

IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI  
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 7128 & 7129/Mum/2019  
(A.Y: 2015-16 & 2016-17)

DCIT 11(1)(1) R No. 204, Aayakar Bhavan, MK Road, Mumbai – 400020.	Vs.	M/s. Qing Ambay Developers Corporation. Ltd., Hotel Sahara Star, Opp Domestic Airport, Vile Parle, Mumbai - 400099
PAN/GIR No. : AAJCA2307C		
Appellant	..	Respondent

Appellant by :	Shri Rajesh Mishra, DR
Respondent by :	None

Date of Hearing	20.05.2021
Date of Pronouncement	02.06.2021

आदेश / O R D E R

**PER PAVAN KUMAR GADALE, JM:**

These are the two appeals filed by the revenue against the separate orders of the Commissioner of Income Tax (Appeals) -18 Mumbai, passed u/s. 143(3) and 250 of the Act.

Since the issues involved in the appeals are identical and similar, hence they are clubbed, heard and consolidated order is passed. For the sake of convenience we shall take up the ITA No. 7128/Mum/2019 for the A.Y

2015-16 as a lead case and the facts narrated therein.  
The revenue has raised the following grounds of appeal:

*Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is justified in holding that no disallowance u/s 14A of the Act is called for as the assessee has not earned any exempt income during the year under consideration without appreciating the legal intent of introducing provisions of Sec. 14A of the Act by Finance Act 2001 as clarified by CBDT circular No. 5/2014 dated 11.02.2014.*

2. The Brief facts of the case are that the assessee company is engaged in the business of entertainment, hospitality and property developers and filed the return of income for the A.Y 2015-16 with a total loss of Rs.31,64,17,828/-on 06.12.2016.Subsequently, the case was selected for scrutiny and notice u/s 143(2) of the Act was issued. In compliance the Ld. AR of the assessee appeared from time to time and furnished the details. On perusal of the financial statements, the A.O. found that the assessee has received revenue from operations and other income and after claim of expenses, the loss is arrived. Further, the assessee company has made investments of Rs. 17,30,08,73,965/-as on 31.03.2015 which yield the exempt income. Whereas, the assessee has not attributed any expenses incurred in the carrying out the operational activity of investments. The A.O

observed that the assessee must have incurred certain expenses and there is no disallowance of expenses u/s 14A of the Act and called for the explanations. The assessee has filed the explanations mentioning that the investments are made for business operations of the company being strategize in associates and infrastructure is not required to regulate the investments. But the A.O. was not satisfied with the explanations and finally considering the investments made by the assessee has worked out the disallowance u/sec14A r.w.r 8D(2)(iii) of the IT Rules of Rs. 8,67,37,238/-and assessed the total loss of Rs.22,96,80,592/- and passed order u/s 143(3) of the Act dated 29.12.2017.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), the CIT(A) considered the grounds of appeal, submissions of the assessee and the Assessing officer findings. The appellate Authority on perusal of the facts and financial details found that the assessee company has made investments in associates and has not received any exempted income during the year. Whereas, the A.O. has made disallowance u/sec14A r.w.r 8D(2)(iii) irrespective of

the facts on record that there is no exempt income received by the assessee. The Ld.CIT(A) relied on the judicial decisions and deleted the addition and allowed the assessee appeal. Aggrieved by the CIT(A) order the revenue has filed an appeal with the Honble Tribunal.

4. At the time of hearing none appeared on behalf of the assessee and Ld.DR has made the submissions. The Ld. DR submitted that the CIT(A) erred in deleting the addition made u/s 14Ar.w.r 8D(2) (iii) of the Act though the assessee company has not received exempt income during the year but made substantial investments and prayed for allowing the revenue appeal.

5. We heard the Ld. DR and perused the material on record. The sole crux of the disputed as envisaged by the Ld.DR that the A.O has made disallowance u/s 14A r.w.r 8D(2)(iii) of the IT Rules based on the investments and the Ld.CIT(A) has deleted the addition considering the fact that there is no exempt income received by the assessee. We found that the CIT(A) has relied on the facts and judicial decisions and granted the relief. We considered it appropriate to

refer to the observations of the CIT(A) at page 3 Para 6.1 to 7 of the order which is read as under:

*6.1 Ground No. 1: Vide this ground appellant has agitated against addition of Rs. 8,67,37,238/- u/s 14A r.w.r.8D. In para 4 of the assessment order the Ld. AO has mentioned that it was observed from the balance sheet for AX, 2015-16 that the appellant company had made investment in the shares on which the appellant is likely to earn exempt income. According to the AO provision of section 14A r.w.r.8D were applicable and the appellant company had failed to make any disallowance u/s 14A r.w.r.8D. In view of it the Ld. AO worked out a disallowance of Rs. 8,67,37,238/- u/s 14A r.w.r.8D,*

*6.2 I have considered the submissions of the appellant and perused the materials available on record. During the course of the appellate proceedings, it was submitted that the appellant had earned no exempt income during the year under consideration and therefore no disallowance could be made under Section 14A r.w.r. 8D of the Income Tax Act, 1961.*

*6.3 Reliance can be placed on the recent judgment of the Hon'ble Supreme Court in the case of PCIT vs. Oil Industry Development Board [2019] 262 Taxmann 102 [SC], wherein it is held that In the absence of any exempt income, disallowance u/ s 14A 86 Rule 8D of the Act of any amount is not permissible (Essar Teleholdings 401 ITR 445 (SC) followed, Cheminvest 378 ITR 33 (Del) approved)*

*6.4 Further reliance was placed on following cases:*

- a). The Bombay High Court in the case of PCIT vs. Ballarpur Industries Ltd.(85 taxmann.com 13)*
- b). Hon'ble Apex Court's dismissal of SLP filed by the revenue against the decision given by the Madras High Court in the case of CIT. (Central)-1 vs. Chettinad Logistics (P.) Ltd.(95 taxmann.com 250).*

- c). *Cheminvest Limited Vs. CIT-4 (Delhi HC) (378 ITR 33)*
- d). *jurisdictional Mumbai ITAT in the case of Kamat Hotels (India) Ltd vs DCIT*
- e). *High Court of Delhi in Principal Commissioner of Income-tax-04 v. IL&FS Energy Development Company Ltd. [2017] 84 taxmann.com 186 (Delhi)*
- J). *jurisdictional ITAT Mumbai Bench "G" in Assistant Commissioner of Income Tax, Mumbai v. Gini 86 Jony Ltd. [2018] 97 taxmann.com 401 (Mumbai - Trib.)*

6.4.1 *The Hon'ble Jurisdictional Bombay HC recently in the case of PCIT vs. Ballarpur Industries Ltd.(85 taxmann.com 13) published on 17th August, 2018 has held as follows:*

*"On hearing the learned Counsel for the Department and on a perusal of the impugned orders, it appears that both the Authorities have recorded a clear finding of fact that there was no exempt income earned by the appellant. While holding so, the Authorities relied on the judgment of the Delhi High Court in Income Tax Appeal No. 749/2014, which holds that the expression "does not form part of the total income" in Section 14A of the Income Tax Act, 1961 envisages that there should be an actual receipt of the income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. The Income Tax Appellate Tribunal held that the provisions of Section 14A of the Income Tax Act, 1961 would not apply to the facts of this case as no exempt income was received or receivable during the relevant previous year. It is not the case of the Assessing Officer that any actual income was received by the appellant and the same was includible in the total income. In the facts of the case, the Authorities held that since the investments made by the appellant in the sister concerns were not the actual income received by the appellant, they could not have been included in the total income."*

6.4.2 *Further the Hon'ble Apex Court has dismissed the SLP filed by the revenue against the decision given by the Madras High Court in the case of CIT, (Central)-1 vs. Chettinad*

*Logistics (P.) Ltd.(95 taxmann.com 250) stating that section 14A cannot be invoked where no exempt income was earned by appellant in relevant assessment year.*

*6.4.3 Cheminvest Limited Vs. CIT-4 (Delhi HC) (378 ITR 33)*

*"23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression does not form part of the total income" in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year."*

*6.4.4 The jurisdictional Mumbai ITAT in the case of Kamat Hotels (India) Ltd vs DCIT has held that*

*"2.5.1 We are of the considered view that the legislative intent is more discernible in the judicial decisions. In Chettinad Logistics (P.) Ltd. (supra), the Hon'ble Madras High Court has held that section 14A cannot be invoked where no exempt income was earned by the appellant in the relevant assessment year. In the case of CIT v. Shivam Motors (P.) Ltd. [2015] 55 taxmann.com 2621230 Taxman 63 (All.), it has been held that in absence of any tax free income earned by the appellant, disallowance u/s. 14A could not be made. In a similar vein, it has been held in Cheminvest Ltd. v. CIT [2015] 61 taxmann.com 1181284 Taxman 7611378 ITR 33 (Delhi) that section 14A will not apply if no exempt income is received or receivable during the relevant previous year."*

*6.4.5 The Hon'ble High Court of Delhi in Principal Commissioner of Income-tax-04 v. IL&FS Energy Development Company Ltd. [2017] 84 taxmann.com 186 delhi wherein it was held that where no exempt income was earned in relevant assessment year, there could be no disallowance in terms of section 14A r.w.r 8D.*

*6.4.6 Jurisdictional ITAT Mumbai Bench "G" in Assistant I Commissioner of Income Tax, Mumbai v. Gini & Jony Ltd. [2018] 97 taxmann.com 401 (Mumbai - Trib.) wherein it was*

*held that where there was no exempt income earned by appellant during previous year relevant to impugned assessment year, there could be no disallowance in terms of section 14A.*

*6.5 It is seen from the ITR and financial statements that the appellant had not earned any exempt income during the year. The same was also accepted by the AO in his Assessment Order. Since no exempt income was earned by the appellant during the year, therefore respectfully following the above noted judicial pronouncements, the addition made by the Ld. AO amounting to Rs.8,67,37,238/ - is hereby DELETED. Hence, the appeal of the appellant on this ground is allowed.*

*7.In the result, for statistical purpose, the appeal is Allowed.*

5.1 The Ld. DR could not controvert the findings of the CIT(A) with any cogent evidences or information but relied only on the order of the A.O. We found that the CIT(A) has relied on the findings in the assessment order and observed that there is no exempt income received by the assessee and relied on the provisions of Sec. 14A r.w.r 8D of the IT Rules. Further CIT(A) emphasized that the provisions of Sec.14A of the Act shall not be applicable where there is no exempt income received and strengthened his order relying on the Hon'ble High Court and Hon'ble Tribunal decisions and passed a reasoned order. Accordingly, we are not inclined to interfere with the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

6. In the result the appeal filed by the revenue is dismissed.

ITA No. 7129/Mum/2019, For the A.Y 2016-17.

7. As the facts and circumstances in this appeal are identical to ITA No. 7128/Mum/2019 for A.Y. 2015-16, the decision rendered in above paragraphs would apply mutatis mutandis for this case also. Accordingly, grounds of appeal of the revenue are dismissed

8. In the result, both the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 02.06.2021

Sd/-  
(S RIFAUR RAHMAN)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 02.06.2021

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai