

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI**

**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE
PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**ITA No. 135/Chny/2022
(Assessment Year: 2015-16)**

M/s. Kal Airways Private Limited 73, Murasoli Maran Towers, MRC Nagar Main Road, MRC Nagar, Chennai – 600 028.	Vs.	DCIT Corporate Circle 4(2), 121 Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034.
PAN/GIR No. AADCK-9818-J		
Appellant)	:	(Respondent)

Appellant by	:	Shri K. Ramakrishnan (FCA) – Ld. AR
Respondent by	:	Shri ARV Sreenivasan (Addl. CIT) – Ld. DR

Date of Hearing	:	11-04-2022
Date of Pronouncement	:	18-04-2022

ORDER

::Manoj Kumar Aggarwal (Accountant Member) ::

1. Aforesaid appeal by assessee for Assessment Year (AY) 2015-16 arises out of the order of learned Commissioner of Income Tax (Appeals)-8, Chennai [CIT(A)] dated 29.06.2018 in the matter of

assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 29.12.2017. The sole issue in the appeal is disallowance u/s 14A.

2. The Registry has noted inordinate delay of 1217 days in the appeal. The condonation of the same has been sought by the assessee on the strength of affidavit of Shri K.Sundar for assessee company. It has been submitted that delay has occurred due to frequent covid surge / lockdowns on account of Pandemic situation. It has also been stated that the delay was neither willful nor intentional. The Ld. Sr. DR opposed the condonation of delay. Considering the contents of petition and in view of prevailing Covid-19 Pandemic, we are inclined to condone the delay with a cost. The assessee is directed to pay cost of Rs.25,000/- to Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras within a period of 15 days from the date of receipt of this order. The receipt / proof shall be furnished by the assessee to the registry forthwith. Accordingly, the delay is condoned and the appeal is admitted for adjudication on merits.

3. The material facts are that in an assessment framed u/s 143(3) on 29.12.2017, Ld. AO computed disallowance u/s 14A for Rs.364.49 Lacs which was interest disallowance u/r 8D(2)(ii) for Rs.179.60 Lacs and indirect expense disallowance u/r 8D(2)(iii) for Rs.184.88 Lacs.

4. During appellate proceedings, a plea was raised that in the absence of any exempt income earned by the assessee, no such disallowance could have been made by Ld. AO. However, rejecting the same, Ld.CIT(A) upheld the disallowance by relying upon CBDT Circular No.5/2014 which provided that the fact that the assessee did not earn exempt income would not be material to consider disallowance u/s14A. Aggrieved, the assessee is in further appeal before us.

5. We find that it is settled position of law that in the absence of any exempt income earned by the assessee during the year, no disallowance u/s 14A could have been made by revenue authorities. The ratio of decision of Hon'ble Madras High Court in the case of **Redington India Private Ltd. (392 ITR 633)** as well as the decision in **CIT V/s Chettinad Logistics Private Ltd. (248 Taxman 55)** is squarely applicable to the fact of the case. In the case of **CIT V/s Chettinad Logistics Private Ltd. (supra)**, the Hon'ble Court has already considered CBDT Circular No.5 dated 11.02.2014. Further, revenue's Special Leave Petition (SLP) against this order has already been dismissed by Hon'ble Supreme Court on 02.07.2018 which is reported at 95 Taxmann.com 250. The subsequent decision of Hon'ble High Court of Madras in **CIT V/s Celebrity Fashion Ltd. (119 Taxmann.com 426; 21.09.2020)** has also taken the same view. Respectfully following the same, we direct Ld. AO to delete the impugned disallowance.

6. The appeal stand allowed in terms of our above order.

Order pronounced on 18th April, 2022.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
/ACCOUNTANT MEMBER