

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

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI PRASHANT MAHARISHI, AM**

आयकरअपीलसं./ I.T.A. No. 1046/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2009-10)

M/s P. N. Writer & Co. Pvt. Ltd. 105, Writer, Dr. B. Ambedkar Road, Lalbaug, Mumbai-400 033	बनाम/ Vs.	DCIT Cir-8(2)(1) R. No. 624, Aayakar Bhavan, Mumbai-400 021
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACP5966B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Priyesh Gansotta, Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Shambhu Yadav, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	10.08.2022
घोषणाकीतारीख / Date of Pronouncement	:	10.08.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the assessee against the impugned order dated 22.03.2022, passed by National Faceless

Appeal Centre (NFAC), Delhi for the quantum of assessment passed u/s 143(3) for AY 2009-10.

2. In various grounds, assessee has challenged the disallowance made u/s 14A on the ground that dividend income was only Rs. 85,439/- whereas the disallowance made by the AO and confirmed by Ld. CIT(A) is Rs. 9,36,209/-.

3. Now it is well settled that disallowance u/s 14A cannot exceed the exempt income which proposition upheld by Hon'ble Delhi Court in **Pr. CIT v. Mc Donalds India (P.) Ltd. ITA 725/2018** decided on 22nd October, 2018 cannot exceed the exempt income of that year. This decision of the Hon'ble High Court follows the ratio and judgment of the Hon'ble Supreme Court in the case of **Maxopp Investments Ltd. v. CIT [2018] 402 ITR 640/254 Taxman 325/91 taxmann.com 154** and the earlier judgments of the Delhi High Court in **Cheminvest v. CIT [2015] 378 ITR 33/234 Taxman 761/61 taxmann.com 118** and **CIT v. Holcim (P.) Ltd. [2015] 57 taxmann.com 28 (Delhi)**.

4. In the case of **Reliance Ports and Terminals Ltd. (114 taxmann.com 529) (2020)**, the Hon'ble Bombay High Court has not entertained revenue's appeal on same basis and held as under:

"4.....

(d) The Revenue is not able to point out, why the impugned order of the Tribunal should be interfered with by this Court. More particularly in view of the fact that this Court's order in Nirved Traders (P.) Ltd. v. Dy. CIT [IT Appeal No. 149 of 2017, dated 23-4-2019] has held that disallowance under section 14A of the Act cannot be more than exempt income.

(e) In the above view, Question (A) does not give rise to any substantial question of law. Thus not entertained.'

5. Thus, we direct the AO to restrict the disallowance u/s 14A to Rs. 85,439/-. This proposition was annexed in the open court for which representative appeared on behalf of assessee has agreed. Accordingly, the ground raised by the assessee is allowed.

6. In the net result, the appeal filed by the assessee stands **allowed.**

Orders pronounced in the open court on 10th August, 2022.

Sd/-

(Prashant Maharishi)

Accountant Member

मुंबई Mumbai;दिनांक Dated : 10/08/2022

Sd/-

(Amit Shukla)

Judicial Member

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai