

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.5742/Del/2017
Assessment Year: 2013-14

ACIT, Central Circle – 29, New Delhi PAN No. AABCC 3799 C (APPELLANT)	Vs.	M/s. Chadha Papers Ltd., Chadha Estates, Nainital Road, Bilaspur, Dist. Rampur, Uttar Pradesh-244 921 (RESPONDENT)
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Appellant by	Shri Jagdish Singh Dahiya, Sr. D.R.
Respondent by	Shri Salil Kapoor, Adv. Ms. Ananya Kapoor, Adv.

Date of hearing:	07/07/2020
Date of Pronouncement:	13/07/2020

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 07.06.2017 of the Commission of Income Tax (A)-30, New Delhi relating to Assessment Year 2013-14.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is a company which is stated to be engaged in the business of manufacturing of Kraft paper, writing printing & news print paper. Assessee electronically filed its return of income for A.Y 2013-14 on 28.09.2013 declaring loss of Rs.91,67,27,055/- (comprising of business loss of Rs.10,45,80,364/- and long term capital loss of Rs.81,21,46,690/-). The case was selected for scrutiny and thereafter, assessment was framed u/s 143(3) vide order dated 23.03.2016 and the total loss was determined at Rs.6,35,89,787/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 07.06.2017 (in Appeal No.86/16-17/2520) granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now before us and has raised following grounds of appeal:

1. *“The Learned CIT(A) has erred in law and on facts in deleting the disallowance u/s 14A read with rule 8D of the Income Tax Rules amounting to Rs.3,78,15,444/- made by the AO ignoring the fact that the provisions of section 14 A are mandatory.*
2. *The ld CIT(A) has erred in not appreciating the content of CBDT Circular No.05/2014 dated 11.02.2014 which clarifies that Rule 8D read with section 14A of the Act provides for disallowances of the expenditure even where taxpayer in a particular year has not earned any exempt income.*
3. *The ld CIT(A) has erred in law and on facts in deleting the addition of Rs.17,13,716/- out of total addition of Rs.31,75,133/- made by the AO on account of gratuity.*
4. *That the grounds of appeal are without prejudice to each other.*
5. *The appellant craves leave to add, alter or amend any/ all of the ground(s) of appeal before or during the course of the hearing of the appeal.”*

4. Ground No.1 and 2 is with respect to disallowance u/s 14A r.w.r 8D of the Income Tax Rules.

5. During the course of assessment proceedings, AO noticed that assessee had invested huge amount in shares but had not disallowed any expenditure u/s 14A of the Act. The assessee was asked to explain as to why the expenses relating to earning of exempt income not be disallowed to which assessee *inter alia* submitted that no exempt income has been earned by the assessee and therefore no disallowance u/s 14A is called for. It was further submitted that assessee has also not incurred any expenditure for earning the exempt income and therefore for this reason also no disallowance u/s 14A is called for. The submissions of the assessee was not found acceptable to AO. AO was of the view that the provisions u/s 14A are mandatory in nature and it is not material that assessee should have earned such exempt income during the financial year for invoking the disallowance u/s 14A. He was further of the view that since investment has been made in the equity of the companies and the income derived or likely to be derived from such investment would be exempt from tax therefore the provisions of section 14A are applicable. He thereafter, proceeded to work out the disallowance u/s 14A read with Rule 8D of the I.T Rules and computed the disallowance u/s 14A at Rs.3,78,15,444/-.

6. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who after noting the fact that no dividend income was earned by the assessee, held that no disallowance u/s 14A is called for. For coming to the aforesaid conclusion,

CIT(A) relied on the decision of Jurisdictional High Court in the case of CIT vs. Holcim India Pvt. Ltd. reported in ITA No.486/2014 & ITA No.299/2014 dated 05.05.2014. He accordingly deleted the disallowance made by the AO. Aggrieved by the order of CIT(A), Revenue is now before us.

7. Before us, Learned DR supported the order of AO and submitted that in view of the decision of Hon'ble Supreme Court in the case of Maxopp Investment reported in (2018) 402 ITR 640 (SC), the order of AO be upheld. Learned AR on the other hand supported the order of CIT(A) and further submitted that Hon'ble Apex Court in the case of PCIT vs. GVK Project and Technical Services Ltd. (2019) 106 taxmann.com 180 has upheld the order of Hon'ble High Court wherein the SLP filed by the Revenue was dismissed. He thus supported the order of CIT(A).

8. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to disallowance u/s 14A r.w.r 8D of the Income Tax Rules. We find that it is assessee's contention that no exempt income in the form of dividend has been earned by the assessee. The aforesaid submissions of the assessee have not been controverted by the Revenue. We find that Hon'ble Delhi High Court in the case of PCIT vs. GVK Project and Technical Services Ltd. (2019) 106 taxmann.com 180 upheld the Tribunal's order holding that in the absence of any exempt income reported by the

assessee, no disallowance u/s 14A can be made. The Revenue filed SLP before the Hon'ble Apex Court challenging the aforesaid decision of High Court. The SLP filed by the Revenue was dismissed which is reported in (2019) 106 taxmann.com 180 (SC). Before us, Revenue has relied upon the decision of Hon'ble Apex Court in the case of Maxopp Investments (supra). We are of the view that the ratio of decision of Hon'ble Apex Court relied upon by Revenue is not applicable to the present facts. In view of the aforesaid facts, we find no reason to interfere with the order of CIT(A). **Thus the ground of Revenue is dismissed.**

9. Second issue is with respect to deletion of addition of Rs.17,13,716/-.

10. AO noted that assessee had credited Rs.31,75,133/- as "miscellaneous income" in the Profit and Loss account on account of excess provision written back but had reduced the same in the computation of income. Before AO, assessee admitted that the amount was inadvertently reduced from income and may be added back to the income. AO accordingly made addition of Rs.31,75,133/-. Assessee carried the matter before the CIT(A). Before the CIT(A), assessee *inter alia* submitted that during the course of assessment proceedings in the absence of the Accountant of the assessee, assessee had voluntarily surrendered the income to avoid any litigation. However, later on assessee realized the mistake and has agitated the addition before the

CIT(A). Before CIT(A), assessee *inter alia* submitted that out of the total amount of Rs.31,75,133/- credited to the Profit and Loss account, a sum of Rs.17,13,716/- was already added back u/s 43B in the various years and therefore, the addition to the extent of Rs 17,13,716 be deleted. CIT(A) after considering the submissions made by the assessee and after considering the breakup of provisions written back (as noted in the table in his order) held that since Rs.17,13,716/- was already added back by the assessee in the computation of income in earlier years, to that extent no disallowance can be made. He, accordingly granted relief to that extent and upheld the disallowance of balance amount of Rs.14,61,417/-. Aggrieved by the order of CIT(A), Revenue is now before us.

11. Before us, Learned DR submitted that the issue was not examined at the stage of assessment proceedings due to the admission of assessee for addition and therefore, the matter may be remitted to the AO for examination of the claim of the assessee. Learned AR on the other hand pointed to the chart which is reproduced by the CIT(A) in his order and submitted that the CIT(A) after examination of the facts has given partial relief to the assessee. He thus supported the order of CIT(A).

12. We have heard the rival submission and perused the relevant materials available on record. The issue in the present ground is with respect to relief granted by CIT(A). We find that

CIT(A) after noting and considering the fact that the amount which was agreed by the assessee for addition before the AO included Rs.17,13,716/- which was already added back to the income of earlier years. He accordingly granted the relief of Rs 17,13,716/- and upheld the addition of the balance amount of Rs.14,61,414/-. Before us, no fallacy in the findings of CIT(A) has been pointed out by the Revenue. Considering the aforesaid facts, we find no reason to interfere with the order of CIT(A) **thus the ground of Revenue is dismissed.**

13. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 13.07.2020

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Priti Yadav, Sr.PS

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 13.07.2020

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	07.07.2020
Date on which the typed draft is placed before the dictating Member	08.07.2020
Date on which the approved draft comes to the Sr.PS/PS	09.07.2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	13.07.2020
Date on which the fair order comes back to the Sr. PS/ PS	13.07.2020
Date on which the final order is uploaded on the website of ITAT	13.07.2020
Date on which the file goes to the Bench Clerk	13.07.2020
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	