2021
date on which the file goes to the Bench Clerk	14.07.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	