

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI****BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER****I.T.A. No. 4622/DEL/2017 (A.Y 2011-12)**

Addl. CIT, Special Range – 9, New Delhi. (APPELLANT)	Vs.	M/s. The Hindustan Times, 18–20, K. G. Marg, New Delhi – 110 001. PAN No. AAAC4962F (RESPONDENT)
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Assessee by :	Shri Rohit Jain, Adv.; & Shri Deepesh Jain, C. A.;
Department by:	Md. Gaysuddin Ansari, Sr. D. R.;

Date of Hearing	21.07.2022
Date of Pronouncement	02 .08.2022

ORDER**PER YOGESH KUMAR US, JM**

This appeal is filed by the Revenue for assessment year 2011-12 against the order of the Id. Commissioner of Income Tax (Appeals)–15, New Delhi, dated 29.03.2017.

2. The solitary ground of the Revenue is that, the Ld.CIT(A) has erred on facts and law in ignoring the legislative intention brought forward by Circular No. 5/2015 that the disallowance u/s 14A are allowed even if no exempt income is earned.

3. Brief facts of the case are that, the assessment order came to be passed on 04/03/2014 by disallowing an amount of Rs. 1,92,21,848/- u/s 14A of the Act and a sum of Rs. 8,06,863/- on depreciation of paintings.
4. As against the assessment order dated 04/03/2014, the assessee has preferred an Appeal before the CIT(A). The Ld.CIT(A) vide order dated 29/03/2017 directed the A.O to work out the disallowance under Rule 8D of the IT Rules after excluding the investments which have not yielded any exempt income.
5. Aggrieved by the order of the Ld.CIT (A), the Revenue has preferred the present appeal on the grounds mentioned above.
6. The Ld. DR has relied on the assessment order and submitted that the order of CIT(A) is against to the legislative intention made in Circular No. 5/2014 that the disallowance made u/s 14A are allowed even if no exempt income is earned.
7. Per contra, the Ld. Counsel for the assessee submitted that, the issue as been settled in the case of ACB India Ltd. Vs. ACIT 2015(374) ITR 108 by the Jurisdictional High Court.
8. We have heard the parties perused the material on record and gave our thoughtful consideration. In the year under consideration, the assessee has received divided income of Rs. 16,07,80,854/-. The assessee itself had disallowed the expenditure of Rs. 36,54,208/- against the exempt dividend income with which A.O was not satisfied and the A.O has proceed to compute the disallowance in terms of Rule 8D of the I.T Rules, which has been deleted by the CIT(A).

9. It is the case of the assessee that the investments on which no dividend income was earned during the year should be excluded from the application of Section 14A. the Jurisdictional High Court in the case of ACB India Ltd. Vs. ACIT 2015(374) ITR 108, held as follows:-

"8. The Assessing Officer, instead of adopting the average value of investment of which income is not part of the total income, i.e., the value of tax exempt investment, chose to factor in the total investment itself. Even though the Commissioner of Income- tax (Appeals) noticed the exact value of the investment which yielded taxable income he did not correct the error but chose to apply his own equity. Given the record that had to be done so to substitute the figure of Rs.39,61,09,287/- with the figure of Rs.3,53,26,800/- and, thereafter, arrive at the exact disallowance of .05 per cent."

10. By respectfully following the above ratio laid down by the Jurisdictional High Court, we are inclined to dismiss the Revenue's Grounds of Appeal accordingly rejected.

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

Order pronounced in the open court on 2nd August, 2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated : 02/08/2022

*R.N*Sr PS

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI