

आयकर अपीलिय अधिकरण
मुंबई पीठ "बी", मुंबई
श्री जी.एस. पन्नु, अध्यक्ष एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " B", MUMBAI
BEFORE SHRI G.S.PANNU,PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं. 706/मुं/2021(नि. व.2017-18)
ITA NO.706/MUM/2021(A.Y.2017-18)

Dy. Commissioner of Income Tax,
Central Circile 1(4),Mumbai
9th Floor, 902, Pratistha Bhavan,
Old CGO Building(Annexe)
Mumbai 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Marine Drive Hospitality &
Realty Pvt. Ltd.
Ground Floor, D.B. House,Gen.A.K.Vaidya Marg,
Goregaon, Mumbai – 400 063
PAN: AACCN-1891-R

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Mahesh Akhade, CIT-DR

प्रतिवादी द्वारा/Respondent by : Shri Kapil Bohra,CA

सुनवाई की तिथि/ Date of hearing : 02/12/2021

घोषणा की तिथि/ Date of pronouncement : 17/ 12/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-47, Mumbai [in short 'the CIT(A)] dated 11/03/2020 for the assessment year 2017-18. The solitary issue raised

by the Revenue in appeal is against deleting of disallowance u/s. 14A of the Income Tax Act, 1961 (in short ' the Act') by the CIT(A).

2. Shri Mahesh Akhade, representing the Department submitted that in assessment proceedings the Assessing Officer had computed disallowance of Rs.11,11,84,920/- under section 14A r.w.r. 8D(2) of the Act. In the first appellate proceedings, the CIT(A) deleted the aforesaid disallowance in entirety.

3. Shri Kapil Bohra appearing on behalf of the assessee submitted that during the period relevant to the assessment year under appeal the assessee has not earned any exempt income, hence, the CIT(A) following the decision rendered by Hon'ble Bombay High Court in various cases deleted the disallowance made by the Assessing Officer under section 14A of the Act.

4. Both sides heard. The solitary issue in the present appeal is deleting of disallowance under section 14A of the Act. During the period relevant to the assessment year under appeal the assessee has not earned any exempt income. It is no more res-integra that where no exempt income is earned no disallowance under section 14A of the Act is to be made. The Hon'ble Jurisdictional High Court in the case of CIT vs. Delight Enterprises in Income Tax Appeal No.110 of 2009 decided on 26/02/2009 has held that in the absence of exempt income no disallowance under section 14A of the Act could be made. Similar view has been expressed by the Hon'ble Bombay High Court in the case of PCIT vs. Red Chillies Entertainment Pvt. Ltd., 116 taxamann.com 770. The Hon'ble Supreme Court of India in the case of PCIT vs. Oil Industry

Development Board, 262 Taxman 102 and PCIT vs. Cheminvest Ltd. has dismissed the SLP of Revenue against the Hon'ble Delhi High Court order holding that in absence of any exempt income, no disallowance under section 14A is permissible. In view of the settled legal position and undisputed facts, we find no infirmity in the impugned order, hence, the same is upheld and the appeal of Revenue is dismissed being devoid of any merit.

5. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open court on Friday the 17th day of December, 2021.

Sd/-

(G.S.PANNU)

अध्यक्ष/ PRESIDENT

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 17/12/2021

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai