

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

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

ITA No.1140/Del/2018
Assessment Year: 2014-15

Addl. CIT Special Range-4 New Delhi	Vs	Innovative B2B Logistics Solutions (P) Ltd. Level-4, Rectangle -1, Commercial Complex, D-4, Saket, New Delhi -110017 PAN No.AABCI5215M
(APPELLANT)		(RESPONDENT)

ITA No.1320/Del/2018
Assessment Year: 2014-15

Innovative B2B Logistics Solutions (P) Ltd. Level-4, Rectangle -1, Commercial Complex, D-4, Saket, New Delhi -110017 PAN No.AABCI5215M	Vs	Addl. CIT Special Range-4 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Ajay Kumar, Sr DR
Respondent by	Sh. Nageshwar Rao, Advocate Sh. Akshay Uppal, Advocate

Date of hearing:	11/07/2023
Date of Pronouncement:	14/07/2023

ORDER**PER N. K. BILLAIYA, AM:**

ITA No. 1140/Del/2018 and 1320/Del/2018 are cross appeals by the revenue and the assessee preferred against the order of the CIT(A)-35, New Delhi dated 21.11.2017 pertaining to A.Y.2014-15.

2. Both these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The first grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs.19111668/- made by the AO in respect of disallowance of interest u/s.14A of the Act with rule 8D of the rules.

4. The under lying facts show that on perusal of the balance sheet the AO found that the assessee has made investment of Rs.45,70,10,646/- in the shares of M/s. Noble Tradecon Private Limited and M/s. B2B Forwarding Agent Limited. The AO noticed that the assessee has not made any disallowance u/s.14A of the Act. The assessee was asked to explain in response to which the assessee stated that it has not received any exempt income during the year, therefore, no disallowance need to be made.

5. The contention of the assessee was dismissed by the AO. The AO was of the opinion that disallowance u/s.14A r.w.r. 8D is mandatory and invoking the provisions of section 14A the AO computed the disallowance under rule 8D at Rs.19111668/-.

6. Assessee challenged the addition before the CIT(A) and once again contended that it has earned no exempt income.

7. After considering the facts and the submissions and after drawing support from decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. 378 ITR 33 the CIT(A) deleted the impugned addition.

8. Before us the DR strongly supported the findings of the AO.

9. Per contra the Counsel for the assessee reiterated what has been stated before the lower authorities.

10. The assessee has not earned any exempt income during the year under consideration is not disputed, therefore, the ratio laid down by the Hon'ble Jurisdictional High Court of Delhi in the case of Era Infrastructure (India) Ltd. 448 ITR 674 squarely apply wherein the Hon'ble High Court has held that no disallowance need to be made if there is no exempt income.

11. Respectfully following the same we decline to interfere with the findings of the CIT(A). Ground No.1 to 6 taken together are dismissed.

12. The second grievance of the revenue is that the CIT(A) erred in applying the percentage of 6% as against 12% applied by the AO in respect of disallowance of interest without giving any guesses.

13. The under lying facts show that during the course of the scrutiny assessment proceedings the AO found that the assessee has total loan outstanding at Rs.28,21,01,306/-. The AO found that the assessee has raised huge loans from various parties/banks on which substantial amount of interest has been paid during the year. The total interest on borrowings paid by the assessee was Rs.11,94,87,374/- . The AO further found that the assessee has given interest free loans to its subsidiary company. The AO formed a belief that the assessee has diverted its interest bearing funds towards its subsidiary company as interest free loans/ advances. Having formed this belief the AO considered 12% interest per annum and computed the disallowance of interest to Rs.29511120/-.

14. The assessee challenged the addition before the CIT(A) and the CIT(A) reduced the disallowance from 12% to 6%.

15. Against this both the revenue and the assessee are in appeal before us. The Counsel for the assessee vehemently stated that the assessee was having sufficient interest free resources from which it has given interest free advances and since the assessee was having mixed pool of funds the presumption is that the loan / advance has been given out of interest free funds.

16. The DR strongly supported the findings of the AO.

17. We have given a thoughtful consideration to the orders of the authorities below. Summary of own funds, interest free loan taken and advance given to Noble starting from the year in which the advance was given can be understood from the following chart :-

<i>Particulars</i>	<i>Year ending March 2010</i>	<i>Year ending March 2011</i>	<i>Year ending March 2012</i>	<i>Year ending March 2013</i>	<i>Year ending March 2014</i>
<i>Advance given to Noble Tradecon Pvt. Ltd</i>	7,50,91,000	9,67,26,431	16,75,62,849	20,97,51,000	28,21,01,000
<i>Owned Funds</i>	186,12,98,740	149,58,30,486	112,31,41,797	87,88,45,957	67,15,66,331
<i>Interest free unsecured loans taken</i>	-	40,00,00,000	94,85,00,000	124,26,00,000	122,26,00,000
Total Interest free funds available	186,12,98,740	189,58,30,486	207,16,41,797	212,14,45,957	189,41,66,331
Total Interest bearing loan	80,96,60,675	100,84,89,038	82,87,16,481	73,92,69,010	134,56,87,757

18. From the above chart it is crystal clear that the interest free funds available with the assessee are far more in excess of the loan/ advance given to the subsidiary.

19. Hon'ble Supreme Court in the case of Reliance Industries 410 ITR 466 has held that no disallowance of interest expense is warranted when interest free funds available are far more in excess of the interest free advance.

20. Considering the facts in totality we do not find any merit in the additions made by the AO, therefore, the AO is directed to delete the additions of Rs.29511120/-. Ground No.1 to 6 of

revenue's appeal and ground No.7 are dismissed and solitary grievance of the assessee in ITA No.1320/Del/2018 is allowed.

21. In the result, the appeal of the revenue is dismissed and that of the assessee is allowed.

Order pronounced in the open court on 14.07.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .07.2023

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Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi