

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI G.S PANNU, HON'BLE VICE PRESIDENT
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 1848/DEL/2016
Asstt. Year 2010-11

Dhanashree Developers P. Ltd. 303, Western Edge-1, Western Express Highway, Above Metro Mall, Borivali (East) Mumbai 400066 PAN AACCD6182F	Vs.	DCIT, Central Circle-4, New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Tanzil Padvekar, Advocate
Department by:	Shri Ram Dhan Meena, Sr.DR
Date of Hearing:	20.6.2024
Date of pronouncement:	25.07.2024

ORDER

PER VIMAL KUMAR, JM

The assessee's appeal is against order dated 20.01.2016 of the Learned Commissioner of Income Tax (Appeals), New Delhi [hereinafter referred as "Learned CIT(A)"], dismissing the appeal against assessment order dated 28.03.2013 of the Deputy Commissioner of Income Tax, Central Circle-4, Delhi (hereinafter referred as "Learned AO") making additions of Rs. 72,50,159/-

and Rs. 1,15,523/- as well as disallowance of Rs. 90,42,612/- in AY 2010-11.

2. Brief facts of the case are that appellant/assessee e-filed return of income for the year 2010-11 on 15.10.2010 declaring total income of Rs. 6,82,88,863/-. On 30.03.2012 the company e-filed revised return of income declaring total income of Rs. 6,63,16,264/-. Reason for filing revised return was due to a mistake in claiming the depreciation which was inadvertently claimed for the year 2009-10. The case was selected for scrutiny. Notice under section 143(2) was issued on 25.08.2011. Further notice under section 143(2) along with a detailed questionnaire was issued on 30.11.2012. Shri A.J. Dighe, Chartered Accountant and Authorised representative of the assessee attended proceedings and submitted replies.

3. Information was received from the DIT (Inv.)-Delhi vide letter dated 26.02.2013 enclosing therein details of non-genuine/bogus bills filed by the appellant/assessee. According to information M/s. Dhanshree Developers Pvt. Ltd. during financial year 2009-10 relevant to assessment year 2010-11 had availed accommodation bills totalling to Rs. 72,50,159/-. The assessee vide order sheet entry dated 15.3.2013 was asked to clarify the position. The assessee filed reply dated 18.3.2013. On considering reply and other documents assessee was given time to reconcile the accounts and file its reply. As per information received, statements of hawala dealers were recorded by the investigation wing of the Maharashtra Sales Tax/VAT

Department. The assessee failed to prove genuineness of purchases from hawala dealers. So, purchases amounting to Rs. 72,50,159/- were disallowed and added to the total income of assessee. Perusal of profit and loss account revealed that assessee had debited an amount of Rs. 56,356/- on account of interest on late payment of VAT amounting Rs. 59,167/- on account of interest on late payment of TDS. Since payments are of penal in nature the same were disallowed. Addition of Rs. 1,15,523/- was made. The balance sheet of the assessee showed of Rs.1,24,60,24,010/-in equity shares. So, disallowance of Rs. 90,42,612/- under section 14A of the Act was made. Therefore, vide Assessment Order dated 28.3.2013 additions of Rs. 72,50,159/-and Rs. 1,15,523/- and disallowance of Rs. 90,42,612/- was passed.

4. Appellant/assessee preferred appeal before Learned CIT(A) which was dismissed vide order dated 20.1.2016.

5. Being aggrieved appellant/assessee preferred present appeal.

6. Learned authorised representative for appellant /assessee submitted that the learned CIT(A) erred in confirming an addition of Rs 72,50,159/- on account of bogus purchases on the basis of information received from investigation department which in turn relied on information from VAT Department without appreciating that the purchases were fully supported

and verifiable by invoices and payments were made by account payee cheques.

7. Learned authorised representative for appellant/assessee submitted that the learned CIT(A) erred in law and on facts in confirming the disallowance by relying on the statements of the dealers without giving any opportunity of cross examination as also without bringing any corroborative material apart from the statements.

8. Learned authorised representative for appellant/assessee submitted that the learned CIT(A) erred in confirming disallowance to the extent of Rs 29,94,307/- and Rs 4,11,961/- reflected in work in progress and VAT credit respectively which was not debited to the Profit and Loss Account.

9. Learned authorised representative for appellant/ assessee submitted that CIT(A) erred in confirming disallowance of Rs 90,42,612/- u/s 14A rws Rule 8D without recording any satisfaction that any expenditure was incurred for earning exempt income. Learned CIT(A) erred in not appreciating that there was no exempt income earned during the year as also no interest bearing funds were utilized for making investments for tax free income.

10. Learned authorised representative for appellant/assessee submitted that the Hon'ble High Court of Delhi in the case of Cheminvest Ltd. vs Commissioner of Income-tax-IV reported in

[2015] 61 taxmann.com 118 (Delhi) has observed that section 14A will not apply where no exempt income is received or receivable during relevant previous year. Hon'ble High Court of Delhi in the case of Principal Commissioner of Income-tax (Central) vs. Era Infrastructure (India) Ltd. reported in [2022] 141 taxmann.com 289 (Delhi) has held that the amendment of section 14A which is "for removal or doubts: cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood."

11. Learned authorised representative for appellant/assessee submitted that Hon'ble High Court of Bombay in the case of H.R. Mehta vs Assistant Commissioner of Income-tax, Mumbai [2016] 72 taxmann. com 110 (Bombay) has held as under:-

"In our view in the light of the fact that the monies were advanced apparently by the account payee cheque and was repaid vide account payee cheque the least that the revenue should have done was to grant an opportunity to the assessee to meet the case against him by providing the material sought to be used against assessee in arriving before passing the order of reassessment. This not having been done, the denial of such opportunity goes to root of the matter and strikes at the very foundation of the reassessment and therefore renders the orders passed by the CIT (A) and the Tribunal vulnerable. In our view the assessee was bound to be provided with the material used against him apart from being permitting him to cross examine the deponents. Despite the request dated 15th February, 1996 seeking an opportunity to cross examine the deponent and furnish the assessee with copies of statement and disclose material, these were denied to him. In this view of the matter we are inclined to allow the appeal on this very issue."

12. Learned authorised representative for the Department submitted that additions made on account of bogus purchases, on account of late payment of VAT/TDS is of penal in nature the additions were rightly made. Disallowance under section 14A was rightly disallowed.

13. From examination of record in light of aforesaid rival contention it is crystal clear that Learned AO in the impugned order out of seven hawala dealers discussed only three hawala dealers. Four hawala dealers were not dealt with. As such, the additions regarding four hawala dealers amounting to Rs.30,758/-, 334409/-, Rs. 782097/- and Rs. 3124987/- are without any basis. Learned AO relied on statements of hawala dealers without giving any opportunity of Cross-examination and without any corroborative material. Therefore, the additions are not just, fair and reasonable and deserves to be set aside.

14. Learned AO failed to make inquiries that the appellant/assessee was carrying some labour contract and certain Government projects during the financial year and in no circumstances the figures of TDS and VAT could not be disallowed due to non submission of clarification. So, addition of Rs.1,15,523/- was not proper and deserved to be set aside.

15. As per balance sheet it is evident that the assessee company had made investment aggregating to Rs. 1,24,60,24,010/- in equity shares and in non cumulative redeemable preference shares. The investments made by the assessee will yield income

which is not includible in the total income of the assessee under the provision of Income Tax Act. The assessee company has received the tax free income in the form of dividend amounting to Rs. 33,410/-. The company has availed the loan from the bank and it was the pre condition of the loan that the shares of certain amounts has to be purchased by the borrower from the bank. The shares are not purchased as income or to earn the dividend or tax free income. So the provisions of section 14A of the Income Tax Act were not applicable. Assessee had made suo moto disallowance. As per ratio of Hon'ble High Court of Delhi in the case of Cheminvest Ltd. vs Commissioner of Income-tax-IV's case (supra) it is well settled that section 14A will not apply where no exempt income is received or receivable during relevant previous year.

16. In view of above material facts and well settled principle of law and as per ratio of aforesaid judgements, the impugned orders of Learned AO and Learned CIT(A) dated 28.03.2013 and 20.1.2016 regarding disallowance of Rs.90,42,612/- are not legal and sustainable. Impugned orders deserve to be is set aside.

17. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 25th July 2024.

sd/-

**(G.S. PANNU)
VICE PRESIDENT**

sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 25/07/2024
Veena/ML

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	