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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 484/2022**

PR. COMMISSIONER OF INCOME TAX-7 Appellant

Through: Mr.Puneet Rai, Sr.Standing Counsel
with Ms.Adeeba Mujahid, Jr.Standing
Counsel and Mr.Nikhil Jain,
Advocate.

versus

TULIP TELECOM LTD. Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **24.11.2022**

CM APPL.50604/2022

Keeping in view the averments in the application, the delay in filing the appeal is condoned.

Accordingly, the application stands disposed of.

ITA 484/2022

Present Income Tax Appeal has been filed challenging the Order dated 11th May, 2022 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.4834/Del/2017 for the Assessment Year 2012-13.

Learned counsel for the appellant states that the ITAT has erred in confirming the order of CIT(A) deleting the addition of Rs.24,69,07,029/- made by the Assessing Officer on account of Section 14A read with Rule 8D



of the Income Tax Rules, 1962 ('the Rules').

He states that the ITAT has failed to appreciate the fact that the Assessing Officer was justified in making the addition of Rs.24,69,07,029/-, since the CBDT Circular No. 5/2014 dated 11th February, 2014 clearly states that disallowance under Section 14A read with Rule 8D of the Rules shall be made even in cases where no exempt income was earned during the year by the assessee and the same was also clarified in Finance Bill, 2022.

A perusal of the paper book reveals that the Authorities below have given concurrent findings of fact that the assessee did not earn any dividend income during the year under consideration. The relevant extract of the ITAT order is reproduced hereinbelow:-

“8. We have heard the Learned DR and perused the material on record. The issue in the present ground is with respect to the disallowance u/s 14A r.w Rule 8D of the Rules. We find that CIT(A) while deleting the addition has given a finding that no dividend income, which is exempt from tax, was received by assessee during the year. He thereafter following the decision of Honble Delhi High Court in the case of Joint Investment Pvt. Ltd. vs. CIT 372 ITR 694 and CIT vs. Holcim India Pvt. Ltd. 272 ITR 386 (Delhi), held that Section 14A of the Act cannot be invoked where no dividend income has been received by the assessee. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue nor Revenue has placed any contrary binding decision in its support. In such a situation, we find no reason to interfere with the order of CIT(A). Thus the ground of Revenue is dismissed.”

This Court is of the view that the present case is covered by the Division Bench judgment in *Cheminvest Ltd. vs. CIT, [2015] 61 Taxmann.com 118 (Delhi)*, wherein it has been held that the expression 'does not form part of the total income' in Section 14A of the Act means that there should be an actual receipt of income which is not includable 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.

This Court in *Cargo Motors Pvt. Ltd. Vs. Dy. Commissioner of Income Tax, ITA 7/2020* decided on 7th October, 2022 has also held that CBDT Circular No.5/2014 cannot override the express provision of Section 14A read with Rule 8D.

Furthermore, this Court in *Pr. Commissioner of Income Tax (Central)-2 Vs. M/s Era Infrastructure (India) Ltd., [2022] 141 taxmann.com 289 (Del)* has held that the amendment of Section 14A, which is “for removal of doubts” is not retrospective.

Consequently, this Court is of the view that no substantial question of law arises for consideration in the present appeal. Accordingly, the same is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 24, 2022

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