

IN THE INCOME TAX APPELATE TRIBUNAL  
DELHI BENCH "SMC-2": NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**ITA No. 6164/Del/2014**

A.Y. : 2010-11

M/s Onkareshwar Properties (P) Ltd. vs. Addl. CIT, Range-13,  
Flat No. B-14-C, First Floor, New Delhi  
Freedom Fighters Enclave,  
Neb Sarai, New Delhi  
(PAN : AAACo7076M)

**Also at:**

Rajesh Jain & Associates,  
49, Pushpanjali,  
Opp. Anand Vihar,  
Vikas Marg Extn.,  
Delhi – 92

**(Appellant)**

**(Respondent)**

Assessee by : Sh. Rajesh Jain, CA  
Department by : None

Date of Hearing : 17-08-2016

Date of Order : 02-09-2016

**ORDER**

This is an appeal filed by assessee against the order of Ld. CIT(A)-XVI, Delhi dated 29.8.2014 relevant for assessment year 2010-11 on the following grounds:-

- 1. That on the facts of the case and as per law, the Ld. CIT(A) upheld the order of the AO in assessing the income of the appellant at Rs. 12,30,680/- against the returned income of Rs. 7,39,000/-, after making the disallowance of expenditure of Rs. 4,91,677/- u/s. 14A of*

*the Act in spite of the fact that the appellant did not earn any income exempt from income tax which is a precondition for invoking the provision of section 14A of the Act.*

2. *That on the facts and circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that the AO did not controvert the submission that the appellant did not make investment for earning income of the dividend and the investment was only strategic commercial decision. That the appellant further stressed that there is no nexus of expenditure claimed in the profit and loss account with the investment made by the appellant and therefore, the provision of section 14A invoked by the AO and the CIT(A) are wrongly invoked.*

2. At the outset, Ld. Counsel for the assessee submitted that the assessee company did not receive any income which is exempt from tax during the year under consideration. Hence, he submitted that the provisions of section 14A of the Act are not applicable on facts of the case and in view of the various judicial precedents including the Hon'ble Jurisdictional High Court in the case of CIT vs. Holcim India Pvt. Ltd. 272 CTR 542 (Del.) It was submitted that Hon'ble High Court has held that where there was no exempt income, no disallowance u/s 14A can be made. Ld. A.R. further submitted that the A.O. without pinpointing any expenditure relatable to exempt income, has calculated disallowance u/s 14A as per Rule 8D and Ld. CIT(A) has also confirmed the same, which was also against the law. Therefore, he requested that the aforesaid decision of the Hon'ble Delhi High Court may be respectfully followed and appeal of the assessee may be allowed.

3. Notice of hearing was sent to both the parties and in response to the same none appeared on behalf of the Department, nor any application for adjournment has been filed by the Department.

Keeping in view of the facts and circumstances of the present case, I am of the considered view that no useful purpose would be served to serve the notice again and again to the Department, therefore, I am deciding this Appeal as Exparte Department, after hearing the Ld. AR of the assessee and perusing the records.

4. I have heard the Ld. AR of the assessee and have gone through the material placed on record. I find that A.O. as well as Ld. CIT(A) has not pointed out any income earned by assessee which was exempt income. I find that there was no exempt income pointed out by the Revenue Authorities and A.O. had made addition holding that assessee had source of exempt income. Section 14A of the Income Tax Act cannot be invoked when no exempt income was earned. I find that the case of assessee is fully covered in its favour by the decision of the Hon'ble Delhi High Court in the case of CIT Vs Holcim India Pvt. Ltd. (Supra) wherein, the Hon'ble High Court under similar circumstances has held as under:

*“13. We are confused about the stand taken by the appellant-Revenue. Thus, we had asked Sr. Standing Counsel for the Revenue, to state in his submission raised was that the shares would have yielded dividend, which would be exempt income and therefore, the CIT(A) had invoked Section 14A to disallow the entire expenditure. The aforesaid submission does not find any specific and clear narration in the reasons or the grounds given by the CIT(A) to, make the said addition. Possibly, the CIT(A), though it is not argued before us, had taken the stand that the respondent- assessee had made investment and expenditure was incurred to protect those investments and this expenditure cannot be allowed under Section 14A.*

14. On the issue whether the respondent-assessee could have earned dividend income and even if no dividend income was earned, yet Section 14A can be invoked and disallowance of expenditure can be made, there are three decisions of the different High Courts directly on the issue and against the appellant-Revenue. No contrary decision of a High Court has been shown to us. The Punjab and Haryana High Court in Commissioner of Income Tax, Faridabad Vs. Mis. Lakhani Marketing Incl., ITA No. 970/2008, decided on 02.04.2014, made reference to two earlier decisions of the same Court in CIT Vs. Hero Cycles Limited, [2010] 323 ITR 518 and CIT Vs. Winsome Textile Industries Limited, [2009] 319 ITR 204 to hold that Section 14A cannot be 'invoked when no exempt income was earned. The second decision is of the Gujarat High Court in Commissioner of Income Tax-I Vs. Corrttech Energy (P.) Ltd. [2014] 223 Taxmann 130 (Guj.). The third decision is of the Allahabad High Court in Income Tax Appeal No. 88 of 2014, Commissioner of Income Tax (Ii) Kanpur, Vs. M/s. Shivam Motors (P) Ltd. decided on 05.05.2014. In the said decision it has been held:

"As regards the second question, Section 14A of the Act provides that for the purposes of computing the total income under the Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. Hence, what Section 14A provides is that if there is any income which does not form part of the income under the Act, the expenditure which is incurred for earning the income is not an allowable deduction. For the year in question, the finding of fact is that the assessee had not earned any tax free income. Hence, in the absence of

*any tax free income, the corresponding expenditure could not be worked out for disallowance. The view of the CIT(A), which has been affirmed by the Tribunal, hence does not give rise to any substantial question of law. Hence, the deletion of the disallowance of Rs.2,03,52,000/- made by the Assessing Officer was in order" .*

*15. Income exempt under Section 10 in a particular assessment year, may not have been exempt earlier and can become taxable in future years. Further, whether income earned in a subsequent year would or would not be taxable, may depend upon the nature of transaction entered into in the subsequent assessment year. For example, long term capital gain on sale of shares is presently not taxable where security transaction tax has been paid, but a private sale of shares in an off market transaction attracts capital gains tax. It is an undisputed position that respondent assessee is an investment company and had invested by purchasing a substantial number of shares and thereby securing right to management. Possibility of sale of shares by private placement etc. cannot be ruled out and is not an improbability. Dividend may not be declared. Dividend is declared by the company and strictly in legal sense, a shareholder has no control and cannot insist on payment of dividend. When declared, it is subjected to dividend distribution tax. 16. What is also noticeable is that the entire or whole expenditure has been disallowed as if there was no expenditure incurred by the respondent- assessee for conducting business. The CIT(A) has positively held that the business was set up and had commenced. The said finding is accepted. The respondent-assessee, therefore, had to incur expenditure for the business in the form of investment in shares of cement companies and to further expand and consolidate their business. Expenditure had to be*

*also incurred to protect the investment made. The genuineness of the said expenditure and the fact that it was incurred for business activities was not doubted by the Assessing Officer and has also not been doubted by the CIT(A).*

*17. In these circumstances, we do not find any merit in the present appeals. The same are' dismissed in limine."*

5. I have already noted that assessee had not earned any exempt income during the year and therefore, following the above order of Hon'ble Delhi High Court in the case of CIT vs. Holcim India Pvt. Ltd. (Supra), disallowance u/s 14A was not warranted. In view of the above, grounds raised by the Assessee are allowed.

6. In the result, the appeal of assessee stands allowed.

Order pronounced in the Open Court on 02-09-2016.

**Sd/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

*Date:02/9/2016*

**SRBhatnagar**

**Copy forwarded to: -**

1. Appellant	2. Respondent	3. CIT	4. CIT (A)	5. DR, ITAT
		TRUE COPY		By Order,

Assistant Registrar, ITAT, Delhi Benches