

**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.199/DEL/2014
ASSESSMENT YEAR-2009-10**

KLJ Resources Ltd., KLJ House, 63, Rama Marg, Najafgarh Road, New Delhi. (PAN: AABCK1181C)	vs	ACIT, Central Circle-04. New Delhi.
---	----	--

Appellant by	Shri V.K. Sabharwal, Adv.
Respondent by	Shri Raman Kant Garg, Sr.DR

Date of Hearing	4.1.2016
Date of Pronouncement	18.1.2016

ORDER

PER BEENA A. PILLAI, JM

The present appeal has been filed by the assessee against 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. 1,41,206/- ,which is illegal, unjustified and required to be deleted.”

2. Brief facts that emerge from the order of the ld. Assessing Officer are as under:-

The assessee filed its return of income for the year under consideration on 22.09.2009, declaring total income of Rs.3,55,09,437/-. The case was selected for scrutiny and due notices were served upon the assessee. The assessee company is engaged in the business of trading in chemicals, investment and real estate. As per the computation of income filed by the assessee, the ld. Assessing Officer observed that assessee has earned dividend income, against which there has been no disallowance of expenditure that has been made by the assessee u/s.14A r.w.R 8D of the Act. Accordingly, the ld. Assessing Officer after recording the satisfaction computed the disallowance the disallowance u/s.14A r.w.R 8D of the Act at Rs.1,41,206/-

3. Aggrieved by the order of the ld. Assessing Officer, the assessee preferred an appeal before the ld. CIT(A). Ld. CIT(A) observed that the assessee has earned tax free income of Rs.900/- as dividend. Ld.CIT(A) upheld the addition made by the

ld.AO.

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

4.1. Ld. AR argued that the assessee has earned tax free income amounting to Rs. 900/- from Hindustan Petroleum Corporation Ltd. He further submitted that there has been no fresh investment made during the year under consideration. Ld. AR submitted that the investment made in Hindustan Petroleum Corporation Ltd. relates to the investment made in the previous years and the same has been made out of capital and free reserves available with the assessee. He submitted that interest bearing funds have not been used in previous year for making such investment as the assessee itself have sufficient capital and reserve funds.

4.2.Ld. AR demonstrated from the profit and loss account that the total capital and free reserves as on 31.3.2009 was amounting to Rs.15,80,49,522,-, the opening balance of investment was Rs.1,08,93,945/- and the closing balance of investment was Rs.1,22,19,945/-. Ld. AR submitted that Rs.15,21,000/- (1,08,93,945-1,22,19,954), during the year has been invested in the assessee company itself which has been made out of its own capital and free reserves.

4.3. Ld. AR submitted that any disallowance u/s 14A, therefore, should not be made in lieu of the fact that the assessee has not made any fresh investment which could give rise to tax free income in the hands of the assessee. Ld. AR placed reliance upon the following decisions:-

i) CIT vs HDFC Bank reported in (2014) 89 CCH 185 (Bom)

- ii) Maxopp Investment Ltd. vs CIT reported in 274 ITR 272 (Del)
- iii) CIT vs Hero Cycles Ltd. reported in 323 ITR 74 (P&H)
- iv) CIT vs. Reliance Industries Ltd., reported in 339 ITR 632 (Bom)
- v) CIT vs. Metalman Auto P.Ltd., reported in 336 ITR 434 (P&H)
- vi) CIT vs. Torrent Power Ltd., reported in 363 ITR 474 (Guj)

5. On the contrary, ld. DR submitted that the Assessing Officer has rightly initiated section 14A of the Act and, after recording the satisfaction, has made the addition to the extent of Rs.1,41,206/-. Learned DR submitted that even where the assessee claimed that no expenditure had been incurred, and that such a claim of the assessee was found to be not acceptable by the Assessing Officer and thus disallowance was justified.

5.1. 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.1,22,19,945/- as at 31.3.2009 as well as during the previous year, in such assets 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. 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 ld.DR submitted that in order to disallow the expenditure it is not necessary that exempt income is earned. He submitted that as expenditure is allowed even if no income was earned in taxable income cases, in reverse case the expenditure should be disallowed though no exempt income was 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. It is an admitted position that for the year under consideration, the assessee has not made any investments in any of the companies which could yield tax free income in the hand of the assessee. On perusal of the balance sheet and Profit and loss accounts, it appears that these investments have been carried forwarded from previous years. The investment which yielded tax free income in the year under consideration is Hindustan Petroleum Corporation Ltd. and the rest are associates/related companies.

6.2. The details of the Administrative expenses are given in Schedule 15 and financial expenses are given in Schedule 16 to the profit and Loss accounts. It is also an admitted position that the assessee has not made any *suo moto* disallowance in respect of the expenditure that could have been incurred to earn the dividend of Rs.900/- for the year under consideration.

6.3. Considering that assessee is also involved in the activity of investment, we proceed to analyse the legal position applicable to the facts of the present case.

6.4. Sub-section (2) of section 14A of the Act provides the manner in which the Assessing Officer is to determine the amount of expenditure incurred in relation to income which does not form part of the total income in a case where an assessee claims that no expenditure has been incurred by the assessee in relation to the income which do not form part of the total income under the

Act. If we examine the provision carefully, we would find that the Assessing Officer is required to determine the amount of such expenditure only if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee, in respect of such expenditure in relation to income which does not form part of the total income under the said Act. Further for the year under consideration, if at all any disallowance needs to be calculated, it must be in accordance with Rule 8 D of the Act. From the computation of in the assessment order, the ld.AO has ruled out the applicability of sub clause (i) of Rule 8 D (2). He has calculated the disallowance under Rule 8 D (2) (ii) & (iii).

6.5. In the present case, the ld. AR has submitted that the assessee has earned a dividend income of Rs.900/- from the investment in Hindustan Petroleum Corporation, which has been made in the preceding years by the assessee and therefore, the assessee has not made any disallowance of the expenditure towards earning such dividend income.

6.6. To the facts of the present case the assessee has not set out whether the interest expenditure was attributable to the earning of exempt income, to be considered for disallowance under Rule 8D(2)(ii). Strategic investment has to be excluded for the purpose of arriving at disallowance under Rule 8D (iii).The assessee has also failed to prove that the investment made in the other companies are strategic in nature. TheLd.CIT(A) has recorded a finding that the assessee has not submitted any evidence to establish that borrowed funds are for specific purpose. Further administrative expenses that could be attributable to earning of

exempt income cannot be excluded. However as held in the case of *Sarabhai Holdings Pvt. Ltd. v. ACIT*, ITA No. 2328/Ahd/2012, dated 11/4/2014 (Ahd.)(Trib.), only average of value of investment from which exempt income has been earned is to be considered and not total investment at beginning of year and at end of year, in disallowing administrative expenses.

We accordingly set aside this issue for computing the disallowance by giving proper opportunity to the assessee. Needless to say that, the burden of proving the nexus between the taxable income/business income and the administrative expenses, lies upon the assessee.

The ground of the assessee stands statistically allowed.

Order pronounced in the open court on 18.01.2016

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Dated: 18thJANUARY 2016
'GS'

Copy forwarded to:

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

Asstt. Registrar