

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.3995/M/2024  
Assessment Year: 2014-15  
&  
ITA No.3994/M/2024  
Assessment Year: 2017-18**

<b>M/s. Kesar Terminals And Infrastructure Limited,</b> Oriental House, 7, Jamshedji Tata Road, Churchgate, Mumbai - 400020 <b>PAN: AADCK2945C</b>	Vs.	<b>Assistant Commissioner of Income Tax – 1(2)(1),</b> Room No.535, 5 <sup>th</sup> Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Karan Jain, C.A.  
Revenue by : Shri Praveen Shrivastava, Sr. A.R.

Date of Hearing : 10.10.2024  
Date of Pronouncement : 23.10.2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order even dated 21.06.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2014-15 & 2017-18.

**2.** For brevity as also requested by the Assessee, we are taking into facts and issue involved ITA **No.3995/M/2024** as a lead case. The Assessee though has preferred this appeal being aggrieved against two additions **one pertains** to the disallowance on account of incentive paid to the Chairman/Managing Director amounting to Rs.9,10,000/- on proportionate basis while computing deduction u/s 80IA of the Act. The Ld. Counsel at the outset submitted that the Assessee is not pressing/agitating this ground and therefore the same may be dismissed as withdrawn. Thus, the instant ground is dismissed accordingly.

**3.** Coming to the **second ground** which pertains to the addition made by the AO and affirmed by the Ld. Commissioner to the tune of Rs.69,22,693/- on account of disallowance u/s 14A r.w.s. 8D of the Income Tax Rules, 1962 (in short "Rules") we observe that the Assessee has not earned any exempt income/dividend during the assessment year under consideration, however, still the Ld. Commissioner affirmed this addition by relying on the judgment passed by the Hon'ble Bombay High Court in the case of Godrej Boyce Mfg. Co. Ltd. vs. DCIT & Ant. Reported in 234 CTR (Bombay) 1 (2020) and Hon'ble Special Bench of the ITAT, Delhi in the case of Cheminvest Ltd. vs. ITO 317 ITR 86 (80), whereas it is a fact that in the case of Godrej Boyce Mfg. Co. Ltd. (supra) the Hon'ble High Court has held that the AO could invoke the provision of section 14A(2) & (3) of the Act and disallow the expenditure in accordance with Rule 8D of the ITAT Rules, only when dividend income was received by the Assessee and the Assessee has neither offered any disallowance or the AO is not satisfied with the Assessee after having regards to the books of the Assessee. Further, the Special Bench judgment in the case of Cheminvest Ltd. (supra) has been reversed by the Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT (2015) 281 CTR 447 (Del.-Trib) wherein the Hon'ble High Court has laid down in para-no.23 clearly

*“that section 14A will not apply if no exempt income is received or receivable during the relevant previous year”.*

**4.** Admittedly in the instant case, admittedly the Assessee was having sufficient/more funds in the form of share capital reserves and surplus than the amount invested and has also not earned any exempt income, hence, respectfully following the judgments of the Hon’ble High Court in the case of Cheminvest Ltd. (supra) wherein it was held *“that section 14A will not apply if no exempt income is received or receivable during the relevant previous year”*, as well as by the Jurisdictional High Court in the case of CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom.), wherein it was held *“that where the Assessee has its own funds and other non-interest bearing funds more than the investment in tax free securities, therefore, it can be presumed that investment made by the Assessee would be out of the interest free funds available with the Assessee”*, hence, we are inclined to delete the addition under consideration, thus the same is deleted.

**5.** In the result, the appeal filed by the Assessee i.e. ITA No.3995/M/2024 is partly allowed.

**6.** Coming to ITA No.3994/M/2024, we observe that in this case sole addition pertains to section 14A of the Act which has been made without considering and in the absence of any exempt income earned during the AY under consideration, hence in view of our decision on addition u/s 14A in ITA No.3995/M/2024 this appeal is also allowed.

**7.** In the result, ITA No.3995/2024 is partly allowed, whereas the ITA No.3994/M/2024 is allowed.

**Order pronounced in the open court on 23.10.2024.**

**Sd/-  
(OMKARESHWAR CHIDARA)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.