

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, JM AND SHRI S. RIFAUR RAHMAN, AM**

आयकर अपील सं/ I.T.A. No.90/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2017-18)

DCIT, Central Circle-1(4) 9 <sup>th</sup> Floor, 902, Pratishtha Bhavan, Old CGO Building, (Annexe), M. K. Road, Mumbai-400020.	<b>बनाम/</b> Vs.	M/s. D.B. Realty Ltd D.B. House, Yashodham, Gen. A.K. Vaidya Marg, Goregaon (E), Mumbai- 400063.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCD5174F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Sanjeev Kashyap (DR)	
Assessee by:	Ms. Pooja Render	

सुनवाई की तारीख / Date of Hearing: 31/03/2022

घोषणा की तारीख /Date of Pronouncement: 21/04/2022

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 25.11.2020 passed by the Commissioner of Income Tax (Appeals) -47 Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2017-18.

2. The revenue has raised the following grounds: -

" 1. “On the facts and circumstances of the case and in law, the ld. CIT(A) erred in deleting the disallowance of Rs.18,20,30,978/- u/s. 14A on the ground that the assessee did not earn any exempt income during the year’ without appreciating that the disallowance u/s. 14A was required to be made irrespective of whether the assessee had earned exempt income during the year or not”.

2. “On the facts and circumstances of the case and in law, the Id. CIT(A) erred in deleting the disallowance u/s. 14A for A.Y. 2012-13



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*without appreciating the fact that circular no. 5 of 2014 dated 11th February, 2014, issued by the Central Board of Direct Taxes clearly provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.*

*3. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”*

3. The brief facts of the case are that the assessee filed its return of income on 01.11.2017 declaring loss to the tune of Rs.69,53,15,153/-. After receipt of return of income, the return was processed u/s 143(1) of the Act. Thereafter, the case was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee company is engaged in the business of Real Estate and Infrastructure development. On verification, it was found that the assessee has made the investment in companies and partnership firms from which it could earn exempt income. The assessee did not make any disallowance u/s 14A r.w. Rule 8D. The AO applied the provision u/s 14A. r.w. Rule 8D and assessed the expenditure to earn the exempt income to the tune of Rs.18,20,30,978/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who deleted the said addition, therefore, the revenue has filed the present appeal before us.

### **ISSUE Nos. 1 & 2**

4. Issue nos. 1 & 2 are inter-connected, therefore, are being taken up together for adjudication. Under these issues the revenue has challenged the deletion of the addition of Rs.18,20,30,978/- in view of the provisions u/s 14A r.w. Rule 8D. The Ld. Representative of the revenue has argued that the CIT(A) has wrongly deleted the said addition, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the



other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on these issues:-

*“7.3 I have considered the facts of the case, submissions and contentions of the appellant, order of the AO and the materials available on record. I have also considered the case laws relied upon by the appellant. The only issue involved in the present case is whether the disallowance of Rs. 18,20,30,978/- made by the AO u/s.14A r.w. Rule 8D is justified and is in accordance with the provisions of law. It is a matter of record that although the appellant has made investments in equity shares of domestic companies, income from which does not form part of total income, it has actually not received any dividend income during the relevant period. In this connection, it is noted that the Hon’ble Delhi High Court vide its judgment dated 02.09.2015 in the case of M/s. Cheminvest ‘Ltd. v. CIT (ITA 749/2014) has held that the expression ‘does not form part of the total income’ in section 14A of the Act 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 in relation to the said income. In other words, it has been held that Section 14A will not apply if no exempt income is received or receivable during the relevant previous year. Since the appellant had admittedly not earned any exempt income during the relevant period, the question of disallowance of expenses u/s.14A r.w. Rule 8D will not arise in view of the aforesaid judicial decision. The assessee is also correct in claiming that in any case, investment in foreign company is not to be considered for disallowance u/s.14A as income from such investment is not exempt under the Act. Therefore, it is held that the appellant having not*



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*earned any exempt income during the relevant previous year, the AO was not justified in invoking the provisions of Rule 8D and computing the disallowance of Rs.18,20,30,978/- u/s.14A.*

*7.4 In the case of CIT v. HSBC Invest Direct (India) Ltd. (2020) 421 ITR 125 ( Bom), dismissing the appeal of the revenue the Hon'ble Bombay High court held that the disallowance of expenditure incurred to earn the exempt income could not exceed the exempt income earned. It was further held that the ratio of the decisions in the cases of Cheminvest Ltd. v. CIT (2015) 378 ITR 33 (Delhi) (HC)) and CIT v. Holcim India (P) Ltd. (I. T. A. No. 486 of 2014 decided on September 5, 2014(Delhi) (HC) would include a facet where the assessee's exempt income was not nil, but had earned exempt income which was more than the expenditure incurred by the assessee in order to earn such income. The order of the Tribunal which restricted the disallowance of the expenditure to the extent voluntarily offered by the assessee was not erroneous.*

*7.5 In the case of the Pr. CIT vs. IL & FS Energy Development CO Ltd ITA No.520/ 2017 (Del HC) the Hon'ble Court held as under:*

*“That would not preclude the assessee from taking a stand that no disallowance under Section 14 A of the Act was called for in the AY in question because no exempt income was earned.”*

*7.6 In case of Maxopp Investment Ltd vs. CIT 402 ITR 640 (SQ), the Hon'ble Supreme Court held as under:*

*“Fact remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business*



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*expenditure. Keeping this objective behind section 14A in mind, the provision has to be interpreted, particularly, the word 'please the income' that does not form part of total income.*

*Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in section 14A."*

*7.7. Similarly in the case of Redington India Ltd vs. ACIT 97 CCH 219 (Mad HC), the Hon'ble Madras High Court held as under:-*

*"Thus, by application of matching concept, in year where there was no exempt income, there could not be disallowance of expenditure in relation to such assumed income relation to such assumed income.*

*The exemption extended to dividend income would relate only to the previous year when the income was earned and none other and consequently the expenditure incurred in connection therewith should also be dealt with in the same previous year. Thus, by application of the matching concept, in a year where there is no exempt income there cannot be a disallowance expenditure in relation to such assumed income. (Madras Industrial Investment Corporation Ltd vs. CIT (225 ITR 802))."*

*7.8 Likewise in the case of CIT vs. Delite Enterprises ITA No.110 of 2009, the Hon'ble Bombay High Court held that when there is no exempted income no disallowance u/s 14A could be made by observing as under:*

*"In so far as Question (A) is concerned, on facts we find that there is no profit for the relevant assessment year. Hence the question as framed would not arise."*



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7.9 Moreover in the case of *PCIT v. Red Chillies Entertainment Pvt Ltd* (2020)16 taxmann.com 770 ( Bom-HC) the Hon'ble Court held that When there is no exempt income declared during the year, no disallowance can be made under Rule 8D (2) ( ii) Dismissing the appeal of the revenue the Court held that, when there is no exempt income declared during the year, no disallowance can be mad. In doing so, the court followed decisions in the cases of *Cheminvest Ltd Vs. CIT* (2015) 378 ITR 33 (Delhi) (HC), *CIT v Shivam Motors Pvt Ltd* (2015) 530 Taxman 63 / 272 CTR 277 (All) (HC), *PCIT v Man Infra projects Ltd* ITA NO dtd 9-04-2019.

7.10 In case of *PCIT v Dish TV India Ltd* (Bom) (HC), the Hon'ble Bombay High court held that when there is no exempt income declared during the year no disallowance can be made. In doing so the Hon'ble Court followed judgments in the cases of *CIT v. Delite Enterprises* ITA No 110 of 2009 dt 26.2.2009 ( Bom) (HC), *CIT v. India Debt Management Pvt Ltd* ITA No 266 of 201 dt 15.4.2019 (Bom) (HC)

7.11 Similarly in the case of *PCIT v. State Bank of Patiala* (2018) 99 taxmann.com 285 / 259 Taxman 315 (P & H) (HC) it has been held that the disallowance cannot exceed exempt income of relevant year. Further SLP filed by the revenue was dismissed.

8.0 Therefore respectfully following the ratio of various judgments cited above, the said disallowance of Rs.18,20,30,978/- made by the AO and added back to the income is, directed to be deleted. Grounds bearing No. 1 raised by the appellant is accordingly allowed.”

5. Undoubtedly, the appellant did not earn exempt income in the relevant assessment year. The CIT(A) has placed reliance upon the decision of the Hon'ble Delhi High Court in the case of **Cheminvest Ltd. Vs. CIT**



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**(ITA. No. 749/2014) dated 02.09.2015 and CIT Vs. HSBC Invest Direct (India) (2020) 421 ITR 125 (Bom) and PCIT Vs. IL & FS Energy Development Co Ltd. ITA. No.520/2017 and Maxopp Investment Ltd. Vs. CIT 402 ITR 640 (SC)** and other judgments which have been mentioned above. The facts are not distinguishable at this stage. The CIT(A) has rightly deleted the addition by relying upon the above mentioned decisions. No law contrary to the law relied by the Ld. Representative of the assessee has been produced before us by the Ld. D.R. for the Revenue. Taking into account of all the facts and circumstances, we are of the view that the finding of the CIT(A) is quite correct which is not liable to be interfered with at this appellate stage. Accordingly, we affirm the finding of the CIT(A) on these issues and decide both the issues in favour of the assessee against the revenue.

### **ISSUE NO.3**

6. Issue no.3 formal in nature which nowhere required for adjudication.
7. In the result, the appeal filed by the revenue is hereby ordered to be dismissed.

Order pronounced in the open court on 21/04/2022

**Sd/-**

**(S. RIFAUH RAHMAN)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

**मुंबई Mumbai; दिनांक Dated : 21/04/2022**

**Vijay Pal Singh (Sr. P.S.)**

**Sd/-**

**(AMARJIT SINGH)**

**न्यायिक सदस्य/JUDICIAL MEMBER**



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**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**