

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "B" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.3262/Del/2018
Assessment Year : 2014-15**

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| DCIT, Circle-2(1), New Delhi. | vs | AKC Retailer Pvt.Ltd., 305, 3 rd Floor, Bhanot Corner, Pamposh Enclave, Greater Kailash- 1, New Delhi-110048. PAN-AABCU0112B |
| APPELLANT | | RESPONDENT |
| Appellant by | Sh. Mahesh Thakur, Sr.DR | |
| Respondent by | Sh. M.P.Rastogi, Adv. & Sh. Rajeev, CA | |
| Date of Hearing | 12.08.2021 | |
| Date of Pronouncement | 31.08.2021 | |

ORDER

PER KUL BHARAT, JM :

This appeal filed by the Revenue pertaining to assessment year 2014-15 is directed against the order of Ld. CIT(A)-1, New Delhi dated 19.02.2018. The Revenue has raised following grounds of appeal:-

1. *"The Ld.CIT(A) has erred in law and on facts in deleting the disallowance of Rs.2,94,81,452/- made by the Assessing Officer u/s 14A r.w.r.8D of Income tax Rules on the ground that the assessee has not earned any exempt income during the relevant year, ignoring the CBDT Circular No.5/2014 dated 11.02.2014 which specifically clarifies that Rule 8D read with section 14A of the Income Tax Act, 1961 provides for disallowance of the expenditure even where the tax payer in a particular year has not earned any exempt income."*

2. The only effective ground is against the deletion of disallowance of Rs.2,94,81,452/- made by the Assessing Officer by invoking the provision of section 14A r.w.Rule 8D of the Income Tax Rules, 1962 (“the Rules”).

3. The facts in brief are that the case of the assessee was selected for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (“the Act”) was framed vide order dated 30.09.2016. By framing the assessment, the Assessing Officer issued a show cause notice vide order sheet dated 24.08.2016 as to why the disallowance u/section 14A r.w. Rule 8D of the Rules may not be made. In response thereto, the assessee filed a detailed reply and submissions of the assessee was found not acceptable on the ground that CBDT Circular No.5/2014 had clarified that *“even if there is no exempt income, disallowance u/section 14A r.w. Rule 8D of the Rules can be made.”* Hence, the Assessing Officer made addition of Rs. 2,94,81,452/- and assessed taxable income of Rs.6,59,691/- against the returned loss of Rs.2,88,21,761/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, partly allowed the appeal of the assessee and deleted the addition made by the Assessing Officer by invoking the provision of section 14A r.w. Rule 8D of the Rules.

5. Aggrieved against this, the Revenue preferred appeal before this Tribunal.

5.1. Ld.Sr.DR supported the assessment order and submitted that Ld.CIT(A) was not justified in deleting the addition made by invoking the provision of section 14A of the Act.

6. Per contra, Ld. Sr. DR relied upon the order of Ld.CIT(A) and submitted that the issue is no more *res integra* as the assessee has not earned any dividend income. Therefore, in the light of the judgement of Hon'ble Jurisdictional High Court in the cases of *CIT vs. Holcim India (P) Ltd [2015]57 taxmann.com 28 (Delhi) in ITA No. 486/2014 & ITA No. 299/2014 and Cheminvest Ltd. VS. CIT - VI (ITA 749/2014) 234 Taxman 761 (Del) decided on 02.09.2015*, wherein disallowance cannot be made by invoking section 14A of the Act.

7. We have heard the rival contentions and perused the material available on record. We find that Ld.CIT(A) has deleted the addition made on account of disallowance u/s 14A of the Act, by observing as under:-

"I have considered the submission of the appellant and observation of the AO made in the assessment order on the issue. The AO computed disallowance u/s 14A of the Act read with Rule 8D at Rs.2,94,81,452/-. The Ld. AR has stated that since no dividend income was earned, the provisions of section 14A are not applicable. He relied on a number of judicial precedents approving the proposition that in the absence of exempt income, no disallowance could be made u/s 14A of the Act.

The Hon'ble Delhi High Court in the case of CIT vs. Holcim India (P) Ltd [2015]57 taxmann.com 28 (Delhi) in ITA No. 486/2014 & ITA No. 299/2014 has ruled that provisions of Section 14A cannot be invoked if the assessee has not earned any exempt income.

The Hon'ble Delhi High Court in the case of Cheminvest Ltd. VS. CIT - VI (ITA 749/2014) 234 Taxman 761 (Del) decided on 02.09.2015 has ruled that section 14A will not apply if no exempt income is received during the relevant previous year. The Hon'ble Court ruled as under:

"23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression 'does

not form part of the total income' in Section 14A of the 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.”

Respectfully following the decision of the Hon'ble High Court of Delhi, the disallowance made by the Assessing Officer is not sustainable as there was no exempt income earned by the appellant during the year. The disallowance of Rs.2,94,81,452/- made by the Assessing Officer is, therefore, deleted.”

8. The Revenue has not pointed out that during the year under appeal, the assessee has earned dividend income. Ld.CIT(A) has followed the decision of Hon'ble Jurisdictional High Court rendered in the cases of *CIT vs. Holcim India (P) Ltd* (supra) and *Cheminvest Ltd. VS. CIT - VI* (supra). The Revenue has not brought any other contrary binding precedents by the Hon'ble Jurisdictional High Court or Hon'ble Supreme Court to our notice. Therefore, we do not see any infirmity in the finding of Ld.CIT(A), the same is hereby affirmed. Thus, ground raised by the Revenue is rejected.

9. In the result, the appeal of the Revenue is dismissed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 31st August, 2021.

Sd/-

**(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI