

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 119/Ind/2023**  
**Assessment Year:2012-13**

Keti Constructions Limited, 31/6,Vatsalya Chambers, Sneh Nagar Main Road, Indore	<b><u>बनाम/</u></b> Vs.	DCIT (CENTRAL) Indore.
(Assessee / Appellant)		(Revenue / Respondent)
<b>PAN: AAACK6893Q</b>		
Assessee by	Shri Soumya Bumb, AR	
Revenue by	Ms. Simran Bhullar, CIT DR	
Date of Hearing	29.08.2023	
Date of Pronouncement	31.08.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 7.03.2023 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 29.09.2015 passed by learned ACIT, Central-2, Indore, ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2012-13, the assessee has filed this appeal. on following grounds:

2. Heard the learned Representatives of both sides at length and case-records perused.

3. The solitary issue involved in present appeal is the disallowance of Rs. 1,34,43,488/- made by AO u/s 14A read with Rule 8D on account of expenditure for earning exempted income in the form of dividend on shares.

4. Ld. AR for assessee straightaway carried us to Para No. 3.1 of the order of first-appeal where the CIT(A) has recorded a clear finding *"The fact that there is no exempt income earned during the year from such investment is seen from the return of income as well as audited Balance-Sheet of the Appellant ."* Having demonstrated this factual position, Ld. AR carried us to the order of **ITAT, Indore in assessee's own case for AY 2017-18 in ITA No. 96/Ind/2022** dated 30.01.2023 where the ITAT has held that in absence of exempt income during the year, no disallowance can be made u/s 14A. The relevant para of order is re-produced below :

"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."

5. Thus, in view of above decision, the disallowance made by AO is not sustainable. But Ld. AR pointed out that there is a change in present case of assessee. The CIT(A) has relied upon the amendment made by Parliament in section 14A vide Finance Act, 2022, whereby a non-obstante clause has been inserted in the opening portion of section 14A and also the following Explanation has been inserted at the end of section:

*"Explanation - For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income."*

6. Ld. AR submitted that though the effect of this amendment is such that the disallowance u/s 14A shall be attracted even if the exempted income is not earned during the year but the amendment itself is applicable prospectively from AY 01.04.2022 and not applicable to AY 2012-13 with which are concerned in present appeal. To support this contention, Ld. AR firstly referred to following para of the **Memorandum to Finance Bill, 2022**:

"4. In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert an Explanation to section 14A of the act to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of the section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income

5. This amendment will take effect from 1<sup>st</sup> April,2022.

6. It is also proposed to amend sub-section (1) of the said section, so as to include a non-obstante clause in respect of other provisions of the Income-tax Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.

7. This amendment will take effect from 1<sup>st</sup> April, 2022, and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years."

Then, the Ld.AR relied upon two decisions, (i) PCIT vs. Era Infrastructure (India) Ltd., (2022) 141 Taxman.com 289 (Delhi HC) and (ii) DCIT vs. Lodha Developers Ltd. (2022) 143 taxmann.com 442 (Mumbai ITAT ), wherein it has been held that the aforesaid amendment is applicable prospectively from 01.04.2022. Ld.AR also filed copies of these decisions after conclusion of hearing as per liberty given to him during hearing.

7. With these submissions, Ld. AR prayed that in the present case of assessee the disallowance made by AO and confirmed by CIT(A) is not valid, hence the same must be deleted.

8. Per contra, Ld. DR for revenue relied upon the orders of lower authorities and contended that once the assessee has made investment in assets capable of generating exempt income, the disallowance u/s 14A must follow irrespective of whether or not there is exempt income during the year. Ld. DR also claimed that the amendment in section 14A made through Finance Act, 2022, is mere clarificatory of pre-existing law and the same should be treated as retrospective in nature. With these submissions, Ld. DR prayed to uphold the disallowance.

9. We have considered rival submissions of both sides. It is not in dispute that the assessee has not earned any exempt income during the year. Hence, our adjudication is confined only to a legal issue as to whether the disallowance u/s 14A is triggered even when exempt income is absent during the relevant year? We find that in assessee's own case for AY 2017-18, the ITAT, Indore, has already held that no disallowance is attracted in

such cases. Coming to the subsequent development of amendment in section 14A, we have seen the Explanatory Memorandum to Finance Bill, 2022, re-produced earlier and on perusal of same we find that it is clearly mentioned therein that the amendment shall apply from 01.04.2022. Furthermore, the said amendment has also been examined in two decisions relied upon by Ld. AR, mentioned earlier, wherein the Hon'ble High Court of Delhi as well as ITAT, Mumbai Bench have held that the amendment is prospective. In view of such state, we are inclined to accept the pleadings made by Ld. AR for assessee. Consequently, we hold that the disallowance made by AO u/s 14 is not valid. The same is hereby deleted. The assessee succeeds in this appeal.

**10. Resultantly, this appeal of assessee is allowed.**

*Order pronounced in the open court on 31.08.2023.*

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER  
Indore

दिनांक /Dated :31.08.2023.  
CPU/Sr. PS

*Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File*

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore*