

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**I.T.A .No.308/DEL/2014
ASSESSMENT YEAR-2009-10**

KLJ Town Planners (P) Ltd., KLJ House, 63, Rama Marg, Najafgarh Road, New Delhi. (PAN: AACCK7445E) (Appellant)	vs	ACIT, Central Circle-04, New Delhi. (Respondent)
Appellant by	Shri V.K. Sabharwal, Adv.	
Respondent by	Shri Raman Kant Garg, Sr. DR	

Date of Hearing	5.1.2016
Date of Pronouncement	18.1.2016

ORDER

PER BEENA A. PILLAI, JM

The present appeal arises from the order of the ld. CIT(A)-XXXIII, New Delhi vide order dated 30.09.2013, for assessment year 2009-10, on the following grounds of appeal:-

“1. That the Ld. Commissioner of Income Tax (Appeal) has passed the impugned assessment order without taking into consideration all the facts before him which make it unreasonable, unjustified and bad in law.

2. That the action on the part of the assessing officer is highly arbitrary, improper and without application of mind, unreasonable, unjustified and bad in law and deserves to be deleted, so that proper justice can be given to the applicant.

3. *That on facts and circumstances of the case, the learned assessing officer has erred while making addition on account of Section 14A of Rs.5,83,545/- which is illegal, unjustified and required to be deleted.”*

2. Brief facts of the case as recorded by the ld. Assessing Officer are as under:-

2.1. The assessee filed its return of income for assessment year 2009-10 on 27.09.2009 declaring an income of Rs. 4,47,36,108/. The return was processed u/s 143(1) and the case was selected for scrutiny. Accordingly, notices were issued to the assessee. The assessee is engaged in real estate developer, building activity.

2.2. During the assessment proceedings, the ld. Assessing Officer observed that although the assessee is a real estate developer, no project was completed during the year. The company has shown income from receipt of management fee, transfer of right in Park Centre and Interest on FDR etc. Ld. Assessing Officer asked the assessee to explain why expenditure incurred in relation to income not includible in the taxable income should not be disallowed as per provision of section 14A of the Act.

2.3. After going through the submissions of the assessee, the ld. Assessing Officer held that since the assessee has not disallowed the expenses incurred for earning of exempt income in view of the provisions of section 14A read with Rule 8D of the Income Tax Rules, and made an addition of Rs. 5,83,545/-.

3. Aggrieved by the order of the Ld.AO, assessee preferred an appeal before the Hon'ble CIT(A). The Ld.CIT(A) held that though during the year, the assessee had net profits amounting to Rs.

4,29,51,263/-, use of borrowed funds for making investment during the year could not be ruled out. He accordingly confirmed the addition made by the ld.AO.

4. Aggrieved by the order of the ld.CIT(A), the assessee is in appeal before us now.

4.1. The Ld.AR submitted that the assessee has not earned any exempt income during the year under consideration. He reiterated that that the assessee has made the investments in its subsidiary companies and other group companies. The Ld.AR submitted that the assessee has capital and free reserves amounting to Rs.68,41,12,730/- and the investment during the year amounts to Rs. 1,75,77,400/- He further submitted that the assessee had earned a net profit of Rs. 4,29,51,263/- and the net surplus was Rs. 2,71,38,381/-.

4.2. The ld.AR submits that the assessee had also taken loan on which it has paid an interest amounting to Rs. 2,10,93,484/-. The ld.AR argued that the Ld.AO on his whims and surmises has assumed that the interest bearing funds have been utilised for the purposes of investments without any cogent evidence.

5. On the other hand, Ld. Department Representative relied upon the order of the Assessing Officer and opposed the request of the assessee's counsel. Ld. DR reiterated the observations made by AO in his order that assessee has shown investments of Rs. 1,75,77,400/- as at 31.3.2009, income from which does not or shall not form part of total income. The assessee has not attributed any expenditure relating to such investment, income

from which is exempt from tax. The further placed his reliance upon Circular No. 5 of 2014 dated 11.2.2014 wherein the Central Board of Direct Taxes (CBDT) clarified that Rule 8-D read with section 14A provides for disallowance of expenditure even where tax payer in a particular year has not earned any exempt income.

5.1. The Id.DR, submitted that the Assessee's stand in not disallowing any expenditure in this regard is not acceptable though no dividend income is earned during the previous year. The Id.DR submitted that in order to disallow the expenditure it is not necessary that exempt income is earned.

6. We have heard both the counsel and perused the records. We have also gone through the orders of the lower authorities, Synopsis, Paper Book filed by the assessee and the case laws relied upon by the assessee.

6.1. On perusal of the balance sheet, it is observed that the assessee has not earned any exempt income. The assessee also has sufficient capital and reserves for making such investment. It is evident from the balance sheet of the assessee that, its investments in shares were only in its subsidiary companies from where the assessee has not earned any dividend income. The assessee over the previous years has made investment in its subsidiary companies and group companies to an extent of Rs. 2,50,51,420/-, under the sub head, "Equity shares of subsidiaries Companies(unquoted)" and an amount of Rs. 2,50,14,000/- under the sub head, "Equity shares of other Companies(unquoted)".

6.2. The controversy raised in this case is that the assessee had not earned or received any dividend in the year under consideration and, therefore, no disallowance can be made by invoking the provisions of Section 14A of the Act. Hon'ble Jurisdictional High Court has recently decided a similar issue in the case of Cheminvest Vs. CIT VI, in ITA no.749/2014 vide order dated 02.09.2015. The question for consideration before the Hon'ble High Court was that,

“Whether disallowance under Section 14A of the Act can be made a year in which no exempt income has been earned or received by the Assessee?”

6.3. Hon'ble High Court relying upon the case of CIT v. Holcim India (P) Ltd. in ITA No. 486/2014, vide order dated 05.09.2014, has answered the question in favour of the assessee. The Hon'ble High Court has also relied upon the decisions of;

- i) Commissioner of Income Tax, Faridabad v. M/s. Lakhani Marketing Incl. in ITA No. 970/2008 vide order dated 02.04.2014 (P7 H)
- ii) CIT v. Hero Cycles Limited, reported [2010] in 323 ITR 518
- iii) CIT v. Winsome Textile Industries Ltd., reported [2009] 319 ITR 204.
- iv) CIT -I v. Corrttech Energy (P) Ltd reported [2014] 223 Taxmann 130 (Guj.)
- v) CIT, Kanpur v. Shivam Motors (P) Ltd.(All) in ITA No. 88/2014 vide order dated 05.05.2014.

6.4. As per Maxopp Investment Ltd., (2012) 347 ITR 272 (Del), the correctness of the claim of the assessee in respect of expenditure incurred in relation to the income which did not form

part of total income had to be first ascertained and in case, the assessee claimed that no expenditure was incurred, the Assessing Officer should verify the correctness of the claim. Hon'ble Court held that where the Assessing Officer was satisfied that no expenditure was incurred, no disallowance should be made under Section 14A. In other cases, the Assessing officer would have to determine the amount of expenditure incurred in relation to the income which did not form part of the total income and the said basis had to be reasonable and based on the acceptable method of apportionment. Expounding the expression "in relation to" appearing in Section 14A as interpreted in Maxopp Investment Ltd. (supra), would include "in connection with" or "pertaining to".

6.5. Ld.DR has placed his reliance upon the Circular no 5 of 2014 dated 11.2.2014. In our opinion, there is no merit in the above submissions of the Ld. DR in view of the decision of Hon'ble Calcutta High Court in the case of Bhartia Industries Ltd. Vs CIT (2013) 353 ITR 486(Cal) wherein the Hon'ble High Court has observed as under:-

"The circular issued by the Central Board of Direct Taxes under section 119 of the Income-tax Act, 1961 is meant for guiding the officers of the Revenue for administrative purpose of enforcing the provisions of the Act. But when an authority under the Act is required to perform quasi-judicial functions, such authorities should be guided by the law of the land as enunciated on the questions involved by various judicial authorities which have binding effect. If an existing circular is in conflict with the law of

the land laid down by the High Courts or the Supreme Court, the Revenue authorities while acting quasi-judicially, should ignore such circulars in discharge of their quasi-judicial functions."

In view of the above, Circular No 5 of 2014, dated 11.2.2014 relied on by the Ld. DR, is in conflict with the law laid down by the High Courts and, therefore, it is justified to ignore the aforesaid circular while discharging quasi-judicial function.

6.6. All the above High Courts have categorically held that in the absence of any tax free income the corresponding expenditure could not be worked out for disallowance. In the instant case also, the admitted fact is that assessee has not earned any tax free income, therefore, Circular No. 5 of 2014 dated 11.2.2014 issued by CBDT is contrary to the law laid down by the different High Courts directly on the issue in hand.

In view of the above discussion, and the decision of the jurisdictional High Court in the case of Cheminvest Vs. CIT(supra) and Maxopp Investment Ltd. (supra), we hold that disallowance made u/s 14A has deserves to be deleted, as the assessee has not earned/received exempt income during the previous year relevant to the assessment year under appeal. Accordingly, the grounds raised by the assessee stands allowed.

Order pronounced in the open court on 18.01.2016

Sd/-

(S.V. MEHROTRA)

ACCOUNTANT MEMBER

Dated: 18thJANUARY 2016
'GS'

Sd/-

(BEENA A. PILLAI)

JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT 5. DR

Asstt. Registrar