

At question no. 6 of the notice dated 25.11.2019 your goodsself show caused the assessee to why the expense which are incurred in respect of exempted income as computed u/s 14A r.w.r 8D shall not be disallowed. In this regards our detailed submissions are as under:

1. At the outset, it is submitted that the assessee company had itself disallowed amount to the tune of Rs. 10,52,550/- as expenses related to exempt income on voluntary basis as computed in accordance with the provisions of section 14A of the act r.w.r. 8D of the Income Tax Rules, 1962. *(Copy of computation of income for the period under consideration is attached herewith on page no. For your kind perusal.)*
2. As per the provisions of section 14A of the act r.w.r. 8D of the Income Tax Rules, 1962, other than expenses incurred directly in relation to earning such exempt income, a deemed amount calculated in prescribed manner shall further be disallowed to do away with the interest and other administrative expenses cannot be specifically attributed to exempt income. However, no disallowance shall be made beyond the total expense claimed by the assessee in the return of income. For the sake of convenience, section 14A of the Income tax Act, 1961 and Rule 8D of Income Tax Rules, 1962 is reproduced as under:

Section 14A

“ (1) For the purposes of computing the total income under this 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 this Act.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.”

Rule 8D of the Income Tax Rules, 1962

“ (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with—

- (a) The correctness of the claim of expenditure made by the assessee; or*
- (b) The claim made by the assessee that no expenditure has been incurred,*

In relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:—

- (i) the amount of expenditure directly relating to income which does not form part of total income; and*
- (ii) an amount equal to one per cent of the annual average of the monthly average of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income :*

Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.”

3. Further, it is a well settled law that where no dividend was earned during the relevant previous year, no disallowance could be made under section 14A of the Act. As held by the Jurisdictional High Court in **Cheminvest Ltd. v. CIT, [378 ITR 33 (Del)]**, - *“The expression “does not form part of the total income” in section 14A of the Income-tax Act, 1961, envisages 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 income. In other words, section 14A will not apply if no exempt income is received or receivable during the relevant previous year. Held, that no exempted income was earned by the assessee in the relevant assessment year and since genuineness of the expenditure incurred by the assessee was not in doubt, no disallowance could be made under section 14A”*. To the same effect are two more rulings of the Delhi High Court in **Pr. CIT v. Oil Industries Development Board, [Delhi HC in ITA 197/2018]** – [SLP dismissed vide Order dated 08-02-2019 in SLP(Civil) Diary No(s) 2755/2019], and **CIT v. Holcim India P. Ltd., [272 CTR 282 (Del)]**. The judgment of the Madras High Court in **CIT v.**

Chettinad Logistics (P) Ltd., [2017] 80 taxmann.com 22 (Mad), [SLP dismissed, (2018) 95 taxmann.com 250(SC)], is also to the same effect.

4. In light of the aforesaid legal analysis and judicial pronouncements, it is clearly evident that the impugned observation is not justified being no disallowance u/s 14A r.w.r. 8D is required to be made as no dividend income have been earned by the assessee during the period under consideration. Further, it is submitted that the assessee being not appraised with well settled legal position as on date of filing of return, inadvertently disallowed the expenses to the extent of Rs. 10,52,550/- as computed under pursuance of rule 8D. As such, it is most humbly prayed that your goodself may kindly drop the impugned proposed addition and shall make adjustment to the returned income by allowing the expenses inadvertently disallowed at the time of filing of return.