

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D" NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT  
AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.6146/Del/2016  
निर्धारणवर्ष/Assessment Year: 2012-13

DCIT Circle-1, Block-B, New CGO Complex, Faridabad.	बनाम Vs.	Lakhani India Ltd. Plot No. 265, Sector-24, Faridabad.
		PAN No. AAACL3113G
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

राजस्वकीओरसे /Revenue by	Shri Vijay Choudhary, Sr. DR
निर्धारितीकीओरसे /Assessee by	None

सुनवाईकीतारीख/ Date of hearing:	27.12.2022
उद्घोषणाकीतारीख/Pronouncement on	24.03.2022

**आदेश /O R D E R**

**PER C.N. PRASAD, J.M.**

This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals), Faridabad dated 19.09.2016 for the AY 2012-13.

2. Revenue in its appeal has raised the following grounds of appeal: -

1. *"On the facts and circumstances of the case, the Ld. CIT(A) has erred on facts and in law in deleting the addition of Rs. 4,92,56,011/- made by the Assessing Officer on account of interest and other expenditures u/s 14A by applying rule*

*8D(2)(ii) & (iii) disregarding the facts that expenditure incurred in relation to the tax-free income investments is not as per the provisions of section 14A read with rule 8D(2)(ii) of the Income Tax Rules.*

- 2. On the facts and circumstances of the case, the Ld. CIT(A) has erred on facts and in law in deleting the addition of Rs. 3,34,30,862/- made by the Assessing Officer on account of wages & salaries even the assessee has fail to produce the documentary evidence in support of its claim. Thus, the claim was remain unexplained.*
- 3. On the facts and circumstance of the case, the Ld. CIT(A) has erred on facts and in law in deleting the addition of Rs. 91,35,033/- made by the Assessing Officer on account of power, electricity & fuel expenses even the assessee has failed to produce vouchers/supporting bills to substantiate its claim of expenditure under this head.”*

3. In spite of issue of notice, none appeared on behalf of the assessee. Ld. DR submits that notice of hearing was served on assessee informing that the appeal is posted for hearing on 27.12.2021. The Ld. DR submits that the notice has been served by affixture by Inspector and notice server of the Department. Copy of notice and letter issued by the DCIT, Circle-1, Faridabad informing the Ld. DR about service of notice was also placed on record. As the notice was served by way of fixture, we proceed to dispose off this appeal on hearing the Ld. DR.

4. Ground No. 1 of grounds of appeal of the Revenue relates to deletion of disallowance made u/s 14A read with Rule 8D of IT Rules. Ld.

DR submits that the AO while computing the assessment noticed that assessee made investments to the tune of 16.75 crores and no disallowance was made towards expenses attributable for earning dividend income from such investments. The Ld. DR submits that the Assessing Officer invoking the provisions of Rule 8D worked out the disallowance u/s 14A at Rs. 5,00,93,983/- in terms of Rule 8D(2)(ii) and Rule 8D(2)(iii). Ld. DR submits that the Ld. CIT(A) deleted the disallowance in so far as the interest of Rs. 4,92,56,011/- which was disallowed under Rule 8D(2)(ii) by the Assessing Officer referring to various decisions.

5. With regard to ground nos. 2 and 3 i.e. in respect of deletion of *ad hoc* disallowance made by the Assessing Officer in respect of wages and salaries, power, electricity and fuel expenses the Ld. DR submits that Assessing Officer disallowed 10% of salaries and wages for the reason that the assessee could not produce some of the vouchers and supporting papers to substantiate the incurring of expenditure under this head. Similarly the Assessing Officer disallowed 15% of power, electricity and fuel charges for the same reason. The Ld. DR submits that the Ld. CIT(A) deleted the *ad hoc* disallowance made by the Assessing Officer in respect of wages and salaries, power electricity and fuel charges. The Ld. DR strongly supported the orders of the Assessing Officer.

6. Heard the Ld. DR perused the orders of the authorities below. We noticed that in the course of assessment proceedings, assessee in so far as the disallowance made u/s 14A read with Rule 8D is concerned submitted that assessee has not received any tax free dividend income during the relevant assessment year. Therefore, it was contended that since there being no exempt income included in the total income, no disallowance u/s 14A is warranted. It was also contended by the assessee that it had not incurred any interest expenditure for making the investments. It was further contended that as the assessee had both interest free and interest bearing funds available with it, it should be presumed that interest free funds were used for making the investments. In the alternative the assessee contended that even assuming that the investments were made out of borrowed funds the investments were made in the sister concern for the promotion of the business and, therefore, there is a commercial expediency in making such investments and the interest paid in respect of capital borrowed for the purpose of business was allowable as deduction u/s 36(1)(iii) of the Act.

7. However, the Assessing Officer rejected the contention of the assessee that since no dividend income was earned by the assessee during the year no disallowance is required to be made in view of the decision of the Spl. Bench 'Delhi' in the case of Chem Invest. The other submissions of the assessee were also rejected by the Assessing Officer.

8. The Ld. CIT(A) deleted the interest disallowance made u/s 14A read with Rule 8D(2)(ii) referring to various High Court decisions including the decision of the Delhi High Court in the case of Chem Invest Ltd. vs. CIT in ITA No. 749/2014 dated 02.09.2015, wherein it was held that no disallowance u/s 14A can be made in an year in which no exempt income has been earned or received by the assessee. The Ld. CIT(A) also referred to various other decisions including the decision of Hon'ble Punjab & Haryana High Court in the case of sister concern of the assessee, CIT Vs. M/s Lakhani Marketing Inc., wherein similar issue has been decided in Assessee favour. It is not in dispute that during this assessment year the assessee did not receive any exempt income. Further on perusal of the assessment order, we find that the contention of the assessee that no disallowance is required to be made when no exempt income was earned has been negated by the Assessing Officer as he has followed the decision of Spl. Bench 'Delhi' in the case of Chem Invest. The Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT [378 ITR 33] held that disallowance cannot exceed exempt income. Further the Hon'ble Bombay High Court in the case of PCIT Vs. Ballarpur Industries Ltd. in ITA No. 51/2016 held that when there is no exempt income received by the assessee no disallowance is warranted u/s 14A of the Act. Thus, the Ld. CIT(A) rightly deleted the interest expenditure disallowed by the Assessing Officer under Rule 8D(2)(ii) as the assessee has not earned any exempt income during the relevant assessment year.

9. Coming to ground nos. 2 and 3 i.e. in respect of *ad hoc* disallowance made by the Assessing Officer in respect of wages and salaries, power, electricity and fuel expenses are concerned we observe that the disallowance was made by the Assessing Officer for the reason that the assessee could not produce a few of the vouchers and supporting papers to substantiate the claim of expenditure. We observe that the assessee furnished detailed submissions before the Assessing Officer as to why there is an increase of expenditure during the current assessment year and reduction in turnover due to unfavourable market conditions. The Assessing Officer did not make any adverse observations/remarks on the submissions of the assessee as to why there is a less turnover and increase in expenditure during the relevant assessment year. The Assessing Officer disallowed the expenditure on *ad hoc* basis i.e. 10% of wages and salaries, 15% of power, electricity and fuel charges merely observing that on test checking it is noticed that few of the vouchers and supporting papers were not produced by the assessee. We noticed that the Assessing Officer did not pin point any specific instances of any expenditure, where the assessee could not produce the vouchers and supporting papers. The Ld. CIT(A) deleted the disallowance as the Assessing Officer merely disallowed the expenditure on purely *ad hoc* basis. We also observe that the assessee relied on the decision of Delhi Bench in the case of ACIT vs. Ganpati Enterprise Ltd. in ITA No. 6112/Del/2012, for the proposition that there cannot be an *ad hoc*

disallowance of expense without specifically discussing which expenses were found unverifiable.

10. In view of the above discussion, we do not find any reason to interfere with the order of the Ld. CIT(A) in deleting the *ad hoc* disallowance made by the Assessing Officer.

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

Order pronounced in the open court on 24/03/2022

**Sd/-  
(G.S. PANNU)  
PRESIDENT**

Dated: 24/03/2022

*\*Kavita Arora, Sr. P.S.*

**Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER**

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**