

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

**Before Ms. Suchitra Kamble, Judicial Member**

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

**(Through Video Conferencing)**

**ITA No. 1179/Del/2018 : Asstt. Year : 2009-10**

**ITA No. 1183/Del/2018 : Asstt. Year : 2010-11**

**ITA No. 1184/Del/2018 : Asstt. Year : 2011-12**

Divyarth Leasing & Finance Pvt. Ltd., E-201-202, Ramesh Nagar, New Delhi-110015	Vs	Pr. Commissioner of Income Tax, Central Circle-3, New Delhi-110055
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACD2385C</b>		

**Assessee by : Sh. Bipin Ram, AR &**

**Sh. S. S. Nagar, Adv.**

**Revenue by : Sh. Javed Akhtar, CIT DR**

**Date of Hearing: 12.10.2021**

**Date of Pronouncement: 18.10.2021**

**ORDER**

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

The present appeals have been filed by the assessee against the orders of the Id. PCIT, New Delhi dated 30.10.2017.

2. Since, the issues involved in all these appeals are identical, which were heard together.

3. In ITA No. 1179/Del/2018, following grounds have been raised by the assessee:

*"1(a) That on the facts and in the circumstances of the case the regular assessment order dated 27-12-2016 had been passed by the Ld. AO after making all such enquiries as were warranted in the case and observations to the*

*contrary and the Ld. Pr. CIT was not justified in assuming jurisdiction under section 263 of the Act.*

*1(b) That on the facts and in the circumstances of the case the regular assessment order dated 27.12.2016 as had been passed by the Ld. AO fully in accordance with the provisions of the law and the order is neither erroneous not prejudicial to the interest of the revenue hence the same could not have been interfered with by the Ld. Pr. CIT in his supervisory jurisdiction under section 263, particularly in the peculiar facts and circumstances of the present case.*

*2(a) That on the facts and in the circumstances of the case provision of section 14A of the Act is not applicable in this instant case and the Ld. Pr. CIT was not justified either on facts or in law to direct the Ld. AO to make suitable checks and verification in the matter.*

*2(b) That on the facts and in the circumstances of the case no disallowance u/s 14A is applicable in this instant case as the appellant has not earned any exempt income and the Ld. Pr. CIT was not justified either on facts or in law to direct the Ld. AO to make suitable checks and verification in the matter.*

*2(c) That on the facts and in the circumstances of the case provision of section 14A along with circular is not applicable in this instant case and the Ld. Pr. CIT was not justified either on facts or in law to direct the Ld. AO to make suitable checks and verification in the matter.*

*3.0 That on the facts and in the circumstances of the case the order has been passed in utter disregard to the principal of nature justice and no opportunity was provided to explain the case."*

4. The order passed u/s 263 of the Income Tax Act, 1961 by the Id. PCIT is reproduced as under:

*"Income tax record of M/s Divyarth Leasing & Finance Pvt. Ltd. reveal, for the assessment, year 2009-10, the A.O., Central Circle-27, New Delhi passed an order u/s 153A read with section 143(3) of the Income-tax Act, 1961 on 27.12.2016, on the returned income of Rs.3 1,57,623/-.*

2. *It is established that the assessee company invested Rs.21,08,65,690/- in shares, which could result into yielding exempt income. In view of Circular No. 5/2014 of CBDT, the expenses related to the exempt income had to be calculated as per Section 14A read with Rule 8D, it is not material that: the assessee should have earned such exempt income during the financial year under consideration. The AO did not raise this issue pertaining to Section 14A of the Act, and did not disallow any expenses to earn exempt income.*

3. *A show cause notice dated 10.10.2017 was issued and served upon the assessee through Speed Post No. ED 787460642IN and the assessee was asked to file any objection on 23.10.2017, if any, in respect: of proposed action u/s 263 of I.T. Act. In response to show cause notice, the AR of the assessee company, Pratika Singh appeared on 23.10.2017 and submitted his submission dated 23.10.2017.*

4. *The submission of the assessee was considered and it is held that assessee has relied upon the decision of ITAT dated 01.09.2017 in the case of M/s Relgan Infrastructure Ltd. However, in the said order the Ld. ITAT has specifically held that the assessee has not earned exempt income and hence disallowance u/s 14A is not warranted. Moreover, the decision of Hon'ble ITAT Bench dated 01.09.2017 has not been accepted by the department and the same is being contested in High Court. As far as applicability of Circular No. 5/2014 is concerned, the said Circular specifically states vide para no. 6 which is reproduced below:-*

*"Central Board of Direct Taxes, in exercise of its power under section 119 of the Act hereby clarifies that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where tax payer in a particular year has not earned any exempt income."*

*Further Section 263 of the I.T. Act clearly states that:-*

*"The [Principal Commissioner or] Commissioner..... considers that any order passed therein by the [Assessing Officer] Officer is erroneous in so far as it is prejudicial to the interest of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."*

*Keeping in view of the above discussions, the objections of assessee is held not tenable and, therefore, rejected.*

*6. The assessment order passed by the Assessing Officer is field to be erroneous and prejudicial to the interest of revenue and, accordingly, the assessment order is hereby cancelled to the extent of disallowance of expenses related to exempt income. The A.O. is directed to decide the issue afresh and pass speaking order as per law after giving proper opportunity of being heard to the assessee."*

*Sd/-  
(Himalini Kashyap)*

*Pr. Commissioner of Income-tax  
(Central)-3, New Delhi*

*Dated: 30-10-2017*

5. Heard the arguments of both the parties and perused the material available on record.

6. Section 14A has been inserted in Chapter IV of the Income tax Act by the Finance Act, 2001, with retrospective effect from 01.04.1962. This Section provides for disallowance of expenditure incurred in relation to income which is not included

in the total income of the assessee (i.e. exempt income). The operative part of this Section reads as under:

*"For the purposes of computing the total income under this chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act."*

7. Proviso to the Section was added by the Finance Act, 2002 w.e.f. 11.05.2001. It also provides that the A.O. cannot reopen the assessment u/s.147 for any assessment year prior to A.Y. 2001-02 for this purpose or pass any rectification order u/s.154 for prior years to disallow any such expenditure.

8. It has been a matter of several judicial pronouncements as to whether the expenses should be disallowed in case the assessee has not earned any exempt income during the relevant assessment year or not ?.

9. The Hon'ble **Delhi High Court** in the case of M/s Holcim India P. Ltd. vs. CIT-IV (ITA No. 486/2014 & ITA No. 299/2014) dated September 5, 2014 held that no disallowance can be made u/s 14A if there is no exempt income in the relevant year.

10. Reference is also invited to the decision of the Hon'ble **Punjab & Haryana High Court** in the case of CIT vs. M/s. Lakhani Marketing Inc., CIT Vs. Hero Cycles Limited, (323 ITR 518), CIT Vs. Winsome Textile Industries Ltd (319 ITR 204), decision of Hon'ble **Gujarat High Court** in the case of CIT vs. Corrttech Energy (P.) Ltd. (223 Taxmann 130) and the decision of Hon'ble **Allahabad High Court** in CIT vs. Shivam Motors (P)

Ltd. wherein it was held that Section 14A cannot be invoked when no exempt income was earned.

11. In the instant case, the Id. PCIT has not disputed the fact that the assessee has not earned any exempt income. Hence, in view of the judicial pronouncement, we hereby hold that the order the Assessing Officer is not prejudicial to the interest of the revenue. Hence, we hereby hold that the order passed by the Id. PCIT u/s 263 is legally not sustainable.

12. In the result, all the appeals of the assessee are allowed.  
Order Pronounced in the Open Court on 18/10/2021.

Sd/-

**(Suchitra Kamble)**  
**Judicial Member**

**Dated: 18/10/2021**

**\*Subodh Kumar, Sr. PS(Gaz)\***

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**