

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH, 'B' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER

ITA Nos.784 & 785/PUN/2023  
Assessment Years : 2013-14 & 2014-15

Prime Centre and Developers Private Limited, 504, Corporate Plaza, Senapati Bapat Road, Pune 411 016 Maharashtra PAN : AABCP4332Q	Vs.	The ACIT, Central Circle-1(1), Pune
Appellant		Respondent

Assessee by  
Revenue by

Shri Suhas Bora  
Shri Uma Shankar Prasad

Date of hearing 03-08-2023  
Date of pronouncement 04-08-2023

आदेश / ORDER

PER R.S. SYAL, VP :

These two appeals by the assessee are directed against the separate orders dt. 10-05-2023 passed by the CIT(A), Pune-11 u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'The Act') in relation to the assessment years 2013-14 and 2014-15. Since a common issue is raised in these appeals, we are, therefore, proceeding to dispose them off by a consolidated order for the sake of convenience.

A.Y. 2013-14 :

2. The only issue raised in this appeal is against the confirmation of disallowance of Rs.7,00,050/- made by the Assessing Officer (AO) u/s.14A read with Rule 8D(2)(iii) of the Act.

3. Briefly stated, the facts of the case are that the assessee is engaged in the business of development of real estate as Developers. Investment in shares were made to the tune of Rs.13.95 crore. Invoking the provisions of section 14A read with Rule 8D(2), the AO made total disallowance of Rs.36,38,957/-. The Id. CIT(A) deleted the disallowance to the tune of Rs.29,28,907/- on the ground that the assessee's capital and Reserves and Surplus were more than the investment in shares. He, however, sustained the addition under Rule 8D(2)(iii) amounting to Rs.7,00,050/- made by the AO at 0.5% of the average value of investments. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. Having heard the rival submissions and gone through the relevant material on record, it is seen from the impugned order that the assessee earned tax free dividend income of Rs.1,25,000/-. This fact has been recorded in para 6 of the order. Against that, the

disallowance under Rule 8D(2)(iii) has been made and sustained to the tune of Rs.7,00,050/-.

5. The Hon'ble Delhi High Court in *Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del)* has held that if there is no exempt income, there can be no question of making any disallowance u/s 14A of the Act. Similar view has been taken by the Hon'ble Delhi High Court in *CIT vs. Holcim India P. Ltd. (2014) 90CCH 081-Del-HC*.

6. It is seen that an amendment has been carried out to section 14A by the Finance Act, 2022 providing that the disallowance u/s 14A would be called for notwithstanding no receipt of exempt income during the year. The Hon'ble Delhi High Court in *Pr.CIT Vs. Era Infrastructure (India) Ltd. (2022) 448 ITR 674 (Delhi)* has held such amendment to be not retrospective. In that view of the matter, the case pertaining to the A.Y. 2014-15 under consideration, having earned tax free dividend of Rs.1,25,000/-, will be governed by the ruling in *Cheminvest (supra)*. Respectfully following the precedent, we order to restrict the disallowance to Rs.1,25,000/-.

A.Y. 2014-15:

7. The facts and circumstances for the A.Y. 2014-15 are *mutatis mutandis* similar. For this year, the assessee earned exempt income of Rs.92,378/-, whereas the AO made the disallowance

u/s.8D(2)(iii) at Rs.5,56,531/-, which came to be sustained in the first appeal. Following the view taken herein above, we restrict the disallowance to Rs.92,378/-, being, the amount of tax free dividend income.

8. In the result, both the appeals are partly allowed.

Order pronounced in the Open Court on 4<sup>th</sup> August, 2023.

Sd/-  
(S.S. VISWANETHRA RAVI)  
JUDICIAL MEMBER

Sd/-  
(R.S.SYAL)  
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 4<sup>th</sup> August, 2023  
सतीश

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The Pr.CIT(Central), Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलिय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	03-08-2023	Sr.PS
2.	Draft placed before author	04-08-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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