

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 8492/DEL/2019 [A.Y 2014-15)

The Dy. C.I.T
Central Circle - 26
New Delhi

Vs. M/s OCE Commercial Block
Hotel Aloft, Asset 5B, Aerocity
Hospitality District, IGI Airport
New Delhi

PAN: AABCO 0946 R

(Applicant)

(Respondent)

Assessee By : Shri K.V.S.R. Krishna, CA
Department By : Shri Jeetender Chand, Sr. DR

Date of Hearing : 19.09.2022
Date of Pronouncement : 19.09.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A) - 29, New Delhi dated 06.08.2019 pertaining to Assessment
Year 2014-15.

2. The solitary grievance of the Revenue is that the CIT(A) erred in deleting the addition of Rs. 13,35,28,383/- made by the Assessing Officer u/s 14A of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] r.w.r 8D of the ITAT Rules.

3. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee company had made investment in shares of Indian companies which would give rise to exempt income. The Assessing Officer further noticed that the assessee has suo moto added back a sum of Rs. 8,81,03,143/- as disallowable interest. Invoking provisions of section 14A of the Act r.w.r 8D of Rules, the Assessing Officer computed total disallowance at Rs. 3,35,28,383/-.

4. The assessee carried the matter before the CIT(A) and strongly contended that since the assessee has not earned any exempt income during the year under consideration, therefore, disallowance made by the Assessing Officer is uncalled for.

5. After considering the facts and detailed submissions and relying upon certain judicial decisions, the CIT(A) came to the conclusion that

since there is no exempt income, no disallowance can be made u/s 14A of the Act.

6. Before us, the ld. DR strongly supported the findings of the Assessing Officer.

7. Per contra, the ld. AR reiterated what has been stated before the lower authorities.

8. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that there is no exempt income earned by the assessee during the year under consideration. On such facts, the dispute is well settled in favour of the assessee and against the revenue by the decision of the Hon'ble Supreme Court in the case of Oil Industry Development Board by which the Hon'ble Supreme Court dismissed the Special Leave Petition preferred by the revenue against the order of the Hon'ble High Court of Delhi in 103 Taxmann.com 325 in which case the Tribunal had held that in the absence of any exempt income, disallowance u/s 14A of any amount was not permissible. The Hon'ble High Court of Delhi upheld the order passed by the Tribunal and the Hon'ble Supreme Court dismissed the SLP preferred by the Revenue.

9. In another decision, the Hon'ble High Court of Delhi in the case of Caraf Builders & Constructions [P] Ltd I.T. Appeal No. 1260 of 2018 order dated 13.11.2018 has held that when no taxable income is earned, corresponding expenditure could not be worked out for disallowance.

10. Similar view was taken by the Hon'ble Delhi High Court in the case of Cheminvest Ltd Vs. CIT 61 Taxmann.com 118. Respectfully following the judicial decisions cited hereinabove, we decline to interfere with the findings of the CIT(A). Accordingly, Ground of appeal raised by the Revenue is dismissed.

11. In the result, the appeal of the Revenue in ITA No. 8492/DEL/2019 is dismissed.

The order is pronounced in the open court on 19.09.2022.

Sd/-

[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 19th September, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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Date on which the file goes to the Head Clerk	
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