

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.5399/Del/2019  
Assessment Year: 2015-16

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

Vs. Carnation Auto India  
Pvt. Ltd.,  
3/16, 2<sup>nd</sup> Floor,  
Shanti Niketan,  
New Delhi.  
PAN: AABCH9733K

(Appellant)

(Respondent)

Assessee by	:	None
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 of the CIT(A)-33, New Delhi, relating to Assessment Year 2015-16.

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

*“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance made u/s 14A of the Income Tax Act, 1961 in accordance with Rule 8D of the IT Rules of Rs.1,90,22,356/-.*

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

3. From the appeal record, we note that the notice issued for the date of hearing 20.01.2022 was served on the assessee, but, none appeared. Notice was also issued to the assessee for today's hearing to the same address. When the case was called for hearing, neither the assessee nor any authorized representative appeared nor any adjournment application has been filed. However, on perusal of the appeal record and brief submissions of the ld. Sr. DR on behalf of the Department, we find that this appeal can be adjudicated in absence of the assessee after hearing the argument of the ld. Sr. DR.

4. The ld. Sr. DR, supporting the assessment order, submitted that the disallowance u/s 14A of the Income-tax Act, 1961 r.w.r. 8D of the Income-tax Rules, 1962 has to be made when the assessee has made investments in shares and other securities. The ld. Sr. DR, drawing our attention towards relevant para of the assessment order, submitted that the AO has rightly noted that each assessment year is different year, hence, the argument of the assessee that the ld.CIT(A) has allowed its appeal on the identical issue in the earlier years was not acceptable. Therefore, the AO was right in making addition and the ld.CIT(A) was not correct in deleting the same. Therefore, the ld. Sr. DR submitted that the assessment order may kindly be restored by setting aside the first appellate order.

5. On careful consideration of the above submissions, we observe that the ld.CIT(A) has deleted the addition by observing as follows:-

*“8. Decision*

*8.1 The Appellant has clarified that there was no exempt income earned by it during the year. To demonstrate this fact the copy of ITR has been submitted in which against the column dividend income the figure has been shown ‘Zero’. Similarly, Nil income has been shown against the column ‘Profit on sale of investment being securities chargeable to securities transaction tax’. Again the Appellant has declared ‘Zero’ income against the head ‘Income credited to Profit & Loss Account (included in one) which is exempt’. The profit & loss account reveals the income of Rs.355 lacs under the head ‘Other Income’ and the other income consists of the following income :*

<u>20 Other Income</u>	<u>Figures in Crores</u>
<i>On bank deposits</i>	<i>Rs. 15.88</i>
<i>On income tax refund</i>	<i>-</i>
<i>Credit balances written back</i>	<i>Rs.296.50</i>
<i>Miscellaneous income</i>	<i>Rs. 42.62</i>
<i>Total</i>	<i>Rs.355.00</i>

*8.2 I have considered the facts of the case and submission of the Appellant. If the Assessee did not earn any exempt income during the year under consideration, no disallowance was called for in view of the decision of the Hon’ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT dated 12.02.2018 :*

*“34) Having clarified the aforesaid position, the first and foremost issue that falls for consideration is as to whether the dominant purpose test, which is pressed into service by the assessee would apply while interpreting Section 14A of the Act or we have to go by the theory of apportionment. We are of the opinion that the dominant purpose for which the investment into shares is made by an assessee may not be relevant. No doubt, the assessee like Maxopp Investment Limited may have made the investment in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact remains that such dividend income is*

*non-taxable in this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind Section 14A of the Act in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in Section 14A of the Act. This is so held in Walfort Share and Stock Brokers P Ltd., relevant passage whereof is already reproduced above, for the sake of continuity of discussion, we would like to quote the following few lines therefrom.*

*“The next phrase is, “in relation to income which does not form part of total income under the Act”. It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of section 14A..*

*xxx xxx xxx*

*The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14A.”*

8.3 Earlier the Hon'ble Delhi High Court in the case of CIT vs. Holcim India Pvt. Ltd. (ITA No. 486/2014) held that no disallowance u/s 14A can be made if the assessee has not declared any exempt income.

8.4 The reliance is also placed on the decision of Cheminvest Ltd. vs. CIT, [2015] 61 taxmann.com 118 (Delhi), High Court of Delhi -

*"In the context of the facts enumerated the question framed was answered by holding that the expression 'does not form part of the total income' in section 14A envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, section 14A will not apply if*

*no exempt income is received or receivable during the relevant previous year."*

*8.5 In view of the above facts and in the circumstances, I find that no disallowance of expenditure could be made by the Assessing Officer in the case of the Appellant as no exempt income was earned during the year under reference. In the light of the above, the addition is deleted and the ground of appeal taken by the Appellant is allowed."*

6. In view of above facts and circumstances, the ld.CIT(A) was right in concluding that no disallowance of expenditure could be made by the AO in the case of the assessee u/s 14A of the Act r.w.r. 8D of the Income-tax Rules, 1962 as no exempt income was earned by the assessee during the year under reference, i.e., AY 2015-16. The ld.CIT(A) has placed reliance on the judgement of the jurisdictional High Court in the case of *Cheminvest Ltd. (supra)* which is binding on all the tax authorities including the Tribunal. Therefore, we are unable to see any ambiguity, perversity or any other valid reasons to interfere with the findings of the ld.CIT(A). The ground raised by the Revenue are dismissed.

7. 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

Sd/-

(C.M. GARG)  
JUDICIAL MEMBER

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

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi