

**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. 3065/DEL/2016
Asstt. Year 2012-13

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| Dhanashree Developers P. Ltd. 303, Western Edge-1, Western Express Highway, Above Metro Mall, Borivali (East) Mumbai 400066 PAN AACCD6182F | Vs. | ACIT, Central Circle-27, New Delhi. |
| (Appellant) | | (Respondent) |

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|---------------------------|--------------------------------|
| Assessee by: | Shri Tanzil Padvekar, Advocate |
| Department by: | Shri Ram Dhan Meena, Sr.DR |
| Date of Hearing: | 20.06.2024 |
| Date of pronouncement: | 25.07.2024 |

ORDER

PER VIMAL KUMAR, JM

The assessee's appeal is against order dated 08.02.2016 of the Learned Commissioner of Income Tax (Appeals), New Delhi [hereinafter referred as "Learned CIT(A)"], dismissing the appeal against assessment order dated 30.03.2015 of the Deputy Commissioner of Income Tax, Central Circle-29, New Delhi (hereinafter referred as "Learned AO") making disallowance of Rs. 62,04,130/- in AY 2012-13.

2. Brief facts of the case are that appellant/assessee e-filed return of income for the year 2012-13 on 29.03.2014 declaring total income of Rs. 4,29,50,760/-. The case was selected for scrutiny. Notice under section 143(2) was issued on 04.09.2014. Further notice under section 143(2) along with a detailed questionnaire was issued on 17.02.2015. Shri Dhananjay Paranjape, Chartered Accountant and Authorised representative of the assessee attended proceedings and details / information / documents.

3. From audited account of assessee company, it was noticed that the assessee have made investment in the companies and earned dividend income of Rs. 32,780/-. The assessee was asked to explain compliance of section 14A of Income Tax Act. The assessee filed reply dated 24.3.2015. On considering reply and other documents it was found that the assessee made substantial investments in shares of other companies. So, disallowance of Rs. 1,76,27,328/- under section 14A read with Rule 8D of the Act was made. Therefore, vide Assessment Order dated 30.03.2015 and disallowance of Rs. 62,04,130/- was passed.

4. Appellant/assessee preferred appeal before Learned CIT(A) which was dismissed vide order dated 08.2.2016.

5. Being aggrieved appellant/assessee preferred present appeal.

6. Learned authorised representative for appellant/ assessee submitted that CIT(A) erred in confirming disallowance of Rs 62,04,130/- 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.

7. 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."

8. 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.”

9. Learned authorised representative for the Department submitted that disallowance under section 14A was rightly disallowed.

10. From examination of record in light of aforesaid rival contention it is crystal clear that as per balance sheet the assessee company had made investment aggregating to Rs. 1,76,27,328/- in preference shares of other companies with a long term intention to earn the capital appreciation out of it. The shares are not purchased as income or to earn the dividend income. The investee company is managed by separate professionals, independently appointed by its equity shareholders and the appellant has no role to play in that. There is no expenditure being incurred directly or indirectly in relation to these investments. Provisions of sub-section 13 of Section 14A clearly states that Rule 8D is not applicable in case where no expenditure is claimed to have been incurred by the assessee in

relation to the tax free income. 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. 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.

11. 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 30.03.2015 and 8.2.2016 regarding disallowance of Rs.62,04,130/- are not legal and sustainable. Impugned orders deserve to be set aside.

12. 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

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Copy forwarded to -

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

ASSISTANT REGISTRAR
ITAT, New Delhi

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