

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.3715/Mum/2018

(निर्धारण वर्ष / Assessment Year : 2014-15)

Zoetis Pharmaceutical Research P. Ltd., 31, Level-3, Kalpataru Synergy, Opp. Grand Hyatt, Santacruz (E), Mumbai-400055	<b>बनाम/</b>  v.	ACIT 11(3)(2) Mumbai
स्थायी लेखा सं./ PAN : AADCP5293L		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )
Assessee by:		Shri. Siddharth Shah
Revenue by :		Shri. C.S. Sharma, DR

सुनवाई की तारीख /**Date of Hearing** : 19.09.2018

घोषणा की तारीख /**Date of Pronouncement** : 26.09.2018

आदेश / ORDER

**PER RAMIT KOCHAR, Accountant Member:**

This appeal, filed by assessee, being ITA No. 3715/Mum/2018, is directed against appellate order dated 31.03.2018 passed by learned Commissioner of Income Tax (Appeals)-18, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2014-15, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 28.12.2016 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2014-15.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called “the tribunal”) read as under:-

*“1. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the disallowance under section 14A of the Act of Rs. 3,67,78,220.*

*2. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in ignoring the contention of the appellant that since the appellant has not earned any exempt income during the relevant previous year, no disallowance ought to be made under section 14A of the Act.*

*The Appellant craves leave to add to, omit or alter all or any of the above Grounds of Appeal before or during the hearing of aforesaid matter.”*

3. The assessee has filed following additional grounds of appeals for admission before the tribunal as under:

*“3. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) - 18 [CIT(A)] erred in not considering the revised return of income filed by the Appellant u/s 139(5) of the Income-tax Act, 1961 (‘Act’), wherein the Appellant sought to rectify the wrongful disallowance of expenditure made u/s. 14A of the Act in the original return of income.*

*4. Without prejudice to the Ground Nos. 2 and 3, the CIT(A) ought to have considered the additional claim of the Appellant that, no disallowance could be made u/s 14A of the Act since no exempt income was earned by the Appellant during the year under consideration in exercise of its powers u/s 251 of the Act.”*

The Ld. Counsel for the assessee submitted that these additional grounds of appeal are legal grounds which does not require investigation of fresh facts and these legal grounds goes to the root of the matter. It was submitted that keeping in view decision of Hon’ble Supreme Court in the case of National Thermal Power Company Ltd. v. CIT (1998) 229 ITR 383 (SC), these additional grounds of appeal

need to be admitted in the interest of justice . The assessee also relied upon the following decisions:-

1. *CIT v. S. Nelliappan [16 ITR 722 (SC)]*
2. *Ahmadabad Electricity Co. Ltd. and Godavari Sugar Mills Ltd. v. CIT [199 ITR 351 (Bom)]*
3. *National Thermal Power Co. Ltd. v. CIT 229 ITR 383(SC)*
4. *Ashok Vardhan Birla v. CWT [208 ITR 958 (Bom)]*
5. *Inaroo Ltd. v. CIT [204 ITR 312 (Bom)]*
6. *CIT vs. Govindram Bros. P. Ltd. [141 ITR 626 (Bom)]*

The Ld. DR objected to the admission of the additional ground but however left the matter to the discretion of the Bench to decide as to admission of these additional grounds of appeal

4. We have heard both the rival parties and gone through the grounds of appeal no. 3 and 4 raised by the assessee vide additional grounds of appeal before the tribunal. We are of the considered view that both this additional grounds of appeal are purely legal grounds which does not required investigations into fresh facts and are requires to be admitted in the interest of substantial justice keeping in view ratio of decision of Hon'ble Supreme Court in the case of NTPC Ltd.(supra). Thus we are admitting both the additional grounds of appeal to be adjudicated on merits in accordance with law.We order accordingly.

5. The assessee is engaged in the business of trading exports, trading in empty vegetables capsules & research and development in veterinary medicine on lab scale for Zoetis USA and its affiliates. The assessee filed its return of income originally for impugned assessment year on 30.11.2004 , wherein in the return of income so filed it made a suo-moto disallowance u/s 14A of the 1961 Act of Rs. 3,67,78,220/- by applying Rule 8D(2)(iii) of the Income-tax Rules, 1962. Later on the assessee revised its return of income on 30.03.3016 u/s 139(5) of the 1961 Act, wherein the aforesaid disallowance u/s 14A r.w.r. 8D of the 1962 Rules was withdrawn by the assessee. During the course of assessment u/s 143(3) r.w.s. 143(2) of the 1961 Act, the AO show-caused assessee as to why disallowance u/s 14A of the 1961 Act as

was originally made by the assessee in the return of income filed with the Revenue be not upheld in the assessment framed u/s 143(3) of the 1961 Act. The assessee filed a detailed submissions before the AO vide letter dated 22-12-2016 citing various judicial precedents to support its contentions. The AO rejected contentions of the assessee that no expenses were incurred w.r.t. these investments and upheld disallowance of Rs. 3,67,78,220/- u/s 14A vide assessment order dated 28-12-2016 passed u/s 143(3) of the 1961 Act , by holding that the investments decisions generally requires certain administrative and managerial expenses to be incurred.

6. The assessee carried the matter by filing first appeal before Ld. CIT(A) , which was dismissed by Ld. CIT(A) vide appellate order dated 31.03.2018 , by holding as under:

*“4.3. Decision: I have considered the submissions of the appellant, perused the assessment order and the facts of the case carefully.*

*4.3.1 In the instant case, the appellant has made suo-moto disallowance in its original return of income of Rs.3,67,78,220/- u/s.14A r.w Rule 8D. Subsequently, the appellant filed revised return on 30.03.2016 in which the said suo-moto disallowance u/s.14A r.w. Rule 8D was withdrawn. The Assessing Officer has issued a show cause to the appellant as to why disallowance u/s.14A should not be made as suo-moto disallowance was made by the assessee in the original return of income. The Assessing Officer has not accepted the contention of the assessee that no expenditure has been incurred on the investments made. Therefore, he disallowed Rs.3,67,78,220/-u/ s.14A of the I. T. Act.*

*4.3.2 During the appellate proceedings, the Ld. AR has made elaborate submissions claiming that no disallowance u/s. 14A can be made when no exempt income has been earned. Further, he relied on the decision of ITAT, Mumbai in appellant's own case for A.Y. 2006-07.*

*4.3.3 The most important issue to be decided is whether a return of income could be revised to claim debatable benefit or deduction. Further, what are the conditions to be fulfilled for filing valid revised return u/ s. 139(5).*

4.3.4 It must be noted that revised return is filed u/s. 139(5). For appreciating the issue in proper perspective, the provisions of sub section 5 of section 139 are reproduced below:

5) If any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before (the expiry of one year) from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.}

4.3.5 It may be noted from section 139(5) that there are three ingredients to be fulfilled. One, the Assessee should discover. Two, discovery should be of omission. Three, discovery should be of any wrong statement in the original return of income.

4.3.6 The term "discovers" as per Oxford English dictionary means "the finding out or bringing to light that which was previously unknown". The term "omission" connotes an unintentional act or neglect to perform what the law requires (Addl. CIT vs. Radhe Shyam (ALL) (01 Taxman 29). The term "wrong statement" means statement which is factually incorrect or false statement.

4.3.7 In the instant case, the appellant has suo-moto made disallowance of Rs.3,67,78,220/- u/s.14A r.w. Rule 8D. The basis of the said disallowance is audited accounts. In clause 21(h) of Form No.3CA (Audit Report), the Auditor has arrived at disallowance u/s.14A r.w. Rule 8D at Rs.3,67,78,220/-. The working of the disallowance is annexed to the audit report as Enclosure F. The working as per Enclosure F is as under:

Clause 21(h) : Amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income.

A.	Interest Expenses		
B.	Average Value of Investments on which dividend income is exempt		
	Value of Investments as on 31.03.2013	(a)	7,355,644,000
	Value of Investments as on 31.03.2014	(b)	7,355,644,000
	Average	$f(a) + (b)j/2$	7,355,644,000
C.	Average Value of Assets		
	Value of Assets as on 31.03.2013	(a)	13,439,812,000
	Value of Assets as on 31.03.2014	(ft)	13,723,194,000

	<i>Average</i>	$l(a) + (b)!/2$	13,581,503,000
	<i>Disallowance vide Rule 8D(2)</i>	$AxB/C$	
	<i>0.5% of the average value of investment</i>		36, 778,220
	<i>Total</i>		36, 778,220

4.3.8 Thus, the auditor, based on the books of account, has come to a conclusion that indirect expenses to the tune of Rs.3,67,78,220/- were incurred for making investments to the tune of Rs. 1358,15,03,000/-.

4.3.9 The appellant subsequently has filed revised return dated 30.03.2016 withdrawing the said suo-moto disallowance of Rs.3,67,78,220/- and claimed refund of Rs.3,64,53,580/-. The appellant has furnished Note claiming to be reasons for filing revised return. The Note to the revised return is as under:

As on 31<sup>st</sup> March 2014, the company is holding investment of Rs. 73,556.44 lakhs in its wholly owned subsidiary Pfizer Animal Health India Ltd. During the year, the company has not earned any exempt income in the form of dividend. Further, the said investments made by the company are strategic in nature.

Based on the above, the company believes that provisions of Section 14A of I. T. Act, are not applicable to it and therefore no disallowance ought to be made u/s. 14A of the Act in the computation of income. Accordingly, the company has filed a revised return of income for not considering any disallowance u/s.14A of the Act as made in the original return of Income."

4.3.10 Now, it has to be seen whether there was any omission or wrong statement in the original return of income. Since, the disallowance of Rs.3,67,78,220/- u/s. 14A r.w Rule 8D is based on the audited books of account and worked out by the auditor, it cannot be said that there was a wrong statement. Further, there is no unintentional act or neglect to perform what the law requires. Therefore, there is no omission also. Hence, revised return is not a valid revised return u/s. 139(5). Importantly, the revised return is filed based on revised computation of income. No revised audit report has been filed along with the revised return. Therefore, there is nothing wrong in the original audit report and there was no omission as well.

4.3.11 In the case of *Sunanda Ram Deka vs. CIT*, 210 ITR 988, the Hon'ble High Court of Gauhati has held that the filing of the revised return after discovery of the omission or wrong statement

*is not by itself sufficient to bring the revised return within the ambit of sub-section (5) of section 139. The further requirement is that the omission or wrong statement in the original return must be due to a bona fide inadvertence or mistake on the part of the assessee.*

*4.3.12 In the instant case, there is no bonafide inadvertence or mistake on the part of the assessee. Therefore, applying the ratio laid down by the Hon'ble High Court of Gauhati, it is held that the revised return filed by the appellant is not a valid revised return u/s. 139(5).*

*4.3.13 In the Note to the revised return it has been mentioned that the company has not earned any exempt income and the investments made by the company are strategic in nature. Therefore, revised return is filed by withdrawing disallowance u/s. 14A. It must be noted that these issues are debatable in nature. In the recent judgement, the Hon'ble High Court of Karnataka, in the case of Sharavathy Conductors (P) Ltd. vs. CCIT, 87 taxmann.com 244 (2017), has held that revised return cannot be filed to make a debatable claim. Therefore, applying the ratio laid down by the Hon'ble High Court of Karnataka, it is held that the revised return filed by the appellant is not a valid revised return u/s. 139(5).*

*4.3.14 Since, the revised return is held to be invalid, the suo-moto disallowance u/s.14A r.w. Rule 8D of Rs.3,67,78,220/- remains.*

*4.3.15 The Ld. AR has relied on various judicial pronouncements. They are not applicable to the facts of the present case. Further, he has relied on the decision of ITAT, Mumbai in appellant's own case for A.Y. 2006-07. However, for A.Y. 2006-07, the appellant has not made any suo-moto disallowance u/s.14A r.w Rule 8D and no revised return was filed. Therefore, the facts of A.Y. 2006-07 are distinguishable from A.Y. 2014-15.*

*4.3.16 In the light of the foregoing, disallowance of Rs.3,67,78,220/- u/s. 14A r.w Rule 8D is hereby sustained.*

*4.4 In the result, Ground No's. 1 to 7 are dismissed.*

*5, In the result, for statistical purpose the appeal is dismissed.”*

7. Aggrieved by the appellate order dated 31.03.2018 passed by learned CIT(A), the assessee filed second appeal with tribunal.

8. The Ld. Counsel for the assessee submitted that the assessee has not earned any exempt income during the impugned assessment year under consideration . It is submitted that keeping in view ratio of

decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd.v. CIT reported in (2015) 378 ITR 33(Del) , decision of Hon'ble Madras High Court in the case CIT v. Chettinad Logistics Private Limited (2017) 248 taxman 55(Mad. HC) and decision of Hon'ble Bombay High Court in the case of Pr. CIT v. Ballarpur Industries Limited in ITA no. 51 of 2016 dated 13.10.2016, the additions as were made by the authorities below of Rs. 3,67,78,220/- need to be deleted as the assessee has not earned any exempt income during relevant previous year. The learned AR submitted that the assessee filed original return of income u/s 139(1) of the 1961 Act on 30.11.2014 wherein suo motu disallowance of Rs. 3,67,78,220/- was made u/s 14A of the 1961 Act read with Rule 8D(2)(iii) of the 1962 Rules being 0.5% of average value of investments based on the tax-audit report issued by tax-auditors of the assessee . It was submitted that the said disallowance u/s 14A r.w.r. 8D(2)(iii) was withdrawn by the assessee by filing revised return of income on 30.03.2016 u/s 139(5) of the 1961 Act because the assessee did not earn any exempt income during relevant previous year and hence in the absence of exempt income , no disallowance u/s 14A is warranted. It was submitted that Courts have consistently held that no disallowance u/s 14A of the 1961 Act is warranted in cases no exempt income is earned by the assessee during the impugned assessment year. The assessee did not earned any exempt income during the previous year under consideration was the contention of learned counsel for the assessee. It was submitted that when return of income was filed , these decisions of the Court were not available but when the revised return of income was filed u/s 139(5) on 30-03-2016, the decision of Cheminvest Limited(supra) which was pronounced by Hon'ble Delhi High Court on 02-09-2015 was available. Similar is the position of Hon'ble Delhi High Court judgment dated 25-02-2015 in the case of Joint Investments Private Limited v. CIT reported in (2015) 372 ITR 694(Del HC) . Thus, it was submitted that revised return of income was filed on 30-03-2016 based on decision of Hon'ble High Courts and

hence it was a bonafide revision of return of income u/s 139(5) of the 1961 Act which should be accepted by tribunal and learned CIT(A) erred in rejecting the revised return of income filed u/s 139(5) of the 1961 Act within the time stipulated under statute. The assessee also relied upon the decision of Mumbai tribunal in assessee's own case for AY 2006-07 in ITA No. 9145/Mum/2010 vide orders dated 22-11-2017 wherein tribunal held that once no dividend income is received or receivable during the relevant previous year, no disallowance u/s. 14A of the 1961 Act is warranted. The Ld. DR on the other hand supported the orders of the authorities below.

8. We have heard rival contentions and perused the material on record including cited case laws and orders of authorities below. We have observed that the assessee is engaged in the business of trading exports , trading in empty vegetables capsules & research and development in veterinary medicine on lab scale for Zoetis USA and its affiliates. The assessee filed its return of income originally for impugned assessment year 2014-15 on 30.11.2014 wherein it made suo-moto disallowance u/s 14A of the 1961 Act of Rs. 3,67,78,220/- by applying Rule 8D(2)(iii) of the 1962 Rules. The said disallowance u/s 14A of the 1961 Act read with Rule 8D(2)(iii) of the 1962 Rule was supported by the tax-audit report dated 28-11-2014 issued by tax-auditor in form no. 3CA and 3CD computed @ 0.5% the average investments held by the assessee , detailed as hereunder :-

**Clause 21 (h) : Amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income.**

A	Interest Expense		
B	Average Value of Investments on which dividend income is exempt		
	Value of Investments as on 31.03.13	(a)	7,355,644,000
	Value of Investments as on 31.03.14	(b)	7,355,644,000
	Average	{(a) + (b)} / 2	<u>7,355,644,000</u>
C	Average Value of Assets		
	Value of Assets as on 31.03.13	(a)	13,439,812,000
	Value of Assets as on 31.03.14	(b)	13,723,194,000
	Average	{(a) + (b)} / 2	<u>13,581,503,000</u>
	Disallowance vide Rule 8D(2)	A*B/C	-
	0.5% of the average value of investment		<u>36,778,220</u>
	<b>TOTAL</b>		<u><u>36,778,220</u></u>

The said tax-audit report is placed in paper book/page number 27-58. Incidentally, the assessee has made investment in only one company namely Zoetis India Limited ( Formerly known as Pfizer Animal Health India Limited) to the tune of Rs. 735.56 crores as at 31-03-2014( Previous Year Rs. 735.56 crores as at 31-03-2013) . Thus, there is no movement in investments during the relevant previous year as the investment at year end is same as investment at the beginning of the relevant previous year. Later on the assessee revised its return of income u/s 139(5) of the 1961 Act on 30.03.2016 i.e. within the time limit prescribed u/s 139(5) for filing revised return of income, wherein the aforesaid disallowance u/s 14A r.w.r. 8D(2)(iii) of the 1962 Rules was withdrawn by the assessee in the aforesaid revised return of income filed with the Revenue as the assessee had a belief that in view of several decisions of Hon'ble Courts/tribunal no disallowance u/s 14A is warranted in the case of the assessee as no exempt income was received or receivable by the assessee on these investments during relevant previous year. Another belief which led assessee in filing revised return of income u/s 139(5) was that these investments were strategic investments in subsidiary company and hence Section 14A is not applicable which in any case proposition is now decided against

the tax-payer by Hon'ble Supreme Court in the case of Maxopp Investment Limited v. CIT reported in (2018) 402 ITR 640(SC) . The said belief's which made assessee revise its return of income was found mentioned in note to the revised return of income filed by the assessee with its revised return of income(pb/page 129).During the course of assessment proceedings u/s 143(3) r.w.s. 143(2) conducted by the AO, the assessee justified its stand of withdrawing disallowance u/s 14A on the grounds that no exempt income was received or receivable by the assessee on the investments held by it during relevant previous year and submitted that as held by several Hon'ble Courts/tribunal decisions , no disallowance u/s 14A is warranted vide reply dated 22-12-2016 filed before the AO (page 130-134/pb). The assessee relied upon decision of Hon'ble Delhi High Court in the case of Cheminvest Limited(supra) which was pronounced on 02-09-2015 wherein Hon'ble Delhi High Court has held that in case no exempt income is received or receivable during relevant previous year, no disallowance u/s 14A is warranted . As could be seen this decision was pronounced by Hon'ble Delhi High Court on 02-09-2015 post filing of original return of income by the assessee on 30-11-2014 but prior to filing of revised return of income on 30-03-2016. The assessee also relied upon decision of Hon'ble Gujarat High Court in the case of CIT v. Corrtch Energy Private Limited (2014) 45 taxmann.com 116(Guj.) which also held that in case there is no claim for exemption made by the tax-payer,there cannot be any expenses to be disallowed . The said decision was pronounced by Hon'ble Gujarat High Court on 24-03-2014 which was even prior to filing of original return of income by the assessee on 30-03-2014. The assessee also placed reliance on following decisions of Hon'ble Courts/tribunal while making submissions before the AO vide letter dated 22-12-2016:-

- a) CIT v. Lakhani Marketing (2014) 49 taxmann.com 257(P&H HC).
- b) CIT v. Delite Enterprises (Bom. HC) ITA no. 110 of 2009)

- c) Siva Industries & Holdings Limited v. ACIT (2011) 11 taxmann.com 404(Chennai-trib.)
- d) Alliance Infrastructure Projects Private Limited v. DCIT (ITA No. 220, 1043 and 1217 , 234(Bang.)/2013)
- e) Shree Shyamkamal Finance & Leasing Company Private Limited v. ITO (2008) 21 SOT 42(Mum)
- f) ACIT v. Lafarge India Holdings Private Limited (2008) 19 SOT 121(Mum.)

The assessee had filed revised return of income u/s 139(5) and the aforesaid cause shown by the assessee is held to be bonafide as the assessee has revised its return of income based on interpretation accorded by Hon'ble Courts to the provisions of Section 14A of the 1961 Act in case no dividend income is received and the reasons for revising return of income u/s 139(5) cannot be held to be frivolous or non-bonafide . Once the Hon'ble High Courts have laid down the law then reliance on such law to revise return of income within the time frame work provided under the provisions of Section 139(5) cannot be treated as non-bonafide or frivolous ground and could not be a reason for rejecting/discarding such revised return of income. It is also pertinent to mention that the framing of law is function of Parliament while interpretation of such laws are done by Courts . When the Courts interpret provision of statute through pronouncement of its judgement , it interprets the law made by Parliament which was always existing after its enactment and hence the said interpretation of law by Courts shall relate back to date of enactment of such law by Parliament unless otherwise specified by Courts in their judgment . The learned CIT(A) has discarded/rejected the revised return of income holding that there was nothing wrong statement or omission in the original return of income filed by the

assessee which could be corrected by filing revised return of income. The learned CIT(A) has relied upon the decision of Hon'ble Gauhati High Court in the case of Sunanda Ram Deka v. CIT reported in (1994) 210 ITR 988(Gau.) and decision of Hon'ble Karnataka High Court in the case of Sharavathy Conductors Private Limited v. CCIT reported in (2017) 87 taxmann.com 244(Kar.) to declare the revised return of income filed by the assessee u/s 139(5) as invalid. We have observed that in the case of Sunanda Ram Deka(supra), the tax-payer could not explain the reasons/particulars to point that the filing of revised return of income was the result of inadvertence mistake or omission on the part of the tax-payer. Thus, this case was decided on its own peculiar facts and has no relevance to present factual matrix of the case before us where the assessee relied upon several decisions of Hon'ble Courts/tribunal to form a belief that Section 14A has no applicability in the circumstances when no exempt income was received or receivable by assessee during relevant previous year on investments. The second case law relied upon by learned CIT(A) to reject revised return of income was the case of Sharavathy Conductors Private Limited(Supra). In the said case revised return of income was filed after expiry of limitation period provided u/s 139(5) of the 1961 Act and then prayers were made before learned CCIT for condonation of delay u/s 119(2)(b) of the 1961 Act which application was rejected by learned CCIT and the Hon'ble Karnataka High Court held that condonation of delay is discretionary and a fair exercise of discretion by authorities cannot be interfered by High Courts in extra jurisdiction under Article 226 of the Constitution of India unless such exercise of discretion is found to be arbitrary and secondly the claim of the taxpayer filed by the tax-payer was held to be debatable. In the instant case, the revised return of income was filed within time prescribed u/s 139(5) of the 1961 Act and secondly the Courts/tribunals are consistently taking a view that in case no exempt income is received or receivable on exempt income, no disallowance u/s 14A is warranted. Thus the assessee's action in

revising its return of income in line with decision of several Courts and tribunal is held to be bonafide and we accept the revised return of income filed by the assessee u/s 139(5) on 30-03-2016 as a valid return of income. We have also noted that the tribunal in assessee's own case in AY 2006-07 in ITA no. 9145/Mum/2010 vide orders dated 22.11.2017 have also held in favour of assessee by holding that in case no exempt income was received or receivable by the assessee during the relevant previous year, then no disallowance u/s. 14A is warranted , by holding as under:-

*“5. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The AO disallowed expenditure incurred towards setting up of STPI unit at Chennai u/s 14A of the Act. According to the AO, the tax auditor has quantified the expenditure to be disallowed u/s 14A towards expenditure incurred for setting up STPI unit at Chennai. It is the contention of the assessee that no disallowance can be made u/s 14A, when there is no exempt income. The assessee further contended that STPI unit at Chennai did not commence its activities during the year under consideration and the assessee has not claimed any deduction u/s 10A, therefore, the AO was erred in disallowing expenditure u/s 14A of the Act. We find force in the arguments of the assessee for the reason that the Hon'ble Delhi High Court in the case of Cheminvest Ltd vs CIT (supra) has observed that when there is no exempt income, disallowance of expenditure u/s 14A cannot be made. Therefore, we direct the AO to delete addition made towards expenditure incurred for setting up of STPI unit u/s 14A of the Act. We further direct the AO to delete adjustment made towards book profit computed u/s 115JB of the Income-tax Act, 1961. As a result, grounds raised by the assessee are allowed.”*

We further note that Hon'ble Bombay High Court in the case of The Pr. CIT v. Ballarpur Industries Limited in ITA no. 51 of 2016 vide orders dated 13.10.2016 has also held that when no exempt income was received or receivable on the investments, no disallowance u/s 14A is warranted. Thus keeping in view our aforesaid discussions and reasoning as set out above, we are of the considered view that no disallowance u/s. 14A of the 1961 Act is warranted in the instant case as the assessee has not received any exempt income during the relevant previous year on investments and we order deletion of the additions as were made by the AO and later sustained by the Ld.

CIT(A) by setting aside the orders of authorities below. The assessee succeeds in this appeal. We order accordingly.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 26.09.2018.

आदेश की घोषणा खुले न्यायालय में दिनांक: 26.09.2018 को की गई

Sd/-

(MAHAVIR SINGH)  
JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

Mumbai, dated: 26.09.2018

Nishant Verma  
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR  
ITAT, MUMBAI