

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. K.N CHARY, JUDICIAL MEMBER**

**ITA No.387/DEL/2018
Assessment Year: 2014-15**

DCIT Circle – 11 (1) New Delhi	Vs	M/s. Hero Solar Energy Pvt. Ltd. 212, Ground Floor Okhla, Industrial Estate, Phase-III, New Delhi -110020 PAN No. AADCH1476P
(APPELLANT)		(RESPONDENT)

Assessee by	Dr. Rakesh Gupta, Advocate Sh. Somil Aggarwal, Advocate
Revenue by	Sh. Amit Katoch, Sr. DR

Date of hearing:	19/03/2019
Date of Pronouncement:	20/03/2019

ORDER

PER N. K. BILLAIYA, AM:

This appeal is preferred against the order of the CIT(A)-35, New Delhi dated 05.10.2017 pertaining to A. Y.2014-15.

2. The sum and substance of the grievance of the revenue is that the CIT(A) erred in deleting the disallowance of Rs.2,03,30,249/-made u/s. 14A of the IT Act r.w. rule 8D.

3. The facts on record show that during the year under consideration the assessee did not earn any exempt income. The Assessing Officer was of the firm belief that even there is no exempt income still expenses have to be disallowed u/s 14A r.w rule 8D of the IT Rules. He accordingly computed the disallowance at Rs.2,03,30,249/- and added to the income of the assessee.

4. The assessee carried the matter before the CIT(A) and pointed out that the Hon'ble High Court of Delhi in the case of CHEM Invest Pvt. Ltd. Vs. CIT reported 378 ITR 33 has held that if there is no exempt income no disallowance can be made.

5. After considering the reply of the assessee, the CIT(A) found that the ratio laid down by Hon'ble Delhi High Court clearly applies in the case of the assessee and accordingly deleted the addition.

6. Before us the DR strongly supported the findings of the Assessing Officer but could not bring any distinguishing decision.

7. It is an undisputed fact that during the year the assessee did not earn any exempt income. The Hon'ble High Court of Delhi in the case of CHEM Invest Pvt. Ltd. Vs. CIT (supra) has clearly held that if there is no exempt income no disallowance can be made. This was subsequently followed by the Hon'ble High Court of Delhi in the case of PCIT Vs. IL & FS Energy Development Company Limited reported 399 ITR 483.

8. Respectfully following the decisions of Hon'ble Jurisdictional High Court of Delhi we decline to interfere with the findings of the CIT(A), in the result the appeal filed by the revenue is accordingly dismissed.

9. In the result, the appeal filed by the revenue is accordingly dismissed.

Order pronounced in the open court on 20.03.2019.

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- 20.03.2019

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	19.03.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	20.03.2019
Date on which the file goes to the Bench Clerk	
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	