

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'B', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 981/Del./2016
Assessment Year: 2012-13**

D.C.I.T., Circle 2(1), New Delhi. (Appellant)	vs.	M/s. Aksh Optifibre Ltd., B-1 ENKAY Tower, Naniya Nikunj, Udyog Vihar, Phase-V, Gurgaon. PAN – AAACA 0062F (Respondent)
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Appellant by	Sh. Anil Kumar Sharma, Sr. DR
Respondent by	None

Date of Hearing	14.11.2017
Date of Pronouncement	23.11.2017

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the Revenue against the order of Id. CIT(A)-I, New Delhi dated 02.12.2015 for the assessment year 2012-13 on the following solitary ground :

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance u/s. 14A of expenditure of Rs.64,00,223/- by ignoring the fact that there was material to establish the direct nexus between the expenditure incurred and the income not forming part of total income.”

2. The brief facts of the case are that the assessee filed return of income on 27.09.2012 showing loss of Rs.2,06,37,666/-. The assessee company is

engaged in the business of providing operating voice and broad band/network service in the field of telecommunication and Information technology and entertainment. The case was selected for scrutiny and statutory notices were issued to the assessee. The total business profit in the year was Rs.7,86,19,745/- and the same had been adjusted against the earlier year's loss. During the assessment proceedings, the AO observed from the balance sheet of the assessee that the assessee had invested in quoted and unquoted equity shares and income from which is exempt from tax. The details are as under :

Trade investment (valued at cost unless stated otherwise)	As at 31.03.2012	As at 31.03.2011
Investment in subsidiaries		
Unquoted equity instruments 10,100,000 (31 st March, 2011: 10,100,000) Equity shares of Rs.5 each fully paid-up in Aksh Technologies Ltd. out of which 10,000,000 equity shares of Rs.5 each at the premium of Rs.25 each (refer note 25).	-	Rs.30,05,00,000/-
22,59,50,000 (31 March 2011: 225,950,000) Equity shares of Rs.5/- each in APAKSH Broadband Ltd.	Rs.112,97,50,000/-	Rs.112,97,50,000/-
Sub -total	Rs. 112,97,50,000/-	Rs.143,02,50,000/-
Non-trade investments (valued at cost unless stated otherwise) Investment in equity instruments (quoted)		
22,300 (31 March 2011: 22,300) equity shares of Rs.5 each fully paid up in CMI Ltd.	Rs.44,600/-	Rs.44,600/-
Sub-total	Rs.44,600/-	Rs.44,600/-

Total	Rs.112,97,94,600/-	Rs.143,02,94,600/-

There is no change in the facts of the year under consideration as compared to previous year. The AO issued show cause notice as to why the provisions of section 14A of the IT Act, 1961 may not be invoked. In response, the assessee submitted detailed reply before the Assessing Officer and relied on various case laws. The Assessing Officer after considering the submissions of the assessee and the provisions of section 14A read with Rule 8D and relying on case laws, calculated the disallowance u/s. 14A r/w Rule 8D(2)(iii) of Rs.64,00,223/- representing to half percent of the average value of investment. In appeal before the Id. CIT(A), the first appellate authority after considering the submissions of the assessee and the facts of the case, allowed the appeal of the assessee by following the decision of CIT(A) for assessment year 2010-11 and 2011-12 in the case of assessee itself, in which similar disallowances were made by the Assessing Officer. Aggrieved by the order of Id. CIT(A), the Revenue is in appeal before the Tribunal.

3. The Id. DR relied on the order of the Assessing Officer and submitted that even if the assessee invested out of his own funds, the incidental expenses for making investments and collecting dividend cannot be denied. Therefore,

the AO is justified to invoke the provisions of section 14A for disallowance made. The case laws relied by the Id. CIT(A) are distinguishable on facts.

4. None is present on behalf of the assessee nor is there any adjournment application available on record. Therefore, we have no option except to decide this appeal exparte on the basis of material available on record.

5. After hearing the submissions of the Id. DR and considering the materials available on record, we observe that during the impugned year, assessee has not made any fresh investment. The assessee had total net worth of Rs.321.82 crores and total investment in subsidiaries is Rs.113.16 crores, out of which 0.18 crores is in foreign subsidiaries and rest amount of Rs.112.98 crores has been invested in Indian subsidiary companies. The dividend received from foreign subsidiary companies is taxable. It is evident from the record available before us that the assessee has not paid any interest for making investment in subsidiaries and no fresh investment has also been made during the year. The Id. CIT(A), after considering the submissions of the assessee and the order of the Assessing Officer has made good reasoned order which is reproduced as under :

“I have carefully considered the aforesaid submissions of appellant company. I find that the AO has invoked Section 14A and Rule 8D on investments made in subsidiary company even though there is no dividend income earned by the

appellant company during the year. In the **case** of appellant similar disallowances were made in preceding assessment years on the investments made in the subsidiary company and in that year also no dividend income was received by the appellant company. Such disallowances of expenses was deleted for A.Y. 2010-11 vide order dated 10.07.2014 in Appeal No.32/13-14. Similar disallowances were made in A.Y. 2011-12 which have been also deleted by the CIT(A) vide its order dated 26.05.2015 in Appeal No.33/14-15. Since the facts of this year's case is identical with the facts of A.Y. 2010-11 and 2011-12, therefore, decision taken in those years is squarely applicable to this year also, For sake of convenience, the relevant part of the order dated 26.05.2015 is reproduced below:

"5.2 I have carefully considered the aforesaid submission of the appellant company. I find that AO has invoked Section 14A and Rule BD on investment made in subsidiary company even though there is no dividend income earned by the appellant company. On identical facts similar disallowance made in preceding assessment year was deleted vide order dated 10.07.2014 in appeal no.32/13-14 for A.Y. 2010-11. For the sake of convenience, the relevant part of the order dated 10.07.2014 is reproduced below:

"5.2 I have carefully considered the submissions of the Ld. AR and perused the order passed by the AO. The Ld. AR for the appellant has submitted that no expenditure was actually incurred for the purpose of making investments in its subsidiaries which was an strategic investment and the same was clear from the balance sheet as on 31.3.2010. It was submitted that the AO has not brought out any evidence on record to suggest that the assesses has incurred any expenditure for making the investment in its subsidiaries. It was submitted that the AO has made disallowance only on the basis of assumption and presumption without bringing any material on record in support of his assumption.

5.2.1 I also find that the appellant has not earned any dividend income during the year on this investment. AO has not controverted the above submission of the appellant. I find that Hon'ble ITAT Mumbai in the case of Garware Wall Ropes Ltd. (supra) has held that where the primary object of investment is holding controlling stake in the group concern and not earning any income out of investment, Section 14A will have no application. It was held that the object of section 14A is not allowing to reduce tax payable on the non exempt income by deducting the expenditure incurred to earn the exempt income. It is not the case of the AO that the assessee has incurred any direct expenditure or any interest expenditure for earning the exempt income or keeping the investment in question. If there is expenditure directly or indirectly incurred in relation to exempt income, the same cannot be claimed against the income which is taxable. It was also held that for attracting the provision of Section 14A there should be a proximate cause for disallowance which has relationship with the tax exempt income as held by the Hon'ble Supreme Court in the case of CIT vs Watfort Share & Stock Brokers Pvt. Ltd. (326) ITR 1. Therefore, there should be

a proximate relationship between the expenditure and the income which does not form part of the total income. I find that the AO has not pointed out any such proximate relationship. Similarly, the Hon'ble ITAT Kolkata in the case of Rei Agro Ltd. vs. CIT (supra) has held that value of strategic investment should be excluded for the purpose of disallowance under Rule 8D (Hi). The above decision of Kolkata ITA T was followed by jurisdictional ITAT Delhi C Bench in the case of Interglobe Enterprises Ltd. in their decision dated 4.4.2014 wherein the Hon'ble ITAT has held that value of strategic investment should be excluded for the purpose of disallowance under Rule 8D(iii).

5.2.2 I further find that Hon'ble Punjab and Haryana High Court in the case of CIT Faridabad vs. Lakhani Marketing INC in ITA no. 970/2008 vide their judgment dated 2.4.2014 have held that the disallowance u/s 14A can be made only to the extent of receipt of dividend income. The Hon'ble High Court relied on its earlier judgment in the case of CIT vs Hero Cycles Ltd. (2010) 323 ITR 518. Similarly, I find that Hon'ble Gujarat High Court in the case of CIT vs Corrttech Energy Pvt. Ltd. vide their judgment dated 24.3.2014 has held that where the assessee did not make any claim for exempt income, section 14A would have no application. Similar view has been expressed by Hon'ble Allahabad High Court in the case of CIT vs M/s Shivam Motors Pvt. ltd. (supra).

5.2.3 In the case under consideration, it is an admitted fact that the appellant did not claim any exempted income during the year under consideration. Therefore, respectfully following the above judicial pronouncements, I hold that the AO was not justified in making the disallowance u/s 14A. The same is therefore, directed to be deleted. Grounds of appeal are allowed."

I further find that similar issue has been decided by various judicial forums as under:

i. CIT Vs. Holcim India Pvt. Ltd. 57 taxmann.com 28 (Delhi):

"Section 14A of the Income-tax Act, 1961 - Expenditure Incurred in relation to income not includible in total income (Investment) -Assessment years 2007-08 and 2008-09 • Whether where business of assessee as an investment company had been set up and commenced and genuineness of expenses and fact that it was incurred for business activities was not doubted by lower authorities, expenditure under section 14A, was allowable • Held, yes [Para 16][In favour of assessee]

ii. Cheminvest Ltd. Vs. CIT 61 taxmann.com 118 (Delhi) wherein it has held as under:

"Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income (Applicability) - Assessment year 2004-05 - Whether section 14A envisages that there should be an actual receipt of income which is not includible in total income; hence, section 14A will not apply

where no exempt income is received or receivable during relevant previous year - Held, yes [Para 23] [In favour of assessee]

The appellant has also relied upon the judgment of Hon'ble Allahabad High Court in the case of CIT Vs. Shivam Motors Pvt. Ltd. wherein it has held as under:

"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.2,03,752/-made by the Assessing Officer was in order".

Commissioner of Income-tax v. Oriental Structural Engineers (P.) Ltd. [2013] 35 taxmann.com 210 (Delhi) HIGH COURT OF DELHI IT APPEAL NO. 605 OF 2012.

"Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income [Interest] - Assessment year 2008-09 - Commissioner (Appeals) found that only a part of interest was paid on funds that was utilized for making investments on which exempted income was receivable, while major investment was made in subsidiary company to form Special Purpose Vehicle to obtain NHAI contract - Further, Tribunal held that expenses which had been claimed by assessee were not towards exempted income - Whether in view of factual finding recorded by Tribunal, disallowance was to be limited - Held, yes [Para 3] [In favour of assessee]"

In view of the above facts and circumstances of the case and various judicial pronouncements on the issue, I hold that the AO was not justified in making the disallowance u/s 14A as the appellant did not claim any exempt income during the year under consideration. Therefore, the disallowance made by the AO is directed to be deleted. Grounds of appeal are allowed."

6. Keeping in view the findings reached by the ld. CIT(A) on the basis of various case laws and its decision in preceding years 2010-11 and 2011-12 in cases of the assessee, we find no justification to interfere with the impugned order, as the ld. DR has no contention before us that the above orders of first

appellate authority for preceding assessment years in the cases of assessee (supra) were challenged by Revenue in any further appeals or were reversed by any higher authority. Accordingly, the appeal of the Revenue is found to have no merits and is liable to be dismissed.

7. In the result, the appeal is dismissed.

Order pronounced in the open court on 23.11.2017.

Sd/-
(Bhavnes Saini)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 23.11.2017

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Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi