

775

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C': NEW DELHI

BEFORE SHRI I.P. BANSAL, JUDICIAL MEMBER AND  
SHRI DEEPAK R. SHAH, ACCOUNTANT MEMBER

I.T.A.No.4971/Del/2007  
Assessment Year : 2004-05

Indo German International Pvt. Ltd.,  
7A, Sagar Apartments,  
6, Tilak Marg, New Delhi.

Dy. Commissioner of Income-tax,  
Vs. Co. Circle 11(1), New Delhi.

(Appellant)

(Respondent)

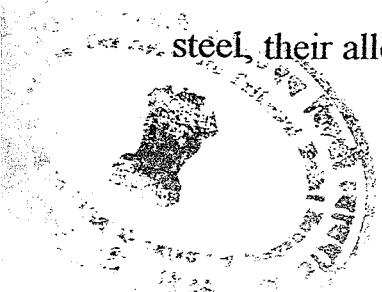
Appellant by : Mrs. Rano Jain, CA.  
Respondent by : Shri M.P. Singh, Sr. DR.

**ORDER**

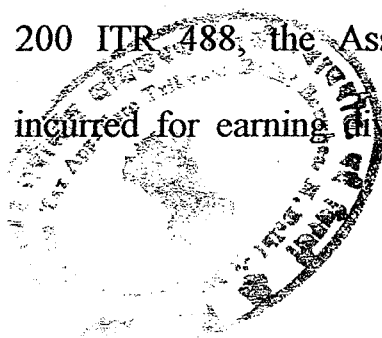
**PER DEEPAK R. SHAH, ACCOUNTANT MEMBER.**

This appeal by the assessee is directed against the order of the learned Commissioner of Income-tax (Appeals)-XV, New Delhi dated 17.10.2007 for the Assessment Year 2004-05.

2. The only issue in appeal relates to the disallowance of a sum of Rs.3,90,267/- by invoking the provisions of section 14A on account of attribution of expenses for earning dividend income which is exempt under section 10(33) of the Act.
3. The assessee carries on business of export and import of iron and steel, their alloys and other allied products and from commission.



4. During the year the assessee earned dividend from mutual fund of Rs.78,05,351/- which was claimed as exempt under section 10(33) of the Act. During the assessment the assessee was asked to explain as to why proportionate expenses for earning exempt income should not be disallowed. The assessee submitted that the expenses incurred are neither directly nor indirectly attributable to the earning of dividend income. No effort has been put to earn the dividend income as only the idle funds are parked in the mutual funds from where dividend was earned. The contention of the assessee was rejected. The Assessing Officer held that as per section 14A, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of total income. The assessee has not furnished any evidence to establish that no expenses have been incurred in earning the dividend income. Certain expenses like salary, employees' welfare expenses, postage/telegram expenses, travelling & conveyance expenses, rent etc. are common expenses with regard to dividend income and normal business activity. Relying upon the decision of Hon'ble Supreme Court in the case of CIT vs. United General Trust Ltd., 200 ITR 488, the Assessing Officer estimated 5% of the expenses as incurred for earning dividend income. To this extent the expenditure was



disallowed against business income and total income was increased to the extent of disallowance.

5. Before the learned CIT(A) it was specifically contended that no expenses were incurred specifically for earning exempt income and hence even under section 14A, there cannot be any ad hoc disallowance. The learned CIT(A) held that as per audited accounts the other-income has risen to Rs.2 crores from Rs.76 lacs in the immediately preceding year. The investment in mutual fund has increased 25 times more as compared to immediately preceding year and the dividend from mutual fund raised from 'Nil' to Rs.78 lacs during the year under appeal. The large scale diversified and studied investments made in the mutual funds connote that considerable time, effort, manpower, resources have been applied. The administrative, selling and other expenses increased from Rs.3.13 crores in the immediately preceding year to Rs.2.18 crores for the year under appeal. From the above it can be said that expenditure has been incurred for earning such exempt income and hence provision of section 14A was rightly invoked. Incurring of expenditure has to be inferred from the accounts. If no expenses are debited against exempt income, the Assessing Officer is competent to locate the same. He accordingly upheld the disallowance of 5% of dividend



income as incurred for earning such exempt income. The assessee is in further appeal before us.

6. The learned counsel for the assessee Smt.Rano Jain submitted that under section 14A only those expenses which are incurred for earning exempt income can be disallowed. However, the assessee has at all times contended that no expenses are incurred for earning exempt income. There cannot be any artificial allocation of expenses. There has to be nexus between incurring of expenditure and earning of income. In absence of such nexus no artificial allocation is permissible for purpose of disallowance.

Reliance was placed on the following decisions:-

- (1) Eicher Motors Ltd. in ITA No.3968/del/02; &
- (2) Wimco Seedling Ltd. vs. DCIT, 107 TTJ 267 (Del).

7. The learned DR Shri M.P. Singh on the other hand, relied upon appellate order. He also placed reliance on the decision of ITAT Mumbai Bench in the case of ACIT vs. Citicorp Finance (India) Ltd., 12 SOT 248 wherein it was held that provision of quantification of disallowance as contained in sub-section (2) and (3) of section 14A are procedural and therefore, applied to all pending matters.

8. We have considered rival submissions. Under section 14A, 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. Thus the pre-requisite for disallowance by invoking provision of section 14A is that the expenditure should have been incurred in relation to income which does not form part of the total income. The assessee has all along been claiming that no expenditure is incurred for earning dividend income. The Assessing Officer has not been able to co-relate any expenditure, which was incurred strictly for earning exempt income. In the circumstances, estimation of expenses is not permissible in law. There has to be a direct nexus between incurring of expenses and earning of exempt income so as to disallow the same as per section 14A of the Act. Similar is the ratio laid down by ITAT in the case of Wimco Seedlings Ltd. (supra). Even in the case of Citicorp Finance (India) Ltd. (supra) relied upon by the learned DR, it has been held that it is not open to the Assessing Officer to make disallowance under section 14A according to his own discretion or on ad hoc basis and it is statutory required to compute the disallowance in the manner provided by sub-section (2) and (3). However, it is to be noted that sub-section (2) & (3) are inserted by Finance Act, 2006 with effect from 1.4.2007. There is nothing in the Act, which expressly or by necessary implication suggest that insertion of sub-section (2) and (3) to section 14A is retrospective in nature. Even under sub-section (2) & (3) the Assessing Officer is to determine the amount of expenditure in accordance with such

method is to be prescribed. However, no such method has been prescribed till date and hence disallowance cannot be made under sec.14A even under sub-sec.(2) or sub-sec.(3) of section 14A. We, therefore, delete the disallowance of Rs.3,90,267/-.

9. In the result, the appeal is allowed.

Pronounced in the open court on <sup>9<sup>th</sup> May</sup> April 2008.

*sd/*  
(I.P. BANSAL)  
JUDICIAL MEMBER

*sd/*  
(DEEPAK R. SHAH)  
ACCOUNTANT MEMBER

Dated: <sup>9<sup>th</sup> May</sup> April 2008.

Copy of the order forwarded to:-

- sd/*  
*By Order*
1. Appellant *M/s. Heman International Pvt. Ltd.*
  2. Respondent
  3. CIT
  4. CIT(A)
  5. DR



By Order  
सहायक पंजीकार  
Assistant Registrar  
Deputy Registrar, ITAT.  
Income Tax Appellate Tribunal  
दिल्ली बेंच, नई दिल्ली  
Delhi Benches, New Delhi