

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

	I.T.A. No. 4448/Del/2013	
	A.Y. : 2009-10	
Income Tax Officer, Ward 14(2), Room No. 209, CR Building, IP Estate, New Delhi – 110 002		M/s Pioneer Radio Training Services Pvt. Ltd., 4 th floor, Dhaka House, 18/17, WEA Karol Bagh, New Delhi – 110 005 (PAN: AADCP7802K)
(APPELLANT)		(RESPONDENT)

AND

	C.O. NO. 11/Del/2014 (In ITA No. 4448/Del/2013)	
	A.Y. : 2009-10	
M/s Pioneer Radio Training Services Pvt. Ltd., 4 th floor, Dhaka House, 18/17, WEA Karol Bagh, New Delhi – 110 005 (PAN: AADCP7802K)		Income Tax Officer, Ward 14(2), Room No. 209, CR Building, IP Estate, New Delhi – 110 002
(APPELLANT)		(RESPONDENT)

Department by : Sh. Vikram Sahay, Sr. DR
Assessee by : Sh. Sanjeev Sapra, CA

Date of Hearing : 14-1-2015

Date of Order : 19-1-2015

ORDER

PER H.S. SIDHU : JM

This appeal filed by the Revenue and Cross objection filed by the Assessee emanate out of the Order passed by the Ld. CIT(A)-XVII, New Delhi pertaining to assessment year 2009-10.

2. The grounds raised in the Revenue's appeal read as under:-

"1. The Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 17,27,733/- made by the Assessing Officer u/s. 14A of the I.T. Act, 1961 read with Rule 8D of the I.T. Rules, 1962.

2. The Ld. CIT(A) has erred in law and on facts of the case in not appreciating the fact that the said disallowance u/s. 14A of the I.T. Act was made the Assessing Officer in accordance with Rule 8D of the Income Tax Rules, 1962.

3. The appellant craves to be allowed to add any fresh grounds of appeal and / or delete or amend any of the grounds of appeal."

3. The grounds raised in the Assessee's Cross Objection read as under:-

"1. That there was no justification on the part of the Ld. CIT(A) to sustain the addition of Rs. 50,000/- under section 14A of the Income Tax Act.

2. That without prejudice to ground No. 1 above the addition of Rs. 50,000/- sustained is very excessive."

4. Briefly stated the facts are that the assessee company is providing training to media professionals and the return of income for the A.Y. 2009-10 was e-filed on 31.8.2009 at a loss of Rs. 24,940/-. The assessment u/s. 143(3) was completed on 30.6.2011 and the disallowance of Rs. 17,77,733/- was made u/s. 14A of the I.T. Act read with Rule 8D(2)(iii) of the I.T. Rules, 1962. The assessee

had investments of Rs. 35,55,46,602/- in subsidiary companies and the assessee had not made any disallowance u/s. 14A of the I.T. Act, 1961 in its return of income. The AO completed the assessment after disallowing Rs. 17,77,733/- being 0.5% of the above investments vide his order dated 26.9.2011 passed u/s. 143(3) of the I.T. Act, 1961.

5. Against the aforesaid assessment order dated 26.9.2011 passed under section 143(3) of the I.T. Act, 1961, assessee appealed before the Ld. First Appellate Authority, who vide impugned Order dated 14.5.2013 partly allowed the appeal of the assessee wherein he reduced the disallowance u/s. 14A to Rs. 50,000/- and granted relief of Rs. 17,27,733/- to the assessee.

6. Against the order dated 14.5.2013 of the Ld. CIT(A), Revenue filed an appeal and assessee filed cross objection before us.

7. At the time of hearing, Ld. Counsel of the assessee submitted that from copy of the Audited Balance Sheet and P&L A/c for the year ended 31.3.2009 it is seen that no fresh investments during the year under consideration were made and source of such earlier year's investment are out of interest free funds in the form of share capital and interest free loans as taken; no dividend income / tax free income was earned; entire expenditure as incurred under various heads was relatable to income from training services, which stands taxed. Ld. AR of the assessee drew our attention towards the order of the AO as well as Ld. CIT(A) and stated that if assessee has not incurred any expenditure to earn dividend income, then no disallowance u/s. 14A is permissible. In support of his contention Ld. Counsel of the assessee relied upon the following case laws and given the gist of the decisions as follows by attaching the copies thereof.

- a) Maxopp Investment Ltd. vs. CIT (Jurisdictional High Court) [347 ITR 272)
- b) Wimco Seedlings Ltd. vs. DCIT (ITAT, Delhi Third Member), [107 ITD 267] in which it has held that there can be no presumption that the assessee must have incurred expenditure to earn tax free income.
- c) CIT vs. Hero Cycles (P&H High Court), [323 ITR 518] in which it was held that the disallowance u/s. 14A of the Act requires a clear finding of incurring of expenditure and that no disallowance can be made on the basis of presumptions.
- d) ACIT vs. Eicher Ltd. (ITAT Delhi) [101 TTJ 369] in which it was held that the burden is on the AO to establish nexus of expenses incurred with the earning of exempt income before making any disallowance u/s. 14A of the I.T. Act.
- e) Maruti Udyog vs. DCIT (ITAT, Delhi) 92 ITD 119, in which it was held that the before making any disallowance u/s. 14A of the Act, the onus to establish the nexus of the same with the exempt income is on the revenue.
- f) Hindustan Paper Corporations Ltd. vs. DCIT (ITAT Kolkata Bench Judgment dated 22.8.2012) ITA No. 47/Kol/2012 (A.Y. 2008-09) in which it has been held if no expenditure is attributable to earning dividend income, the no disallowance u/s. 14A could be made.

7.1 Besides the above, assessee's counsel further relied upon the following case laws:-

(i) 360 ITR 68, CIT vs. Hero Management Service Ltd. (Jurisdictional Delhi H.C.), in which it was held that no satisfaction as required by Rule 80 had been recorded by the Assessing Officer and accordingly, no disallowance could be made u/s 14A.

(ii) 363 ITR 474, CIT vs. Torrent Power Ltd. (Gujarat H.C.), in which it was held that disallowance u/s 14A requires a finding of incurring of expenditure and where it is found that for earning exempted income, no expenditure had been incurred, disallowance u/s 14A will not stand.

(iii) 336 ITR 434, CIT vs. Metalman Auto P Ltd. (P & H High Court), in which it was held that disallowance u/s 14A requires a finding of incurrance of expenditure for earning the exempted income and in case no such expenditure has been incurred, the disallowance u/s 14A is not justified.

(iv) 339 ITR 632, CIT vs. Reliance Industries Ltd. (Bombay H.C.), in which it was held that where there was no fact of having incurred any expenditure for the purpose of earning the dividend income, section 14A could not be invoked.

(v) 361 ITR 131, CIT vs. Oeepak Mittal (P & H High Court), in which it was held that when consistent case/version of the assessee was that he had not incurred any expenditure for earning exempt income, the Assessing Officer in terms of section 14A(2) of the Act had to proceed further to collect relevant material or evidence to determine the expenditure, if any, incurred by the Assessee relating to such exempt income and application of Rule 8D by the Assessing Officer as a substitute for section 14A(2) in such a situation is not permissible in law.

7.2 Ld. Counsel of the assessee further submitted that since the Assessee had not earned any tax free income, therefore, section 14A of the I.T. Act could not be invoked for making any disallowance out of expenditure as held by the Hon'ble Allahabad High Court in its recent judgment dated 05/05/2014 in the case of CIT vs. M/s Shivam Motors (P) Ltd. Relevant findings of the High Court are reproduced below:

"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".

7.3 It was further submitted that similarly in the case of CIT vs. Winsome Textile Industries Ltd. (P & H High Court) 319 ITR 204, it has been held that in the absence of any claim for exemption, section 14A could have no application.

7.4 Ld. Counsel of the assessee further submitted that as submitted before the AO and also evident from the balance sheet of the Appellant Co., its investments in shares were only in two subsidiary companies. Such investments in subsidiary companies were made by the Appellant to acquire/promote the subsidiary companies which are in the media business and were not made purely for earning dividend income. Neither any dividend income has been earned since the time such investments were made in the shares of the subsidiary companies. Hence, such investments cannot be considered for disallowance u/s 14A read with Rule 80 as has been held by ITAT Chennai Bench in the case of EIH Associated Hotels vs. Dy. CIT. Relevant portion from such judgment from para 6 are reproduced below:

"We are of the considered opinion that the investments made by the assessee in the subsidiary company are not on account of investment for earning capital gains or dividend income. Such investments have been made by the assessee to promote subsidiary company into the hotel industry. A perusal of the order of the CIT(Appeals) shows that out of total investment of Rs. 64,18,19,775/-, Rs. 63,31,25,7151- is invested in wholly owned subsidiary. This fact supports the case of the assessee that the assessee is not into the business of investment and the investments made by the assessee are on account of business expediency. Any dividend earned by the assessee from investment in subsidiary company is purely incidental. Therefore, the investment made by the assessee in its subsidiary are not to be reckoned for

disallowance u/s. 14A r.w.r. 8D. The Assessing Officer is directed to re-compute the average value of investment under the provisions of Rule 8D after deleting investments made by the assessee in subsidiary company".

7.5 He argued that the deletion of disallowance of Rs.17,27,733/- by the Ld. CIT(A) was justified. However, he submitted that there was no basis for the Ld. CIT(A) to sustain ad-hoc disallowance of Rs.50,000/- by holding that the only expenses which can be attributed to exempt income likely to be earned in future are the auditor's remuneration and legal & professional charges". He argued that auditor's remuneration and legal & professional charges incurred for maintenance of statutory books and its audit etc. were required to be incurred irrespective of whether the Company had any income or not and hence, there was absolutely no basis for considering a part of such expenditure towards earning of exempt income. In this connection, reliance is placed on Gujarat High Court judgment in the case of CIT vs. Suzion Energy Ltd. 354 ITR 630, in which the Court confirmed the deleting of disallowance u/s 14A in respect of interest expenses incurred for investments in subsidiaries and administrative expense such as staff salary of corporate office, audit fees, building rent and communication expenses. He requested that the appeal filed by the Revenue may be dismissed and Assessee's CO deserves to be allowed.

8. On the other hand, Ld. Department Representative relied upon the order of the Assessing Officer and opposed the request of the assessee's counsel. Ld. DR reiterated the observations made by AO in his order that assessee has shown investments in shares of Rs. 35,55,46,602/- as at 31.3.2009 as well as during the previous year, in such assets income from which does not or shall not form part of

total income. The assessee has not attributed any expenditure relating to such investment, income from which is exempt from tax. Assessee's stand in not disallowing any expenditure in this regard is not acceptable though no dividend income is earned during the previous year. In order to disallow the expenditure it is not necessary that exempt income is earned. Many times expenditure is incurred but not income or even negative income (loss) is earned. As expenditure is allowed even if no income was earned in taxable income cases, in reverse case the expenditure should be disallowed though no exempt income was earned.

9. We have heard both the counsel and perused the records. We have also gone through the orders of the lower authorities, Synopsis, Paper Book filed by the assessee and the case laws relied upon by the assessee. We find that Ld. CIT(A) has adjudicated the issue as under:-

"3. Ground No. 1 & 2 are against the disallowance of Rs.17,77,733/- u/s 14A and ground No. 2 specifically states that the disallowance made is excessive. As per assessment order, the AO had made this disallowance on the presumption that the appellant had incurred expenses on management and on meeting of the board of directors etc. which can be attributed to the appellant's exempt income. The appellant's AR's submission during the appellate proceedings is that no expenses was incurred as remuneration to the directors or as meeting fee paid to the directors. As per the P&L A/c, the expenditure incurred is basically under four heads of expenses only. The preliminary expense written off was already added back by the appellant

in the computation statement and the other head was depreciation. The major expenses incurred are under two heads namely personal expenses and administrative expenses. As per the appellant's AR, the entire personal expense of Rs.51,12,123/- was incurred for the salary of two employees who are not directors of the company. The details of administrative expenses were also furnished and the same is as follows:

<u>Head of expenses</u>	<u>Amount (Rs.)</u>
<i>Bank charges</i>	<i>3070</i>
<i>Communication expenses</i>	<i>88223</i>
<i>Services Tax</i>	<i>2387</i>
<i>Auditors remuneration</i>	<i>25000</i>
<i>Legal & professional charges</i>	<i>184400</i>
<i>Consultancy charges</i>	<i>3912217</i>
<i>Maintenance expenses</i>	<i>4368</i>
<i>Entertainment/business promotion</i>	<i>226304</i>
<i>Newspapers, Books & Periodicals</i>	<i>54988</i>
<i>Rent</i>	<i>24000</i>
<i>Traveling/Conveyance expenses</i>	<i>553923</i>
<i>ROC filing fee</i>	<i>7500</i>
<u><i>Total expenses</i></u>	<u><i>5086380</i></u>

3.1. As per the appellant's AR, the above. expenses are directly attributable to the appellant's income

earned from training as expenses like consultancy charges, entertain/business promotion, traveling/conveyance etc. have nothing to do with the investments made by the company. As per the balance sheet, there are no fresh investments during the relevant assessment year and as per the appellant's AR, the source of these investments is out of interest free unsecured loans. Further, no interest expenses are debited in the P&L A/c. The only expenses which can be attributed to exempt income likely to be earned in future are the auditor's remuneration and legal & professional charges. Considering this aspect and the peculiar facts of the case, I am of the view that a disallowance of Rs.50,000/- would serve the interest of justice and therefore the appellant gets Rs. 17,27,733/- from the disallowance made by the AO under Rule 80(2)(iii). Thus, grounds Nos. 1 & 2 are partly allowed as the disallowance of Rs. 50,000/- is sustained."

9.1 In view of the above, we find that Ld. CIT(A) was right to some extent in deleting the disallowance of RS. 17,27,733/-, but on the other hand we find no basis on which he has sustain the adhoc disallowance of Rs. 50,000/-. In this regard, we find considerable cogency and force in the submissions of the assessee's counsel as discussed above that there was no basis for the Ld. CIT(A) to sustain ad-hoc disallowance of Rs.50,000/- by holding that "the only expenses which can be attributed to exempt income likely to be

earned in future are the auditor's remuneration and legal & professional charges". The auditor's remuneration and legal & professional charges incurred for maintenance of statutory books and its audit etc. were required to be incurred irrespective of whether the Company had any income or not and hence, there was absolutely no basis for considering a part of such expenditure towards earning of exempt income. In this connection, reliance is placed on Gujarat High Court judgment in the case of CIT vs. Suzion Energy Ltd. 354 ITR 630, in which the Court confirmed the deleting of disallowance u/s 14A in respect of interest expenses incurred for investments in subsidiaries and administrative expense such as staff salary of corporate office, audit fees, building rent and communication expenses. In view of the above, the cross objection filed by the assessee deserve to be allowed.

9.2 We also find that the case law cited by the Ld. Counsel of the assessee i.e. Hon'ble Jurisdictional Delhi High Court judgment dated 5.9.2014 in the case of *Commissioner of Income Tax-IV vs. Holcim India P. Ltd. in ITA No. 486/2014 & ITA No. 299/2014* has dealt the similar issue and decide the issue against the Revenue by adjudicating as under:-

"3. The respondent-assessee, a subsidiary of Holderind Investments Ltd., Mauritius, was formed as a holding company for making downstream investments in cement

manufacturing ventures in India. In the return of income filed for the Assessment Year 2007-08, the respondent-assessee declared loss of Rs. 8.56 Crores approximately. The respondent-assessee had declared revenue receipts of Rs. 18,02,274/- which included interest of Rs. 726/- from Fixed Deposit Receipts and profit on sale of fixed assets of Rs. 16,52,225/-. As against this, the respondent assessee had claimed administrative and miscellaneous expenses expenditure written off amounting to Rs. 8.75 Crores. For the Assessment Year 2008-09, the assessee had filed return declaring loss of Rs. 6.60 Crores approximately. The assessee had declared revenue receipts in the form of foreign currency fluctuation difference gain of Rs. 12,46,595/-. It had claimed expenses amounting to Rs. 7.02 Crores as personal expenses, operating and other expenses, depreciation and financial expenses.

4. In the two assessment orders, the Assessing Officer held that the respondent-assessee had not commenced business activities as they had not undertaken any manufacturing activity or made downstream investments. The respondent-assessee, after receiving approval of Foreign Investment Promotion Board (FIPB) dated 20.12.2000 acquired shares capital of Ambuja Cement India Ltd. This, the Assessing Officer felt, was not sufficient to indicate or hold that the respondent-assessee had started their business. He accordingly disallowed the entire expenditure of Rs. 8.75 Crores for the Assessment Year 2007-08 and Rs. 7.02 Crores for the Assessment Year 2008-09.

5. The CIT(A), by two separate orders did not agree with the findings recorded by the Assessing Officer that the business of the respondent- assessee had not been set up or commenced. The CIT(A) observed that the respondent-assessee had been set up with the business objective of making investment in cement industry after due approval given by the Government of India, Ministry of Commerce and Industry vide letter dated 18.12.2002 and 20.12.2012. In fact, the respondent-assessee was not to undertake any manufacturing activity themselves. He referred to the FIPB approval vide letter dated 30.03.2005 granted by Government of India, Ministry of Finance permitting them to make investment in Ambuja Cement Ltd. by acquiring majority stake from the earlier shareholders. Thereupon, the respondent-assessee had purchased shares in the said company of Rs. 1850.91 Crores. Reference was then made to the expenditure as per the financial statement. Section 3 of the Act was elucidated upon to observe that business would be established when the assessee was ready to commence. Revenue expenditure incurred after setting up business should be allowed under Section 37 of the Act but expenditure incurred prior to setting up of business cannot be allowed. The CIT (A) accordingly held:-

“5.6 In view of the above discussions, I hold that the appellant is engaged in the business of holding of investment is entitled to claim expenditure provided there is a direct connection between expenditure incurred and business of the assessee company. In the

instant case. the expenditure incurred is on salaries of employees of the assessee company and other operating expenses of the company. The appellant has also admitted that the said expenditure have been incurred in order to protect their investment as well as exploration of new investments”.

6. For the Assessment Year 2008-09, the same reasoning was adopted and followed.

7. However, the CIT(A) issued notice and called upon assessee, why Section 14A should not be invoked? The Section postulates that for the purpose of computing total income under Chapter IV, no deduction shall be allowed in respect of the expenditure incurred in relation to income which does not form part of the total income. Since the business of the respondent-assessee was to act as a holding company for downstream investments and as it was an accepted fact that they had incurred expenses to protect their investments and explore new avenues of investments, the provisions of Section 14A were applicable. The exact reasoning given by the CIT(A) in this regard in respect of the Assessment Year 2007-08 is as under:-

“5.8....Thus, as admitted by the appellant; since business of the appellant exclusively is to act as a holding company for downstream investment in order (sic) companies and the admitted fact that they incurred the expenses to protect their investments and to explore

new avenues of investments clearly show, that in the facts of the appellant's case the provision of Section 14A of the Act are clearly applicable”.

[underlining is as per the original order of CIT(A)]

8. The aforesaid reasoning given by CIT(A) was ambiguous and unclear, hence, clarity was sought from the counsel for the appellant Revenue on their stand and stance. Learned senior standing counsel for the appellant-Revenue was asked to elucidate and has stated that “the stand of the assessee contained a contradiction to the extent that on the issue of setting up of business, it was stated that the assessee had incurred expenditure on acquiring the shares, therefore, the assessee could not now take a different stand than the one taken in the first issue”.

(The aforesaid submission has been recorded verbatim).

9. The said statement has left us equally confused and perplexed. Is it the Revenue’s contention that expenditure made by investment companies should be disallowed under Section 14A of the Act as income or investment is not taxable? This is not clearly stated. We proceeded to read and examine the subsequent observations and findings of the CIT(A).

10. Thereafter, the CIT(A) has referred to the contentions of the assessee that they had not earned dividend

income and therefore, Section 14A of the Act was not applicable. The CIT(A) did not agree that as no exempt income was "claimed", no disallowance under Section 14A was warranted. The CIT(A) relied on the decision of Special Bench of the Tribunal (Delhi) in the case of Cheminvest Ltd. Vs. ITO., [2009] 317 ITR (A.T.) 86. Reference was made to Maxopp Investment Ltd. Vs. CIT, [2012] 347 ITR 272 to observe that Rule 8D of the Income Tax Rules, 1962 was not applicable in the assessment year 2007-08. Judgment of the Bombay High Court in Godrej and Boyce Manufacturing Co. Ltd. Vs. DCIT, [2010] 328 ITR 81 was also quoted. As per Maxopp Investment Ltd. (supra), the correctness of the claim of the assessee in respect of expenditure incurred in relation to the income which did not form part of total income had to be first ascertained and in case, the assessee claimed that no expenditure was incurred, the Assessing Officer should verify the correctness of the claim. Where the Assessing Officer was satisfied that no expenditure was incurred, no disallowance should be made under Section 14A. In other cases, the Assessing officer would have to determine the amount of expenditure incurred in relation to the income which did not form part of the total income and the said basis had to be reasonable and based on the acceptable method of apportionment. Expounding the expression "in relation to" appearing in Section 14A as interpreted in Maxopp Investment Ltd. (supra), the CIT(A) held that the said expression could not be given a narrow meaning. The expression "in relation to" would include "in connection with" or "pertaining to". No deduction

should be allowed in respect of the expenditure incurred by the assessee with the main object of earning income which did not form part of the total income. He accordingly held that disallowance under Section 14A had no relation with the “dominant and immediate connection” between the expenditure and exempt income. Thereafter, in paragraphs 5.13 to 5.15, the CIT(A) held as under:-

“5.13 With regards to inapplicability of Section 14A of the Act the appellant stated that they had not utilized any borrowed funds for making such investment and hence, no expenses on account of interest had been debited and claimed. It has been also contended that in absence of any clear finding or nexus between expenses incurred and exempt income or without bringing on record, specific material, no adhoc disallowance under section 14A of the Act is warranted.

This contention raised by the appellant is unfound for the reason that they are based on contradiction. When it comes to the claim of expenditure, it is stated that, such expenditure has been incurred in the course of business of holding investments and in order to protect their investments and to explore new avenues of investments and, when it comes to applicability to Section 14A, it is argued to the contrary. This contradiction belies the claim made by the appellant. There

is no adhoc disallowance. As regards, findings or nexus, specific opportunity has been granted to the appellant based on the facts and submissions made by the appellant, I am satisfied that the expenditure has been incurred by the appellant company in relation to investments which gives rise to income which does not form part of total income.

5.14 Thus from the above discussions, I am of the considered view that once the business of the appellant is of holding investment then it has to be held that in view of specific provisions contained in Section 14A and despite the fact that there is no exempt income that expenditure incurred was for holding and maintaining Investment.

5.15 Therefore, by applying the above judicial decision to the facts of the instant case, I find admittedly and indisputable, entire expenditure incurred to the tune of Rs. 8,75,35,452/- has been incurred for investment and hence in the light of the above factual position, the entire expenditure is not allowable in view of Section 14A of the Act. Thus, disallowance made by the Assessing Officer is confirmed though on a different ground and as such, the appeal preferred by the appellant is dismissed”.

11. The CIT(A) did not refer to the factual matrix in his order for the assessment year 2008-09 but applied his earlier order dated 02.08.2012 for the Assessment Year 2007-08. We may note that for the Assessment Year 2008-09, Rule 8D as per the decision in the case of Maxopp Investment Ltd. (supra) is applicable. The said Rule was not invoked. The reasoning given by the CIT(A) reads thus:

"4....While deciding the appeal for A.Y. 2007-08, vide my order dated 01.08.2012, I have given the finding that AO was not correct in disallowing the expenses on the ground of non-commencement business. In the said order however I have upheld the disallowance u/s 14A by giving a detailed finding therein.

Since in the year under-consideration the same facts exists as were existing in assessment year 2007-08 and the appellant has also made the same submissions as were given during the appellate proceedings for assessment year 2007-08, therefore relying on my order dated 01.08.2012 vide which I have adjudicated the appellant's appeal for assessment year 2007-08, I hold that in the year under consideration also that no disallowance

can be made on account of non-commencement of business.

However the addition of Rs. 7,02,54,564/- is to be made on account of disallowance u/s 14A because the appellant has admitted time and again that their main business activity is to act as a holding company for downstream investment in other companies which are engaged in manufacturing cement and that the expenses of Rs. 7,02,54,564/- have been incurred by them under to protect their investments and to explore new avenues of investments.

Thus in view of the findings given in assessment year 2007-08, the addition of Rs. 7,02,54,564/- stands confirmed on account of disallowance under section 14A.

5. In the result, the appeal is dismissed”.

12. As noticed above, the Tribunal has reversed the said finding by their common order dated 27.09.2013. It was specifically recorded that the business had been set up. We note that the Revenue did not prefer any appeal or file cross-objection against the finding on the question whether the business had been set up. The Tribunal specifically noticed that the CIT(A) did not make disallowance on the ground that the respondent-assessee had invested in the shares for earning of the dividends

but, on the ground that the respondent-assessee had acquired controlling interest in the respective companies and this was their line of business. Therefore, the Tribunal observed that there was a contradiction in the submissions made by the departmental representative that the assessee had acquired shares for earning of dividends. After referring to a decision of Chandigarh Bench of the Tribunal in M/s Spray Engineering Devices Ltd., ITA No. 701/Chd./2009 dated 22.06.2012, the appeal of the respondent assessee was allowed

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 own words, their stand before us. During the course of hearing, the 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. 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 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 (li) 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.2,03,752/- 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 may or 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."

10. In the background of the aforesaid discussions and precedents, we find that the present issue is squarely covered by the aforesaid judgment dated 5.9.2014 of the Jurisdictional Delhi High Court in the case of *Commissioner of Income Tax-IV vs. Holcim India P. Ltd.* in ITA No. 486/2014 & ITA No. 299/2014 in favor of the assessee and against the Revenue. Respectfully following the above precedent,

we dismiss the Appeal of the Revenue and allow the Cross Objection filed by the Assessee.

11. In the result, the Appeal filed by the Revenue stands dismissed and Cross Objection filed by the Assessee stands allowed.

Order pronounced in the Open Court 19-1-2015.

Sd/-

Sd/-

[T.S. KAPOOR]
ACCOUNTANT MEMBER

[H.S. SIDHU]
JUDICIAL MEMBER

Date 19/1/2015

"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

