

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'C' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.6146/Del./2017  
(ASSESSMENT YEAR : 2013-14)**

M/s. Kayer India (P) Ltd., vs. ACIT, Central Circle 14 (1),  
D-238, Sector 63, New Delhi.  
Noida (Uttar Pradesh).

**(PAN : AABCK4956F)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None  
REVENUE BY : Ms. Anupama Singla, Senior DR

Date of Hearing : 26.05.2022  
Date of Order : 09.06.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)-5, Delhi dated 31.07.2017 pertaining to assessment year 2013-14.

2. The issue raised is that Id. CIT (A) erred in law in upholding the addition of Rs.14,72,422/- made under section 14A of the Income-tax Act, 1961 (for short 'the Act') .

3. In this case, the Assessing Officer (AO) noted that assessee company has declared dividend income of Rs.48,70,674/-. The AO asked the assessee to submit details of investment made and enquired as to why the

disallowance u/s 14A should not be made. Assessee responded that no expenditure has been incurred but AO proceeded to make disallowance u/s 14A read with Rule 8D of the Income-tax Rules, 1962. Ld. CIT (A) proceeded to make factual examination of the submissions that assessee has sufficient own funds. Ld.CIT(A) referred to earlier year order and from that it was held in that case that assessee has failed to establish that the investment from which dividends have been earned were made out of interest free funds. The ld. CIT (A) has accepted that assessee has maintained mixed funds and part of the investment made out of own funds and part made out of the funds borrowed from sister concerns bearing no interest liability. Ld. CIT (A) proceeded to confirm the AO's action.

4. Against this order, the assessee is in appeal before us.

5. We have heard the ld. DR for the Revenue and perused the records. None is appearing on behalf of the assessee for the past several dates. Hence, we are proceeding to adjudicate the issue after perusing the records and hearing the ld. DR for the Revenue. We note that in deciding this appeal, AO has observed that it is immaterial whether there is any exempt income or not. We note that this observation is not legally sustainable as **Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT - (2015) 378 ITR 33 (Delhi)** held that if no exempt income is earned, disallowance is not sustainable. Furthermore, ld. CIT (A) has noted the assessee's submission that assessee has sufficient interest free funds but has

insisted that assessee should give one to one nexus with the available interest free funds and investment. We note that right of attribution lies with the assessee. It has been so held by **Hon'ble Bombay High Court in the cases of CIT vs. HDFC Bank Ltd. 366 ITR 505 (Bom) and CIT vs. Reliance Utilities & Power Ltd. 313 ITR 340.**

6. In this view of the matter, Id. CIT (A)'s order is not legally sustainable. In our considered opinion, the interest of justice would be served if the matter is remitted back to the AO. The AO is directed to examine as to whether assessee has sufficient interest free funds or not. We make it clear that it is a settled law that right of attribution lies to assessee. Furthermore, AO shall also examine whether assessee has earned exempt income or not. If the assessee has not earned any exempt income, no disallowance would be made u/s 14A. Accordingly, the issue in this case stands remitted to AO, who shall pass order as per law keeping in mind our observations herein above.

6. In the result, the assessee's appeal is allowed for statistical purposes.

**Order pronounced in the open court on this 9<sup>th</sup> day of June, 2022.**

**Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 9<sup>th</sup> day of June, 2022  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-5, Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.