

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "C" BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI G.S.PANNU, PRESIDENT &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.5232/Del/2018  
[Assessment Year : 2015-16]**

JPM Tools Ltd., Sanjay Satpal & Associates, F-11, Green Park Extension, New Delhi. PAN-AAACJ3128K	vs	ACIT, Central Circle-13, New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Sh. Madhur Aggarwal, Adv.	
<b>Respondent by</b>	Sh. Umesh Takyar, Sr.DR	
<b>Date of Hearing</b>	01.11.2021	
<b>Date of Pronouncement</b>	09.11.2021	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee for the assessment year 2015-16 is directed against the order of Ld. CIT(A)-XXVI, New Delhi dated 11.06.2018. The assessee has raised following grounds of appeal:-

1. *"The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.*
2. *The learned Commissioner of Income Tax (A) has erred in confirming addition of Rs 11,96,866/- u/s 14A of the Income Tax Act without going through the facts, statutory provisions as well as explanation filed during the course of assessment proceeding as well as penalty proceeding .*
3. *The learned Commissioner of Income Tax (A) has failed to consider that the amount of disallowance cannot exceed exempt income and have adequate non - interest bearing fund to make investment in shares and have not incurred expenses related to exempt income*

4. *The learned Commissioner of Income Tax (A) has erred in not adjudicating the ground relating to disallowance of job work expenses of Rs 1,49,130/- and the disallowance in respect of which have been made without going through the facts, statutory provisions as well as explanation filed during the course of assessment proceeding.*

5. *The appellant herein craves its right to alter, amend, add and / or withdraw any grounds of appeal and / or to take any additional grounds of appeal.”*

2. Facts giving rise to the present appeal are that the assessee company had filed its return of income through electronic mode on 30.09.2015 declaring total income of Rs.43,48,060/-. The case was selected for scrutiny assessee. The assessment u/s 143(3) of the Income Tax Act, 1961 (“the Act”) was framed vide order dated 15.12.2017. By framing the assessee, the Assessing Officer noticed that the assessee company had earned dividend income of Rs.55,000/-. Therefore, he invoked the provision of section 14A of the Act and computed the disallowance as per Rule 8D of the Income Tax Rules, 1962 at Rs.11,96,866/-. Further, the Assessing Officer made disallowance on account of job work expenses at Rs.1,49,130/-.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who sustained both the additions and dismissed the appeal of the assessee.

4. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

5. Ground Nos.1 & 5 are general in nature, need no separate adjudication.

6. Ground Nos. 2 & 3 are in respect of disallowance made u/s 14A of the Act. Ld. Counsel for the assessee submitted that the assessee company had earned dividend income of Rs.55,000/- and the Assessing Officer made disallowance of Rs.11,96,866/- which is contrary to the judgement of the Hon'ble Jurisdictional High Court rendered in the case of *Pr.CIT-2 vs Caraf Builders & Constructions (P.) Ltd.* [2019] 101 taxmann.com 167 (Delhi).

7. Ld. Sr. DR opposed these submissions and supported the order of Assessing authority.

8. We have heard the rival contentions and perused the material available on record. The Revenue did not dispute the fact that the assessee had earned exempt income to the extent of Rs.55,000/-. Ld. Counsel for the assessee has relied upon the judgement of Hon'ble High Court rendered in the case of *Pr.CIT-2 vs Caraf Builders & Constructions (P.) Ltd.* (supra) wherein the Hon'ble High Court has held as under:-

25. *"Total exempt income earned by the respondent-assessee in this year was Rs. 19 lakhs. In these circumstances, we are not required to consider the case of the Revenue that the disallowance should be enhanced from Rs. 75.89 crores to Rs. 144.52 crores. Upper disallowance as held in Pr. CIT v. McDonalds India (P) Ltd. ITA 725/2018 decided on 22<sup>nd</sup> October, 2018 cannot exceed the exempt income of that year. This decision follows the ratio and judgment of the Supreme Court in the case of Maxopp Investments Ltd. v. CIT [2018] 402 ITR 640/254 Taxman 325/91 taxmann.com 154 and the earlier judgments of the Delhi High Court in Cheminvest v. CIT [2015] 378 ITR 33/234 Taxman 761/61 tasmann.com 118 and CIT v, Holcim (P) Ltd. [2015] 57 taxmann.com 28 (Delhi). Relevant portion of the judgment in McDonalds India (P.) Ltd. (supra) reads:-*

'8. The decision in the case of *Maxopp Investment Ltd. (supra)* is significant and does answer the question in issue. This decision does not support the Revenue as the Assessing Officer in the case of *Maxopp Investment Ltd. (supra)* had himself restricted the disallowance to the extent of exempt income. After referring to *Walford Share and Stock Brokers P Ltd. (supra)* it was held-

"Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includable in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income."

\* \* \* \*

10. The decision of the Delhi High Court in *Holcim India Pvt. Ltd. (supra)* had referred to the issue whether disallowance of expenditure under Section 14A of the Act would be made even when no exempt income in the form of dividend was earned in the year, and it was observed:

"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 contra decision of a High Court has been shown to us. The Punjab and Haryana High Court in *Commissioner of Income Tax, Faridabad v. M/s. Lakhani Marketing Incl., ITA No. 970/2008*, decided on 02.04.2014, made reference to two earlier decisions of the same Court in *CIT v. Hero Cycles Limited, [2010] 323 ITR 518* and *CIT v. Winsome Textile Industries Limited, [2009] 319 ITR 204* to hold that Section 4A cannot be invoked when no exempt income was earned.

*The second decision is of the Gujarat High Court in Commissioner of Income Tax-I v. 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, v. M/s. Shivam Motors (P.) Ltd. decided on 05.05.2014. In the aid 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. 2,03,752/- 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 mayor 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."*

*11. Decision in Holcim India (P.) Ltd. (supra) was followed and elaborated in Chemin vest Ltd. (supra)."*

9. Respectfully following the ratio laid down by the Hon'ble High Court in the case of *Pr.CIT-2 vs Caraf Builders & Constructions (P.) Ltd.* (supra), we hereby restrict the disallowance to the extent of exempt income of Rs.55,000/-. Ground Nos.2 & 3 raised by the assessee are partly allowed.

10. Ground No.4 is against the disallowance of job work expenses of Rs.1,49,130/-.

11. Ld. Counsel for the assessee submitted that Ld.CIT(A) has not decided this issue hence it may be restored back to the file of Ld. CIT(A) for decision on merit.

12. Ld. Sr. DR has no objection in this regard.

13. We have heard the contentions of both authorized representatives of the parties and perused the material available on record. We find that Ld.CIT(A) has not given his finding on merit on this issue. Therefore, this issue is restored back to the file of Ld.CIT(A) for decision on merit by way of a speaking order. Needless to say that the assessee would not seek adjournment without

any reasonable cause. Thus, Ground No.4 raised by the assessee is partly allowed for statistical purposes.

14. In the result, the appeal of the assessee is partly allowed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 09<sup>th</sup> November, 2021.

***Sd/-***

**(G.S.PANNU)  
PRESIDENT**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

***Sd/-***

**(KUL BHARAT)  
JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI