

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.2176/Mum/2023  
(Assessment Year :2017-18)**

M/s. Mirae Asset Global Investments (India) Pvt. Ltd. Unit-606, 6 <sup>th</sup> Floor Windsor Building CST Road, Vidyanagri Marg, Kalina Santacruz (E) Mumbai	Vs.	Commissioner of Income Tax (Appeals) New Delhi
<b>PAN/GIR No.AAECM8387K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Tanzil Padvekar / Ms. Tejal Kharkar
Revenue by	Smt. Mahita Nair
<b>Date of Hearing</b>	<b>31/10/2023</b>
<b>Date of Pronouncement</b>	<b>31/10/2023</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 23/03/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) for the A.Y.2017-18.

2. In the grounds of appeal assessee has only challenged the disallowance made u/s.14A made by the ld. AO on the

ground that when assessee has not earned any exempt income during the year and the investments made into 'mutual fund growth' which are not capable of generating any dividend income, no disallowance u/s.14A can be made.

3. The brief facts are that ld. AO on perusal of the balance sheet he found that assessee at the yearend has average investment amounting to Rs.1,30,03,41,824/-. Accordingly, he issued show-cause to the assessee as to why 1% should not be disallowed and added to the income. In response, assessee submitted that it has not earned any exempt income during the year and therefore, disallowance u/s 14A is not applicable. The ld. AO relying upon the CBDT Circular No.5 of 2014, computed the disallowance of Rs.1,30,03,418/-. Even the ld. CIT (A) has confirmed the disallowance made u/s.14A r.w. Rule 8D despite noting that the investments were made into mutual fund growth scheme as per the details noted in the order at page 12.

4. After considering the submissions made by both the parties and on perusal of the impugned order, we find that there is no exempt income earned by the assessee nor the investments in 'mutual fund growth scheme' were capable of earning tax free income. Thus, no disallowance u/s.14A can be made. This issue stands covered by the series of decision including that of Hon'ble Bombay High Court in the case of **PCIT vs. Kohinoor Project (P) Ltd. reported in 276 Taxman 180** wherein the Hon'ble High Court has observed as under:-

**“1.** Heard Mr. A. R. Malhotra, learned standing counsel revenue for the appellant and Mr. Mihir C. Naniwadekar, learned counsel for the respondent-assessee.

**2.** This appeal has been filed by the revenue under section 260A of the Income-tax Act, 1961 ("the Act" for short) against the order dated 18-10-2016 passed by the Income-tax Appellate Tribunal "A" Bench, Mumbai ("Tribunal" for short) in Income Tax Appeal No. 5241/Mum/2013 for the Assessment Year 2008-09.

**3.** The appeal has been preferred projecting the following two questions as substantial questions of law :

(i) Whether on the facts and in circumstances of the case and in law, Hon'ble ITAT was justified in deleting the addition of Rs. 5,79,95,481/- on the ground that when there is no exempt income declared during the year, there cannot be any disallowance u/s. 14A of the Income-tax Act, 1961 read with rule 8D of the Income-tax Rules, 1962 while confirming the order of the Ld. CIT(A) restricting the disallowance to Rs. 1,16,03,269/- under rule 8D(2)(ii) of the IT Rules, 1962?

(ii) Whether on the facts and in the circumstances of the case and in law, Hon'ble ITAT was justified in confirming the order of the Ld. CIT(A) to restrict the disallowance to Rs. 1.16 crore without appreciating the fact that by doing this, Hon'ble ITAT has allowed the application of rule 8D(2)(ii) of the IT Rules, 1962 in the case of the assessee even when it has not earned any exempt income?

**4.** Respondent in its return of income for the assessment year under consideration declared total loss of Rs. (-) 10,16,33,795/-. The case was selected for scrutiny and thereafter subjected to scrutiny assessment. Assessing Officer noted that assessee had made investment of Rs. 7.90 Crores in shares of Kohinor CTNL Infrastructure Co. Ltd. which was held to be strategic investment for which assessee would receive future benefits. Notwithstanding the fact that the assessee had earned no exempt income for the relevant previous year, Assessing Officer made disallowance to the extent of Rs. 6,95,98,750/- under section 14A of the Act.

**5.** Aggrieved by the aforesaid, assessee preferred appeal before the Commissioner of Income-tax (Appeals)-12, Mumbai. In the appeal proceedings the first appellate authority held that the Assessing Officer was justified in invoking section 14A of the Act by taking the view that the assessee had made investments that would give rise to exempt income and, therefore, Section 14A of the Act was applicable. Accordingly, vide order dated 8-5-2013, first appellate authority affirmed the action of the Assessing Officer in invoking section 14A of the Act but reduced the quantum of disallowance to Rs. 1,16,03,269/- for the grounds and reasons mentioned in the appellate order.

**6.** Aggrieved by the reduction in the quantum of disallowance revenue preferred appeal before the Tribunal. The Tribunal considered the contention of the assessee that no exempt income was claimed by the assessee under section 14A of the Act and, therefore, no disallowance could have been made by the Assessing Officer by invoking section 14A together with Rule 8D(2)(ii) of the Income-tax Rules, 1962. Tribunal relied upon the decision of the Delhi High Court in the case of Cheminvest Ltd. v. CIT [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 (Delhi); the decision of the Punjab and Haryana High Court in CIT v. Lakhani Marketing Inc. [2014] 49 taxmann.com 257/226 Taxman 45 (Mag.); and decision of the Allahabad High Court in the case of CIT v. Shivam Motors (P.) Ltd. [2015] 55 taxmann.com 262/230 Taxman 63 (All.) and observed that there is uniformity in the view that in case there is no exempt income claimed by the assessee in the return of income, no disallowance can be made by the revenue. Consequently, vide order dated 18-10-2016 Tribunal dismissed the appeal of the revenue.

**7.** Submissions made by learned counsel for the parties have been considered.

**8.** Section 14A of the Act deals with expenditure incurred in relation to income not includible in total income. As per sub-section (1) of section 14A, for the purpose of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income. In Cheminvest Ltd. (supra) Delhi High Court examined the expression "does not form part of the

*total income" as appearing in sub-section (1) of section 14A of the Act. Delhi High Court held that the said expression 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. It was clarified that section 14A will not apply if no exempt income is received or receivable during the relevant previous year.*

*9. This view has been followed in several decisions by this Court. In fact in Pr. CIT v. Man Infraprojects Ltd. [IT Appeal No. 259 of 2017, dated 9-4-2019], this Court followed the decision of the Delhi High Court in Cheminvest Ltd. (supra). It was further noted in MAN Infraprojects Ltd. that the decision of the Delhi High Court was challenged by the revenue before the Supreme Court by filing SLP but the SLP was dismissed.*

*10. In the light of the above, we hold that no substantial question of law arises from the order of the Tribunal. The appeal is devoid of merit and is accordingly, dismissed.*

5. Thus, disallowance u/s.14A made by the ld. AO is deleted.

**6. In the result, appeal of the assessee is allowed.**

Order pronounced on 31<sup>st</sup> October, 2023.

**Sd/-**  
**(GAGAN GOYAL)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 31/10/2023  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Asstt.  
Registrar)  
**ITAT, Mumbai**