

IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH: DB: INDORE

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER

ITA No.96/Ind/2022  
Assessment Year: 2017-18

The ACIT (Central)-2, Indore, MP 452001	vs.	M/s Keti Construction Ltd., Vastalya Chambers, Sapna Sangeeta, 31/6, Sneh Nagar, Main Road, Indore, MP PAN AAACK6893Q
(Appellant)		(Respondent)

For Revenue :	Shri P.K. Mishra, CIT(DR)
For Assessee :	Shri Somya Bumb, CA

Date of Hearing :	17.11.2022
Date of Pronouncement :	30.01.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

This appeal filed by the Revenue is directed against the order dated 08.02.2022 of the Ld. CIT(A), Indore, relating to Assessment Year 2017-18.

2. The grounds of appeal raised by the revenue read as under:-

1. *"Whether or not on the facts and in the circumstances of the case the Ld.CIT(A) is justified in deleting the addition of Rs. 2,33,07,231/- made by AO for A.Y 2017-18 on account of disallowance u/s 14A of the Income Tax Act, 1961, ignoring the fact that the assessee has not provided any quantitative details to prove that the accounts for taxable income and exempt income were separately maintained in respect of shares."*

2. *"Whether or not on the facts and in the circumstances of the case the Ld.CIT(A) is justified in ignoring the fact that the investment made by the assessee is capable of earning dividend income which is exempt from tax. The Ld.CIT(A) has not appreciated the fact that the intention of legislature is to disallow all the expenditures incurred in relation to income, which does not form part of total income. In the case of Lolly Motors India(p.)Ltd VS PCIT(2018) 93 taxmann.com39(Amritsar-Trib.)/(2018)170 ITD 370 (Amritsar-Trib.), Hon'ble ITAT held that section 14A would apply even if no dividend was earned by assessee from investment in shares."*

3 *"Whether or not on the facts and in the circumstances of the case the Ld.CIT(A) is justified in ignoring the circular no 5 of 2014 dated 11.02.2014 issued by CBDT, which is intended to cover even those situations where there is a possibility of exempt income being earned in future. The circular, at paragraph 4, states that it is not necessary for exempt income to have been included in the income of particular year for disallowance to be triggered."*

4 *In the case of Pr.CIT vs Karnatka State Financial corporation (2022)137 taxmann.com 195(Supreme court), Notice has been issued in SLP filed against order of High Court wherein HC held that provision of Section 14A is relatable to earning of actual income and only expenses proportionate to earning of exempt income could be disallowed under section 14A. Further, Notice is issued in SLP filed in the case of PCIT vs Adani Wilmar Ltd(2021) 133 taxmann.com 444 (Supreme Court), against High Court ruling that where there was no exempt income claimed to be earned by assessee-company during year,*

*no disallowance of expenditure under section 14A was to be made."*

3. The learned CIT-DR submitted that the Ld. CIT(A) has granted relief to the assessee without considering the relevant facts and circumstances of the case and ignoring the relevant CBDT circular No. 5 dated 11.02.2014 and judgment of Hon'ble Karnataka High Court in the case of PCIT vs. Karnataka State Financial Corporation (2022) 137 Taxmann.com 195. Therefore impugned first appellate order may kindly be set aside by restoring that of the AO.

4. Replying to the above the learned AR submitted that it is a peculiar fact of the case that in the present case the appellant had no exempt income in the relevant financial year pertaining to assessment year under consideration therefore no disallowance could have been made u/s. 14A of the Income Tax Act 1961, and Rule 8D of the Income Tax Rules 1963. In view of judgment of Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs CIT in ITA 749/2014 dated 02.09.2015.

5. In view of above the controversy regarding making disallowance u/s. 14A r.w.r 8D of the Rules no disallowance can be

made in the hands of the assessee when the assessee has not claimed any exempt income. Ld. CIT(A) after considering the written submissions of the assessee has granted relief to the assessee by following judgement of Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT (supra) where Their Lordship categorically held that section 14A will not apply if no exempt income is received or receivable during the relevant previous year by the assessee. In view of above we are unable to see any valid reason to interfere with the findings arrived at by the Ld. CIT(A), therefore we uphold the same. The sole contention of the revenue is that the Hon'ble Supreme Court has issued notices in the cases of PCIT vs. Adani Wilmar Ltd(2021) 133 taxmann.com 444 Ltd against the order of Hon'ble High Court of Gujarat reported as (2021) 133 taxmann.com 443 (Guj) and in the PCIT vs. Karnataka State Financial Corporation against judgement of Hon'ble Karnataka High Court reported as (2021) 127 taxmann.com 115 (Kar.) wherein Hon'ble respective High Courts granted relief to the assessee by holding that no disallowance of expenditure of expenditure u/s. 14A of the Act can be made more than actual exempt income earned by the assessee. Similar proposition has been rendered by Hon'ble High

Court of Delhi in the case of Cheminvest Ltd. vs Commissioner of Income Tax (supra). In our humble view until unless the issue is adjudicated at the level of Hon'ble Supreme Court modifying of setting aside the orders of judgments of Hon'ble High Court all authorities below to the High Court's including this Tribunal is duty bound to follow the propositions rendered by Hon'ble High Court therefore we are inclined to hold that the Ld. CIT(A) was right in granting relief to the assessee by following the proposition rendered by various High Court's including judgment of Hon'ble Delhi High Court in the case of Cheminvest vs. CIT (supra). Consequently ground of revenue being devoid of merit is dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 30.01.2023.

Sd/-

Sd/-

(BHAGIRATH MAL BIYANI)  
ACCOUNTANT MEMBER

(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 30<sup>th</sup> January, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, Indore

		Date
1.	Draft dictated on	17.01.2023
2.	Draft placed before the author	18.01.2023
3.	Draft placed before the other Member	.01.2023
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5.	Order uploaded on	.01.2023
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7.	Date on which file goes to the Head Clerk.	
8.	Date on which file goes to the AR	
9.	Date of dispatch of Order.	