

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.780/Del/2023  
(Assessment Year: 2018-19)**

Gateway Impex Pvt. Ltd.,  
108/1, 2<sup>nd</sup> Floor, Madangir,  
Delhi – 110 062.

vs.

ITO, Ward 10 (1),  
Delhi.

**(PAN : AAACG6562C)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S. Krishnan, Advocate

REVENUE BY : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 20.11.2023

Date of Order : 22.11.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 17.01.2023 for the assessment year 2018-19.

2. Grounds of appeal taken by the assessee read as under :-

“1. The order of the Id. CIT (A) is wrong on facts and bad in law, and therefore, is illegal.

2. i) The Id. CIT (A) erred in upholding the action of Id. AO of disallowing a sum of Rs.2,43,88,100/- under section 14A read with Rule 8D.

ii) The Ld. CIT (A) erred in upholding the addition of Rs.2,38,537/- being the suo moto disallowance by the appellant u/s 14A to the income of the appellant.

3. The Ld. CIT (A) erred in upholding the action of Id. AO for not set off brought forward short term capital loss of Rs.1,29,72,640/- with short term capital gain.

4. The Id. CIT (A) erred in passing the said order in haste without giving adequate opportunity of hearing.”

3. At the outset, Id. Counsel of the assessee submitted that he shall be pressing ground no.2(i) and ground no.3.

4. As regards Ground No.2 (i) : the grievance is that AO disallowed a sum of Rs.2,43,88,100/- under section 14A of the Income-tax Act, 1961 with Rule 8D of the Income-tax Rules, 1962. In this regard, Id. Counsel of the assessee submitted that assessee had not earned any exempt income. So, he pleaded that there cannot be any disallowance on the touchstone of Hon'ble jurisdictional High Court decision in the case of Cheminvest Ltd. vs. CIT 61 taxmann.com 118 (Delhi). He further submitted that the fact that assessee had not earned any exempt income is arising out of the order of AO wherein AO has held that though assessee has not earned any exempt income but the disallowance under Rule 8D has to be made.

5. Ld. DR for the Revenue did not dispute the proposition that assessee has not earned any exempt income and the issue is covered by the decision

of Hon'ble jurisdictional High Court decision in the case of Cheminvest Ltd. vs. CIT.

6. Accordingly, respectfully following the precedent, we set aside the orders of the authorities below on this issue and decide the issue in favour of the assessee.

7. As regards Ground No.3 : The same is raised against the action of the AO for not setting off brought forward short term capital loss of Rs.1,29,72,640/- with short term capital gain. We note that it is a consequential ground and AO will examine the same and pass order as per law.

8. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the open court on this 22<sup>nd</sup> day of November, 2023.**

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 22<sup>nd</sup> day of November, 2023  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**