

आयकर अपीलीय अधिकरण  
मुंबई पीठ "सी "  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
आअसं. 327/मुं/2021(नि.व.2013-14)  
ITA NO. 327/MUM/2021 (A.Y.2013-14)

Dy. Commissioner of Income Tax -2(3)(1),  
Room No.509, 5<sup>th</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020

: अपीलार्थी/ Appellant

बनाम/ Vs.

M/s. Patel Energy Resources Ltd.,  
Patel Engineering Compound,  
Patel Estate Road, Jogeshwari(W),  
Mumbai 400 102  
PAN: AAACP-5477-H

: प्रत्यर्थी/ Respondent

Appellant by	:	Shri R.A.Dhyani
Respondent by	:	Shri Mayur Kisnadwala
सुनवाई की तारीख/ <b>Date of Hearing</b>	:	10/03/2022
घोषणा की तारीख / Date of Pronouncement	:	17/03/2022

**आदेश/ ORDER**

**PER VIKAS AWASTHY, JM:**

This appeal by the Revenue is directed against the order  
Commissioner of Income Tax(Appeals)-17, Mumbai [in short 'the CIT(A)']  
dated 31/01/2020 for the assessment year 2013-14.

2. The appeal is time barred by 346 days. The Revenue has filed an application for condonation of delay. A perusal of the application shows that the order of CIT(A) dated 31/01/2020 was received by the Assessing Officer on 07/02/2020. The last date for filing appeal was 07/04/2020, but on account of COVID-19 Pandemic the appeal was filed on 19/03/2021, thus, resulting in delay of 346 days in filing of appeal. The Id. Departmental Representative submitted that the time limit for filing of the appeal was extended due to Pandemic by Hon'ble Supreme Court of India vide order dated 23/03/2020 [117 taxmann.com 66(SC)]. In fact there is not delay in filing of the appeal in view of the time extended by the Hon'ble Supreme Court of India. We are satisfied that the delay in filing of the appeal was on account of the reasons stated in the application. In fact the time for filing of the appeal was enlarged by the Hon'ble Supreme Court order (supra), Therefore, the delay of 346 days in filing of appeal is condoned and appeal of the Revenue is admitted for disposal on merits.

3. The solitary issue raised by the Revenue in appeal is with regard to deletion of addition Rs.18,23,62,853/- made in the assessment order on account of disallowance u/s. 14A r.w.r. 8D of the Income Tax Act,1961 ( in short 'the Act').

4. Shri R.A.Dhyani representing the Department vehemently defended the assessment order and placed reliance on CBDT Circular No.5 of 2014 dated 11/02/2014. The Id. Departmental Representative submitted that the aforesaid circular clearly states that disallowance u/s. 14A r.w.r. 8D of the Act is to be made even where tax payer in a particular year has not earned any

exempt income. The Id. Departmental Representative to further strengthen his submission draws support from the following decisions:

(i) Maxopp Investments Ltd. vs. CIT, 402 ITR 640(SC); and

(ii) Lally Motors India Pvt. Ltd. vs. PCIT, 170 ITD 370 (Amritsar- Trib)

5. On the other hand, Shri Mayur Kisnadwala appearing on behalf of the assessee strongly supported the order of CIT(A). The Id. Authorized Representative for the assessee pointed that no fresh investments were made in the impugned assessment year. The investments made were from own funds. Own funds of the assessee are sufficient to cover the investments. The fund situation for making investments has not been disputed by the Department. The Id. Authorized Representative for the assessee referred to the findings of the CIT(A) in para -4 of the impugned order. The Id. Authorized Representative for the assessee further submitted that it is a trite law that where no exempt income is earned no disallowance is to be made. The assessee has not earned any dividend income during the period relevant to the assessment year under appeal. Hence, no disallowance is required to be made under section 14A of the Act.

6. Both sides heard, orders of authorities below examined. Undisputedly, the assessee has not earned any exempt income during the period relevant to the assessment year under appeal. It is no more res-integra that no disallowance u/s.14A is warranted in the absence of exempt income. 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 and in the case of PCIT vs. Ballarpur Industries Ltd. in Income Tax Appeal No.51 of 2016 decided

on 13/10/2016 has endorsed this view. The Hon'ble Supreme Court of India in the case of PCIT vs. State Bank of Patiala, 99 taxmann.com 286 has held that disallowance u/s. 14A of the Act cannot exceed tax exempt income earned during the relevant period.

7. Thus, in view of undisputed facts and the settled law we find no merit in the ground raised by the Revenue.

8. In the result impugned order is upheld and appeal of the Revenue is dismissed.

Order pronounced in the open Court on Thursday the 17<sup>th</sup> day of March, 2022.

Sd/-

(S.RIFAUR RAHMAN )

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 17/03/2022

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.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)  
ITAT, Mumbai