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

+ ITA 1025/2019

THE PR. COMMISSIONER OF INCOME TAX -18 Appellant

Through: Mr.Ruchir Bhatia, Sr.Standing
Counsle for the Revenue.

versus

OIL INDUSTRY DEVELOPMENT BOARD Respondent

Through: None

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Date of Decision: 21st November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Income Tax Appeal has been filed challenging the Order dated 12th June, 2019 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 4417/Del./2016 for Assessment Year 2012-13.
2. Learned counsel for the appellant states that the ITAT has erred in deleting the addition of Rs.4.65 crores made by the assessing officer under Section 14A of the Income Tax Act, 1961 ('the Act'). He states that the ITAT has erred in holding that no disallowance can be made under Section 14A of the Act read with Rule 8D of the Income Tax Rule, 1962 in the case wherein no exempt income has been earned during the year under consideration.

3. A perusal of the paper book reveals that the authorities below have given concurrent finding 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:-

“7. It is pertinent to mention here that the decision of the Tribunal was upheld by the Hon'ble Delhi High Court and the SLP filed by the Revenue was dismissed by Hon'ble Supreme Court. We find the Ld. CIT(A) deleted the disallowance made by the Assessing Officer u/s 14A r/w. Rule 8D on the ground that the assessee has not earned any dividend income during the year. The Ld. DR also could not controvert the above factual findings given by the CIT(A), therefore, following the decision of Hon'ble Delhi High Court in the case of Cheminvest Limited (supra), we hold that no disallowance u/s. 14A r/w. Rule 8D is called for when the assessee has not received any dividend income during the year. The order of the CIT(A) is accordingly upheld and ground raised by the revenue is dismissed.”

(emphasis supplied)

4. 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 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.

5. 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 dealt with the issue of amendment made by the Finance Act, 2022 to Section 14A of the Act. The relevant portion of the said judgment is reproduced hereinbelow:

“8. Consequently, this Court is of the view that the amendment of Section 14A, which is “for removal of doubts” cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood.”

6. Accordingly, 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 21, 2022
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