

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER**  
**AND**  
**SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER**

**ITA No.421/Ind/2024**  
**Assessment Year:2017-18**

Decore Thermal Power Pvt. Ltd. Office Block 1A, 5 <sup>th</sup> Floor, DB City Corporate Park, Arera Hills Opp MP Nagar	<b><u>बनाम/</u></b> <b><u>Vs.</u></b>	DCIT 1(1) Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
<b>PAN: AAFCD3868H</b>		
Assessee by	Shri Navin Gupta & Ms. Shilpa Gupta ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	23.01.2025	
Date of Pronouncement	31.01.2025	

**आदेश / O R D E R**

**Per UDAYAN DAS GUPTA, J.M.:**

This appeal is filed by the assessee against the order of the Ld Addl/JCIT (A) - 1, Kolkata , passed u/s 250 of the Act 61 , dated 28/03/2024, which has emanated from the order of the AO / DCIT 1(1) Bhopal, passed u/s 143(3) of the Act 61 dated 16/11/2019.

2. The grounds of appeal taken by the assessee in form 36 are as follows :

*"On the fact and circumstances of the case the Learned CIT (Appeals)-1, Kolkata has erred:*

- 1. Whether on the fact and circumstances of the case, the learned CIT (Appeals) was justified confirming the action of AO for disallowing the demerger expenses under section 14A,*
- 2. The addition of Rs 8,98,393/-may please be deleted.*

*3. The assessee craves to amend, add, alter or delete any of the ground of appeal on or before the date appeal is finally heard for disposal."*

3. Facts in brief are that the assessee is a Private limited company deriving income from consultancy of power project management, providing operation and maintenance services. The return was filed on 29.10.2017 declaring the income of Rs. 9,97,410 under normal provision of the act. The accounts are audited under the Companies Act and also subjected to Tax Audit under income Tax act. While computing its total income assessee has added back an amount of Rs. 35,86,837 as the same is incurred on account of demerger expenses and got allowed 1/5th of the demerger expenses as per the provision of section 35DD of the act. The case was selected for scrutiny and the assessment was completed u/s 143(3) on 16.11.2019 by not allowing such 1/5th of demerger expenses of Rs. 8,98,393 and adding the same to the total income of assessee by applying the provisions of section 14A of the act. Subsequently, aggrieved by the order of the AO the appellant has filed an appeal before the Id CIT (A). The Id CIT (A) upheld the addition of the AO on following grounds:

i) Demerger expenses were directly related to investment appearing in the balance sheet in the form of holding shares of another company, which would result in exempt income in the form of dividends.

ii) The CBDT Circular No. 5 of 2014 dated 11.02.2014 in which it had been held that section 14A was applicable even when no exempt income has been earned during the financial year. Now the assessee is in appeal before the tribunal on the grounds contained in the memo of appeal.

4. The Ld AR of the assessee submitted that during the FY 2016-17 , a scheme of arrangement was entered into by the assessee company ( resulting company ) and Diligent Power private Limited ( in short DPPL , demerged company ) and their respective share holders and creditors, with the view to demerge the project consulting business of DPPL along with related assets and liabilities, to the assessee company, and the said scheme

was duly sanctioned by the Hon'ble Madhya Pradesh High Court vide its order dated 10<sup>th</sup> May , 2016. The scheme was filed before the Hon'ble Court in accordance **with section 391 to 394 ( rws 100 to 103 ) of the Companies Act 1956 and section 52 of the Companies Act 2013**, seeking its approval , and being effective all assets and liabilities relating to the project consultancy services of the demerged company, which also includes investment by the demerged company in the shares of DB Power (Madhya Pradesh) Limited, shall be transferred to and shall be vested in the resulting company at their respective values as appearing in the books of account of the demerged company at the closure of the business of the day immediate preceding the appointed date i.e. as on 31 July 2015. The Scheme was sanctioned by the Hon'ble Madhya Pradesh High Court vide its order dated 10 May 2016 and the same has also been filed with the Registrar of Companies on 26 May 2016. To give effect to the scheme, the assets and liabilities of the demerged undertaking have been transferred at book value.

4.1 The Ld AR of the assessee further submitted that during the entire process of demerger , the legal expenses which is incurred wholly and exclusively for the purpose of amalgamation or demerger of the undertaking , being an Indian company , is legally allowable to the assessee as a deduction u/s 35DD of the Act 61, and such expenses needs to be equally spread out for each of the five successive previous years, beginning with the previous year in which the amalgamation or demerger takes place , and no deduction of such expenses shall be allowed under any other provisions of the Act 61.

4.2 In other word he submits that 1/5<sup>th</sup> of the total expenses under this head is to be allowed in five successive years commencing from Asst year 2016-17 , onwards and he further stressed on the point that the claim of 1/5<sup>th</sup> expenses has been allowed by the AO in scrutiny assessment proceedings u/s 143(3), for the Asst year 2016-17, which was the initial year of such claim .

4.3 He further drew our attention to the computation of income for the year ended 31<sup>st</sup> March 2017, ( placed in page 52 of pb ) to point out that out of the total claim of expenditure on account of demerger only 1/5<sup>th</sup> of such expenses , which works out to Rs.8,98,393/- , has been claimed as a deduction u/s 35DD for the year under appeal , and the same has been disallowed by the AO by applying the provisions of section 14A of the Act 61 .

4.4 He further argued that section 35DD of the Act 61, is a special provision that governs deduction related to demerger or amalgamation and section 14A of the Act , is a general anti avoidance provision which aims to disallow expenses incurred in relation to exempted income , and in cases where a specific provision section 35DD applies there is no basis for invoking a general provision like section 14A.

5. He relied on the Hon'ble Apex court judgments in the case of *Orissa State Warehousing Corporation vs CIT [1999] 237 ITR 589* to submit that in absence of any ambiguity a taxing statute should be strictly construed. ( *Relevant portion reproduced* )

*"38. In fine thus, a fiscal statute shall have to be interpreted on the basis of the language used therein and not de hors the same. No words ought to be added and only the language used ought to be considered so as to ascertain the proper meaning and intent of the legislation. The Court is to ascribe natural and ordinary meaning to the words used by the Legislature and the Court ought not, under any circumstances, to substitute its own impression and ideas in place of the legislative intent as is available from a plain reading of the statutory provisions."(Emphasis Supplied)*

5.1 In another case of *Keshavji Ravji & Co. v. CIT AIR 1991 SC 1806* the Apex Court observed as under: ( *Relevant portion* )

*"As long as there is no ambiguity in the statutory language resort to any interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the legislation cannot then appealed to whittle*

*down the statutory language which is otherwise unambiguous. If the intendment is not in the words used it is nowhere else. The need for interpretation arises when the words used in the statute are, on their terms, ambivalent and do not manifest the intent of the Legislature" (Emphasis Supplied)*

5.2 In the case of CIT V. Calcutta Knitwears (SC) :(2014) 362 ITR 673 the Apex Court referred in various para as under: (Relevant Portion)

*"24... the principle in favour of a strict literal approach... simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*

*"26.... To adhere as closely as possible to the literal meaning of the words used, is a cardinal rule from which if we depart we launch into a sea of difficulties which it is not easy to fathom."*

*"That is to say, once the literal rule is departed, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of the edifice of fiscal legislations which impose economic duties and sanctions."*

5.3 The Apex Court further, referring various judgment stated as under:

"33. In B. Premanand v. Mohan Koikal [2011] 4 SCC 266 this Court has observed as follows:( Relevant Portion )

*"The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language."*

"34. Thus, the language of a taxing statute should ordinarily be read understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative animation. A taxing statute should be strictly construed; common sense approach, equity, logic, ethics and morality have no role to play. Nothing is to be read in, nothing is to be implied; one can only look fairly at the language used and nothing more and nothing less. (J. Srinivasa Rao v. Govt. of A.P. 2006(13) SCALE 27, Raja Jagdambika Pratap Narain Singh v. CBDT [1975] 100 ITR 698(SC))"

6. The Ld AR concluded by submitting that since the words of section 35DD are absolutely clear and unambiguous, strict meaning should be given to the same following the rules of interpretation as observed by the Hon'ble Apex Court, in the decisions cited above, and as such the provisions as laid down in section 35DD are there in the provisions to encourage corporate restructuring and the same should not be linked to the provisions contained in Section 14A of the Act 61, which operates in a different field altogether. Thereafter, the Ld AR relied upon the *Kolkata ITAT judgment in the case of DCIT vs Asian Hotel East Ltd [2020]82 TLC 050*, to buttress his argument, that the deduction u/s 35DD of the Act 61 is a continuing one and when the said deduction was allowed in the initial year of claim, then in absence of any factual matrix, the Revenue could not disturb the continuing claim in the subsequent year.

6.1 The Ld AR further submitted that in the instant case there are no exempted income for the year under appeal and in the absence of any exempted income being earned or credited in the books of accounts of the assessee, for the year, applicability of section 14A does not arise and in support of his contention he relied upon the following judgments :

"1.34 We are relying on the following judgment in this regard:

*In the case of CIT v. Chettinad Logistics Pvt. Ltd. [2018] 95 taxmann.com 250 (SC) [Case Law Paper Book page no. 74 to 80], the Hon'ble Apex Court has dismissed SLP against High Court ruling that section 14A cannot be invoked where no exempt income was earned by assessee in relevant assessment year u/s 14A, of the Income-tax Act, 1961, read with rule 8D of the Income-Tax Rules, 1962.*

*In the case of Cheminvest Ltd v. CIT the Hon'ble Apex Court has dismissed the SLP of Revenue and uphold the decision of Hon'ble High Court of Delhi (DEL-HC) :(2015) 378 ITR 33[Case Law Paper Book page no.81to 87].*

□ *In the case of Pr. CIT v. Pr.CIT v. Oil Industry Development Board (SC)*

*:(2019) 262 TAXMAN 102 [Case Law Paper Book page no.88 to 89] while dismissing the appeal of revenue the Hon'ble Apex Court has stated in para 3 of the order as under:*

*"The ITAT relied upon the ruling of this Court in Cheminvest Ltd. v. CIT [2015] 378 ITR 33 which ruled in the absence of any exempt income, disallowance under Section 14-A of the Act of any amount was not permissible. Since the decision in Cheminvest Ltd. (supra) was followed, there is no substantial question of law that requires consideration."*

6.2 Regarding the CBDT circular No 5 of 2014 , dated 11<sup>th</sup> February, 2014 , relied upon by the Ld first appellate authority , that section 14A was applicable even when no exempt income had been earned during the financial year , the Ld AR of the assessee relied upon the *Delhi High Court decision in the case of PCIT vs IL and FS Energy Development Co Ltd [2017] 84 taxmann.com186(Delhi)* to submit that judicial precedents has consistently held that the circular cannot override the Act or judicial interpretations , and since in the instant case there is no EXEMPT income for the year under appeal , the provisions of section 14A of the Act 61, cannot be made applicable , and as such he prayed that the addition of Rs. 8,93,393/- sustained by the Ld first appellate authority by invoking the provisions of section 14A may please be deleted.

7. Per contra , the Ld DR relied upon the order of the Ld Addl/ JCIT(A) and submitted that the demerger expenses were directly related to investments

appearing in the balance sheet in the form of holding shares of another company , which would result in exempt income in the form of dividends , because the investments are appearing as unlisted equities of other companies and the assessee company has got ownership of such investments on account of the demerger, and he prayed that the first appellate authority was legally justified in sustaining the addition u/s 14A of the Act 61 , and the said addition should be upheld.

8. We have heard the rival submissions and considered the materials on record. We find that the provisions of section 35DD of the Act 61 are very clear and unambiguous, and in the instant case before us there is no dispute regarding the quantum of the expenditure incurred , which has already been accepted by the AO in scrutiny proceedings and *one fifth* of the same has already been allowed in the immediately earlier year ie in FY 2015-16 ( relevant to the Asst year 2016-17 ), and there is also no dispute to the fact that the expenditure has been incurred wholly and exclusively for the purpose of amalgamation and demerger of the undertaking , (being an Indian company ), and the same is legally allowable to the assessee as a deduction u/s 35DD of the Act 61, and as per provisions of the Act 61 , the said expenses needs to be equally spread out for each of the five successive previous years, beginning with the Asst year 2016-17 , and this year under appeal being the second year of such claim, the claim cannot be disallowed because the said deduction is a continuing one and in absence of any change in the factual aspect of the matter , the revenue cannot disturb the continuing claims in succeeding years.

8.1 Moreover, we also hold that amalgamation or demerger expenses are specifically classified to be allowed as a deduction u/s 35DD of the Act 61 , and the same being already accounted for in regular books of accounts , has to be allowed as such because the same can neither be claimed nor allowed under any other provisions of the Act and there cannot be any direct nexus

in between an expenditure claimed u/s 35DD with that of an exempted income .

8.2 Moreover, we find that in the instant case there is no exempted income for the year under appeal , and in absence of any exempted income , the provisions of section 14A is not applicable . On this issue, respectfully following the law laid down by the Hon'ble Apex court in the case of (i) *CIT vs Chettinad Logistics Pvt Ltd [2018] 95taxmann.com250(SC)* , (ii) *Cheminvest Ltd vs CIT , 378 ITR 33* , (iii) *PCIT vs Oil Industry Development Board [2019]262 taxmann 102 ( 103taxmann.com 326)* , we have no hesitation in deleting the addition of Rs. 8,98,393/- sustained by the Ld first appellate authority , as not legally sustainable.

9. As a result the appeal of the assessee is allowed.

Order pronounced in the open court on 31 .01.2025.

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

Sd/-

(UDAYAN DAS GUPTA)  
JUDICIAL MEMBER

**Indore**

दिनांक /Dated : 31/01/2025

Patel/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order

Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore