

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : B : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.5707/Del/2019  
Assessment Year: 2015-16

ACIT,  
Circle-5(2),  
New Delhi.

Vs. Decent Financial  
Services Pvt. Ltd.,  
A-86, DD Shed, Okhla  
Industrial Area, Phase-I,  
New Delhi.

(Appellant)

PAN: AAACD2899P  
(Respondent)

Assessee by : Shri Amit Sharma, Advocate  
Revenue by : Shri Kumar Pranav, Sr. DR  
Date of Hearing : 21.11.2022  
Date of Pronouncement : 24.11.2022

ORDER

PER C.M. GARG, JM:

This appeal filed by the Revenue is directed against the order dated 10.04.2019 of the CIT(A)-3, New Delhi, relating to Assessment Year 2015-16.

2. The ground of appeal raised by the Revenue reads as under:-

*“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has grossly erred in deleting the disallowance made by the AO u/s 14A r.w. Rule 8D of the Act of Rs.1,62,35,930/-.*

*2. The appellant craves leave to add, amend or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

3. The ld. Sr. DR, supporting the assessment order dated 26.12.2017 passed u/s 143(3) of the Income-tax Act, 1961 (for short, 'the Act') submitted that the assessee had earned substantial dividend income of Rs.1,22,16,840/-, therefore, the AO was right in making disallowance u/s 14A of the Act r.w.r. 8D of the Income-tax Rules, 1962 (for short, 'the Rules'). The ld. Sr. DR submitted that the assessee has capitalized substantial amount of interest paid by him on the amount invested, therefore, the amount of disallowance has to be calculated accordingly.

4. Replying to the above, the ld. Counsel of the assessee vehemently supporting the first appellate order, submitted that the assessee has offered the entire amount of Rs.1,22,16,840/- as taxable income of the assessee and has not shown any exempt income during the relevant financial period and, therefore, the disallowance u/s 14A r.w.r. 8D cannot be made in view of the decision of the Hon'ble jurisdictional High Court of Delhi in the case of *Cheminvest Ltd. vs. CIT* (2015) 61 taxmann.com 118 (Delhi) and the judgement of the Hon'ble Supreme Court in the case of *CIT vs. Chettinad Logistics Pvt. Ltd.* (2018) 95 taxmann.com 250 (SC).

5. On careful consideration of the rival arguments, first of all we may point out that the AO has made the addition by observing that where investment has been made in shares which did not yield any dividend income in the year under

consideration, the expenditure incurred for earning income was deductible notwithstanding the fact that no such income has been earned.

6. Aggrieved, the assessee carried the matter before the Id.CIT(A) who deleted the addition by observing as follows:-

*“5.1 The brief facts of the case are that the AO noted that the appellant had made some investments. Thus, the AO has invoked the provisions of Section 14A of the Act read with Rule 8D and has made addition of Rs. 1,62,35,930/-. In appeal the appellant has submitted that it has earned dividend income of Rs. 1,22,16,840/- and has offered this entire income as taxable and has not shown any exempt income during the year and of Hon’ble Delhi High Court in the case of Cheminvest Ltd. Vs. CIT and the decision of Apex Court in the case of CIT vs. Chettinad Logistics Pvt. Ltd. [2018] 95 taxman.com 250 ~-(SC). It has been noticed that the appellant has not shown any exempt income during the year. In this regard, reference is made to the judgment in the case of CIT vs Holcim India P Ltd. (2014 TOI 1586 Del IT), in which the jurisdictional High Court has observed as under:*

*“14. On the issue whether the respondent-assessee could have earned dividend income and even if no dividend income was earned, yet Section 14A can be invoked and disallowance of expenditure can be made, there are three decisions of the different High Courts directly on the issue and against the appellant- Revenue. No contrary decision of a High Court has been shown to us. The Punjab and Haryana High Court in Commissioner of Income Tax, Faridabad Vs. M/s. Lakhani Marketing Inch, ITA No. 970/2008, decided on 02.04.2014, made reference to two earlier decisions of the same Court in CIT Vs. Hero Cycles Limited, [2010] 323 ITR 518 and CIT Vs. Winsome Textile Industries Limited, [2009] 319 ITR 204 to hold that Section 14A cannot be invoked when no exempt income was earned. The second decision is of the Gujarat High Court in Commissioner of Income Tax-I Vs. Corrttech Energy (P) Ltd. [2014] 223 Taxmann 130 (Guj). The third decision is of the Allahabad High Court in' Income Tax Appella No. 88 of 2014. Commissioner of Income Tax (ii) Kanpur, Vs. M/s. Shivam Motors (P) Ltd. decided on 05.05.2014. In the said decision it has been held:*

*"As regards the second question. Section 14A of the Act provides that for the purposes of computing the total income under the Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. Hence, what Section 14A provides is that if there is any income which does not form part of the income under the Act, the expenditure which is incurred for earning the income is not an allowable deduction. For the year in question, the finding of fact is that the assessee had not earned any tax free income. Hence, in the absence of any tax free income, the corresponding expenditure could not be worked out for disallowance. The view of the CIT(A), which has been affirmed by the Tribunal, hence does not give rise to any substantial question of law. Hence, the deletion of the disallowance of Rs.2,03,752/- made by the Assessing Officer was in order"*

*15. Income exempt under Section 10 in a particular assessment year, may not have been exempt earlier and can become taxable in future years. Further, whether income earned in a subsequent year would or would not be taxable, may depend upon the nature of transaction entered into in the subsequent Assessment Year. For example, long term capital gain on sale of shares is presently not taxable where security transaction tax has been paid, but a private sale of shares in an off market transaction attracts capital gains tax. It is an undisputed position that respondent assessee is an investment company and had invested by purchasing a substantial number of shares and thereby securing right to management. Possibility of sale of shares by private placement etc. cannot be ruled out and is not an improbability. Dividend may or may not be declared. Dividend is declared by the company and strictly in legal sense, a shareholder has no control and cannot insist on payment of dividend. When declared, it is subjected to dividend distribution tax. "*

*Also the Hon'ble ITAT, Delhi has taken a similar view in the cases of Mitsubishi Corporation India Pvt. Ltd. vs. DCIT (ITA No. 803/Del/14 AY 2009-10), ITO vs. Milk Food Ltd. (ITA NO. 3278/Del/2013) and LG- Chemical India Pvt. Ltd. vs. ACIT (ITA No. 331/Del/2013) whereby the ITAT has deleted the additions made u/s 14A on the ground that no exempt income has been earned by the appellant. It is further contended by the AR that the AO has not recorded satisfaction before invoking the provision of section 14A and Rule 8D. The AR has also furnished a copy of the appellate order for AY 2014-15 in which the similar addition made by the AO has been allowed by Ld. Predecessor. The AR has submitted that the appellant has capitalized*

*interest amounting to Rs. 18,33,73,452/- out of the total interest of Rs. 23.44 crores incurred during the year and had also disallowed a sum of Rs. 1,63,482/- on account of direct expenses relatable to dividend income and it is contended that the AO has not rejected the computation and suo moto disallowance made by the appellant. In view of the above decisions of jurisdictional courts and in view of the fact that there is no exempt income shown by the appellant during the year, the disallowance made by the AO u/s 14A read with Rule 8D cannot be sustained and therefore, the addition made on this account is deleted and the ground of appeal is allowed.*

6. *Ground no. 6 of the appeal is regarding the charging of interest u/s 234A, 234B & 234C of the Act. In this respect, it is stated that the levy of interest is mandatory and consequential to the determination of total income and has to be paid when the statutory conditions are satisfied. This has been observed and confirmed by the Hon'ble Supreme Court in the case of CIT vs. Anjum M.H. Ghaswala (2001) 252 ITR 1 (SC). In view of this position of law, the ground of appeal is dismissed."*

7. In our considered opinion, when the entire amount of dividend income of Rs.1,22,16,840/- has been offered for taxation by the assessee in its return of income and no exempt income has been claimed for AY 2015-16, then, the disallowance u/s 14A of the Act r.w.r. 8D of the Rules cannot be held as sustainable in view of the judgement of the jurisdictional High Court of Delhi in the case of *Cheminvest Ltd. (supra)* and in view of the judgement of the Hon'ble Supreme Court in the case of *CIT vs. Chettinad Logistics Pvt. Ltd. (supra)*. So far as the contention of the ld. Sr. DR that the assessee has capitalized huge amount of interest paid by him is concerned, this also show that the assessee has incurred expenditure of interest paid towards amounts used for investments in shares, but, has not claimed interest amount as revenue expenditure and has capitalized the same. Therefore, the facts and circumstances of this contention

are self-explanatory which reveals that instead of claiming expenditure on interest payment, the assessee has capitalized the same by enhancing the value of investment, therefore, no addition is called for u/s 14A of the Act r.w.r. 8D of the Rules in this regard. In view of the above, we are unable to see any ambiguity, perversity or any other valid reasons to interfere with the findings of the Id.CIT(A). The ground raised by the Revenue is dismissed.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 24.11.2022.

Sd/-

(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Dated: 24<sup>th</sup> November, 2022.

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Copy forwarded to :

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

Sd/-

(C.M. GARG)  
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi