IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.2498/Del./2018
Assessment Year 2012-2013

M/s. Vikas Globalone Ltd., (Now known as M/s. Vikas Ecotech Ltd.,) F-6, Vikas House, 34/1, East Punjabi Bagh, New Delhi. PIN 110026.PAN AAACV0608G	vs.	The DCIT, Circle-26(2), New Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Gautam Jain, And Shri Piyush Kamal, Advocates
For Revenue :	Shri S.S. Rana, CIT-D.R.

Date of Hearing :	31.01.2019
Date of Pronouncement :	08.03.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of the Ld. CIT(A)-31, New Delhi dated 15th March 2018 for the assessment year 2012-2013.

2. We have heard the Learned Representatives of both the parties and perused the material available on record.

3. Learned Counsel for the Assessee did not press Ground Nos.1 and 5 of the appeal, the same are dismissed as not pressed.

4. During the year assessee-company is engaged in the business of manufacturing and distribution of specialty polymers compounds and addictives. The company is manufacturing high end products used in Agricultural Pipes, Auto Parts, Wires, and Cables, Artificial Leather, Footwear, Organic Chemicals, Polymers and Pharmaceuticals. The assessee claimed deduction under Section 80IB of the Income Tax Act, 1961, but, paid the taxes on book profit of Rs.2.94 crores under section 115JB of the Income Tax Act, 1961.

4.1. On Ground No.2, the assessee challenged the disallowance of a sum of Rs.6,04,361/- out of the expenditure incurred on repair and maintenance.

4.2. The assessing officer on perusal of the details of repair and maintenance furnished by the assessee, observed that the expenses mentioned at page-4 of the assessment order are in the nature of capital expenditure, but, the same have been treated by the assessee as revenue expenditure in a sum of Rs.7,55,414/-. The assessee furnished few bills on record and from the perusal of same, it was observed that these expenses incurred by assessee during the year under appeal which are in the nature of capital expenditure, which will give benefit to the assessee in future years as well. The assessing officer accordingly disallowed the same under section 37 of the Income Tax Act, 1961 and made the addition of Rs.7,55,414/-.

5. The addition was challenged before the Ld. CIT(A) and assessee explained that all the details along with vouchers were produced before assessing officer, which have been examined by the A.O. but treated the same as capital expenditure instead of revenue expenditure. All the expenses were incurred for replacement of any part of machinery or computer, no capital addition has been made.

In respect of software expenses incurred, the same are received as a license for a period of one year only. Therefore, revenue in nature. The Ld. CIT(A) examined the same details and find that repair and replacement of parts do not always confer enduring advantage. Similarly, routine modifications /repairs to the Office, may not lead to enhancement in capital valuation. It was noted that the turnover of the assessee is in excess of Rs.114 crores, therefore, entire expenditure could not be treated as capital expenditure. The Ld. CIT(A), therefore, scaled down the addition to Rs.6,04,361/- and granted relief to the assessee in a sum of Rs.1,51,053/-.

6. The assessee is in appeal challenging the addition of Rs.6,04,361/-. The Learned Counsel for the Assessee reiterated the submission made before the authorities below and submitted that no reasons are given as to how these are capital expenditure. No new capital was created out of these expenses which are routine expenses. Learned Counsel for the Assessee referring to the written submissions also submitted that no new addition was made, rather nothing

was possible and merely minor routine Office construction work was done for better functioning of the Office. He has submitted that expenses incurred for repair of the office are not capital expenditure and relied upon several decisions in support of the same. He has also submitted that expenses incurred for software development/maintenance is revenue expenditure and relied upon Judgment of the Delhi High Courtin the case of CIT vs. ACL Wireless Limited 361 ITR 210 (Del.). He has further submitted that expenses incurred on up-gradation of computer hardware which does not bring any new asset but is incurred to keep pace with Business and Technology is revenue expenditure and relied upon decision of the Delhi High Courtin the case of CIT vs. Volga Restaurant 253 ITR 405.

7. On the other hand, Ld. D.R. relied upon order of the Ld. CIT(A) and submitted that the amounts spent on purchase of laptop, purchase of LED screen and Ram, and purchase of electric motor pump, are clearly capital in nature, which provides enduring benefit to the assessee.

8. We have considered the rival submissions. The Ld. D.R. rightly pointed out that purchases of laptop, LED screen and Ram and electric motor pump are clearly capital expenditure in nature and total of the same comes to Rs.1,17,997/- (Rs.24,328/- + Rs.51,435/- + Rs.42,324/-). Therefore, these would provide enduring benefit to the assessee and as such could not be treated as revenue expenditure. However, the remaining expenses mentioned at page-40 of the appellate order, are in the nature of software charges, office construction expenses, purchase of hard disk, UPS etc., are clearly revenue expenditure in nature, therefore, no addition could be made for the same. In this view of the matter, we set aside the orders of the authorities below and delete the addition on this head except to the extent of Rs.1,17,997/-. The assessing officer is directed to restrict the addition to Rs.1,17,997/-. This ground of appeal of assessee is allowed partly.

9. On Ground No.3, assessee challenged the disallowance of a sum of Rs.22,17,583/- under section 14A of the Income Tax Act read with Rule 8D of I.T. Rules. The

assessing officer noted that assessee-company has claimed an income of Rs.2.46 crores as exempt income on account of share of profit in partnership firm under section 10(32) of the Income Tax Act. The assessee submitted that it is partner in partnership firm M/s. Sigma Plastic Industries which has its Head Office in Delhi and Factory at Samba Jammu and Kashmir. During the year under consideration, the assessee-company has earned Rs.2 46 crores as its share of profit from the firm. As the share of profit from the firm is exempted under section 10 (2A) of the Income Tax Act, the same has been claimed as exempt income. Copy of the Partnership Deed, ITR, Balance Sheet of the firm was filed. Further, the firm is a separate business entity and is managed by different staff and partners. No separate expenditure has been incurred by the assessee to earn such income. The firm is having a complete separate manufacturing unit at Samba, Jammu and Kashmir. All the expenses incurred by the firm has been specifically debited to the profit and loss account of the firm, even the interest on funds borrowed by the firm are debited to the profit and

loss account. The assessee is having 75% of share in the firm and the firm is an associate of assessee company who has made investment of Rs.448.00 lacs in the firm as capital introduction by the Company. The assessee company has share capital/reserve i.e., own funds as on 31st March, 2012 in a sum of Rs.34.03 crores. Out of these, total own funds of the assessee, which are interest free, the assessee can make investment anywhere, whether to earn taxable income or non-taxable income from such own funds. The assessee has invested a sum of Rs.448.00 lacs as capital contribution in the firm and earned profit of it's share, which is exempt from tax. The assessee has not incurred any expenditure for earning the profit, therefore, no addition under section 14A could be made. In case of attracting Section 14A, there has to be proximate cause i.e., actual expenditure incurred in relation to earning of non taxable income which could be disallowed and this Section cannot be extended to disallow expenditure which is assumed to have been incurred for earning non taxable income. The assessee relied upon the decision of the ITAT

Delhi Bench in the case of DLF Ltd., vs., CIT (2009) 27 SOT 22 (Del.). The assessee relied upon decision of Punjab and Haryana High Court in the case of CIT vs., Metalman Auto (P) Limited 11 taxmann.com 51. Assessee also submitted that when assessee has more own interest free funds, it should be presumed that interest free loans have been given out of own funds, no disallowance could be made and relied upon the decision of the Hon'ble Supreme Court in the case of Munjal Sales Corporation vs., CIT (2008) 168 Taxman 43 (SC) and decision of Bombay High Court in the case of CIT vs., Reliance Utilities and Power Ltd., 178 Taxman 135 (Bom.). The assessee also relied upon decision of the Punjab and Haryana High Court in the case of CIT vs., Winsome Textile Industries Ltd., 319 ITR 204 (P&H). The assessee also submitted that borrowed funds of the assessee have been utilised in a mixed way for the investment in the partnership firm and also for its own business. It was, therefore, submitted that no addition could be made under section 14A of the Income Tax Act. The A.O. however,

rejected the explanation of assessee and made disallowance under section 14A in a sum of Rs.22,17,583/-.

10. The assessee challenged the above addition before the Ld. CIT(A) and same submissions were reiterated. It was also submitted that assessee has made an average investment of Rs.477.77 lacs in the firm. Thus, there is a fall in investment in assessment year under appeal. The Ld. CIT(A), however, following the decision of the Hon'ble Supreme Court in the case of CIT vs Walfort Share & Stock Brokers P. Ltd., (2010) 326 ITR 1 (SC) and Judgment of Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Co Ltd., vs. DCIT (2010) 328 ITR 81 (Bom.) dismissed this ground of appeal of assessee.

11. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that no investment was made in the assessment year under appeal. It was a continuous investment coming from earlier year.

12. On the other hand, Ld. D.R. relied upon others of the authorities below and submitted that there is an investment by assessee-company in the firm and assessee earned exempt income. Therefore, disallowance under section 14A is wholly justified. The Ld. D.R. also relied upon Judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd., vs. CIT 402 ITR 640 (SC), Indiabulls Financial Services Ltd., 76 taxmann.com 268 (Del.) and Avon Cycle Ltd., vs. CIT 53 taxmann.com 297 (P&H).

13. We have considered the rival submissions. The assessee explained that assessee-company is a partner in the partnership firm M/s. Sigma Plastic Industries. During the assessment year under appeal, the assessee has earned its share of a profit, which was claimed as exempt. The assessee also claimed that investment was made in earlier years and no investment was made in assessment year under appeal. Learned Counsel for the Assessee also demonstrated that there is a fall in investment in assessment year under appeal. It is not in dispute that

assessee has interest free own funds as on 31st March, 2012 in a sum of Rs.34.03 crores. The assessee also explained that it has not incurred any expenses to earn profit from the firm. These facts have not been disputed during the course of arguments. The average investment made by the assessee company in the firm is far below the own interest free funds available with the assessee. Thus, there is a presumption that assessee did not use borrowed funds for the purpose of making investment in the firm. Since the assessee has availability of its own funds, therefore, own funds must be used for the purpose of making investment in the firm. Learned Counsel for the Assessee, therefore, rightly contended that for attracting Section 14A, there has to be a proximate cause i.e., actual expenditure incurred in relation to earning of exempt income that can be disallowed and this Section cannot be extended to disallow expenditure on estimate or assumed basis. Since the assessee was having interest free funds for making the investment, therefore, it should be presumed that interest free funds have been used for the purpose of making investment in the firm. Hon'ble

Punjab and Haryana High Court in the case of Deepak Mittal 361 ITR 131 (P&H) observed that assessee claimed no expenditure incurred to earn exempted income. The A.O. should proceed under section 14A(2) of the I.T. Act, 1961, to collect material and evidence to determine the expenses. Hon'ble Punjab and Haryana High Court in the case of Hero Cycles 323 ITR 518 (P&H) observed that disallowance under section 14A is not permissible, where no nexus between expenses incurred and income generated. Where no expenditure incurred, no disallowance could be made. Similarly, Hon'ble Punjab and Haryana High Court in the case of CIT vs., Winsome Textile Industries Ltd., 319 ITR 204 (P&H) observed that assessee did not make claim of expenses, 14A do not apply. Own funds used to acquire shares, no expenses incurred. Hon'ble Delhi High Court in the case of IP Support Services India Ltd., 378 ITR 240 (Del.) held that no disallowance be made under section 14A in the absence of satisfaction as to why voluntary disclosure made by the assessee, was unreasonable and unsatisfactory. The Hon'ble Punjab and Haryana High Court

in the case of Kapson Associates 381 ITR 204 (P&H) noted that assessee claimed old investments out of capital and reserves, no separate amount borrowed for making investment, no disallowance be made. Hon'ble Punjab and Haryana High Court in the case of Abhishek Industries Ltd., 380 ITR 652 (P&H) held that onus is upon the A.O. to record satisfaction that interest bearing funds used for investment to earn tax free income.

13.1. Considering the totality of the facts and circumstances in the light of above decisions, it is clear that assessee claimed that no expenditure have been incurred for earning exempt income. A.O. has not recorded any satisfaction as to how the claim of assessee was incorrect. No material have been brought on record to justify the addition. Further, assessee has sufficient own capital to make investment in the firm. Therefore. no disallowance under section 14A is permissible. The decisions relied upon by the Ld. D.R. would not support the case of the Revenue. We, accordingly, set aside the orders of the authorities

below and delete the addition. Ground No.3 of the appeal of the assessee is allowed.

14. On Ground No.4. assessee challenged the Order of the Ld. CIT(A) in enhancing the disallowance from Rs.16,77,347/- to Rs.3,39,19,015/- by treating agricultural income an exempt income as taxable income.

15. The assessing officer observed that assessee company has claimed an income of Rs 3,39,19,015/- as exempt income on account of agricultural income. Further, from the profit and loss account, it was observed that the same was shown as profit on disposal of tangible assets and no disposal of fixed assets were reflected in the fixed schedule of the balance sheet. The assessee was called upon to furnish the details as to why the disallowance be not made under section 14A of the I.T. Act. The assessee explained that it has received a sum of Rs.3,39,19,015/- as compensation for nursery and plants which were planted by the company on the agricultural land held as stock in trade in real estate business. The same was inadvertently shown

under the Head "Profit on Disposal of Tangible Assets" to the above amount. This was already explained. Further, assessee-company acquired these lands long back before 2004 for the purpose of getting the same approved for business by the Government and convert the same into residential colony in real estate business. During the year under consideration, the said land was acquired by the Government and compensation was received both for land as well as nursery and plants and produce on the said land. Profit of compulsory acquisition from the same have been shown under the Head "Other Operating Revenue" as income. Compensation received for nursery and plants have been shown as agricultural income which is exempt income. The assessee has made investment in land to earn taxable profit on real estate transaction and not to earn agricultural income. This is an incidental income which has been generated on agricultural land shown as stock in trade. It was, therefore, clarified that Section-14A of the Income Tax Act would not apply. Further, the said land was purchased with an intention to earn taxable income from converting

the same from agricultural land into residential purposes and also the said land was acquired then investment in land out of the capital and free reserve of the Company which were much higher and therefore, addition under section 14A is not warranted. Further, the Company is into the business and manufacturing and trading of chemical compounds and all the expenditure are incurred for the said business and no part of the expenditure has been incurred to earn such agricultural income during the year under consideration. The assessing officer, however noted that assessee has earned income from compensation received for nursery and plants acquired under compulsory acquisition. The assessee has paid interest expenses of Rs.3.60 crores during the assessment year under appeal and the amount borrowed by the assessee has been utilised for acquisition/ growing of plant and nursery. The assessing officer relied upon decision of the Hon'ble Punjab and Haryana High Court in the case of Haryana Land Reclamation and Development Corporation vs., CIT 159 Taxman 271 (P&H) in which it was held that Section 14A is applicable to income claimed as

exempt as agricultural income. The assessing officer accordingly disallowed Rs.16,77,347/-under section 14A of the Income Tax Act.

16. The assessee challenged the addition before the Ld. CIT(A) and reiterated the submissions as were made before the assessing officer. It was submitted that assessee received compensation of Rs.3,39,19,015/ for nursery and plants which were planted by the Company long back in the year 2004 on agricultural land held as stock in trade in real estate business. Further, the assessee-company acquired these lands long back before 2004 for the purpose of getting the same approval for business by the Government and convert the same into residential colony in real estate business. Therefore, the same was shown under the Head "Inventory - Real Estate Business" by the Company. The said land was acquired by the Government and compensation was received both for the land as well as nursery, plants and produce on the said land. The profit on compulsory acquisition from the same has been shown as income under the Head "Other Operating Revenue".

Compensation received for nursery and plants have been shown as agricultural income which is non-taxable income. The assessee made investment in land to earn taxable profit on real estate transaction and not to earn agricultural income. This is an incidental income which have been generated on agricultural land shown as stock in trade. No disallowance under section 14A could be made. Further, land was acquired and investment in land was made out of the capital and free reserves available to the assessee which were much higher. No expenses have been incurred to earn agricultural income. The agricultural income is incidental income to the assessee which have been received on account of acquisition of the land by the Government.

16.1. The Ld. CIT(A), however, noted that the assessee has received the above compensation on account of nursery and trees etc. The assessee, therefore, claimed that he did not incur any expenditure for earning such agricultural income. The assessee claimed it to be incidental income, therefore, this income is arising from spontaneous growth. The activities of agricultural nature and normal agricultural

process were not carried out for earning this income, therefore, it is not exempt income. The Ld. CIT(A) issued an enhancement notice to the assessee dated 13th February, 2018 and called for the explanation of assessee as to why the amount of Rs.3.39 crores should not be treated as non-agricultural income and brought to tax accordingly. The assessee filed detailed reply before Ld. CIT(A) and same submissions were reiterated and it was briefly explained that assessee-company received the above compensation on acquisition of plants etc., which grew, on the agricultural land purchased, in the year 2004. The assessing officer has accepted the explanation of assessee as the claim of assessee is supported by documentary evidences on record, which are the orders of the Competent Authorities granting compensation. No amount have been spent on agricultural land in assessment year under appeal and preceding two assessment years. It was submitted that no new source of income could be considered by the Ld. CIT(A) and assessee relied upon Judgment of Full Bench of the Delhi High Court in the case of CIT vs. Sardari Lal & Co. (2001) 251 ITR 864

(Del.). The assessee filed copy of the award in respect of compensation for plant and trees from Land Acquisition Collector. It was explained that as the plants and trees were grew in the land, therefore, no expenses were incurred. It was submitted that since assessee has not made any investment/expenses to earn such agricultural income, therefore, no disallowance under section 14A could be made.

16.2. The Ld. CIT(A), however, did not accept the contention of assessee because assessee did not carry out both the basic operations i.e., cultivation and sale of agricultural produce and assessee admitted that no expenses have been incurred for earning such incidental agricultural income, therefore, it is attributable to spontaneous growth. The assessee failed to discharge onus upon it to prove that it is agricultural income. The Ld. CIT(A) relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Jyotikona Chowdhurani 32 ITR 705 (SC), Kameshwar Singh vs. CIT 32 ITR 587 (SC) and CIT vs. Ramakrishna Deo 32 ITR 312 (SC). The Ld. CIT(A),

therefore, held that the amount in question received is not agricultural income but is taxable income. The income to that extent was accordingly enhanced rejecting the objection of assessee that First Appellate Authority cannot introduce a new source of income. The Ld. CIT(A) observed that he is not introducing a new source of income because such income is already considered in the assessment year. This addition was, therefore, enhanced

17. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that assessee acquired agricultural land in 2001 in village Pooth Khurd. The Government of NCT proposed to acquire the land for public purpose. The Government issued Notification under section 5A of Land Acquisition Act. Joint Inspection Report was prepared, copy of which, is filed at page 157 of the paper book to show that in the impugned land, the Inspection Report has mentioned that it is cultivated. The Government, ultimately, acquired the land and Awarded compensation to assessee. The compensation was also given to the assessee for land, plants and nursery

on the basis of Joint Inspection carried out by the Revenue Authorities. The Horticulture Staff of P.W.D. also have given the Valuation Report which shows that nursery was there in the impugned land and on the said basis, compensation of Rs.3.39 crores was determined for acquiring plants and nursery etc. He has submitted that no new source could be considered by the Ld. CIT(A) for enhancing the income and relied upon the Judgment of the Hon'ble Delhi High Court in the case of CIT vs. Union Tyres 240 ITR 556 (Del.) and CIT vs. Sardari Lal & Co. 251 ITR 864. Further, decisions of the Tribunal are also mentioned in the written submissions. He has submitted that compensation received on compulsory acquisition of trees and nursery is not taxable and relied upon decisions of the Hon'ble Supreme Court in the case of Commissioner of Agriculture vs., Kailas Repair & Co., Ltd., 60 ITR 435 (SC), A.K.T.K.M. Vishnudatta Antharjanam vs. Commissioner of Agricultural Income Tax 70 ITR 58 (SC), CIT vs. Ambat Echukutty Menon 120 ITR 70 (SC). The assessing officer accepted the agricultural income earned by the assessee which were claimed as exempt by

assessee. The Government Awarded compensation after making Inspection and in case, no trees, plants or nursary was grown in the impugned land, the Government would not have paid the compensation. He has, therefore, submitted that both the additions are liable to be deleted.

18. On the other hand, the Ld. D.R. relied upon the Orders of the authorities below and submitted that same source of income was considered by the assessing officer. Which is issue of taxability of income. The cultivation, would not include trees. Nursery is meant for growing small trees to be sold. In 4 acres of agricultural land, huge agricultural income cannot be earned. The assessee admittedly did not incur expenses to earn agricultural income, therefore, it was spontaneous growth, which could not be considered as agricultural income. The Ld. D.R. relied upon same decisions of the Hon'ble Supreme Court as relied upon by the Ld. CIT(A), for rejecting the claim of assessee. He has submitted that since basic operations of earning agricultural income have not been carried out by

the assessee, therefore, income from nursery is not agricultural income and relied upon the following decisions.

(i) P.H.I. Seeds (P.) Ltd., vs. CIT (2018) 96 taxmann.com 493 (Delhi-Tribunal).

(ii) CIT vs. Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466 (SC).

(iii) Bhairavnath Agrofin (P.) Ltd., vs CIT 354 ITR 276 (Raj.)

(iv) H.M. Maharaja Vibhuti Narain Singh vs. State of Uttar Pradesh 65 ITR 364 (SC).

19. Learned Counsel for the Assessee in the rejoinder submitted that the decisions of the Hon'ble Supreme Court as relied by the Ld. CIT(A) and the Ld. D.R. are distinguishable on the facts of the present case.

20. We have considered the rival submissions. The assessee explained that it has acquired agricultural land in the year 2001 and that nursery and plants which were planted by the company long back in the year 2004 on

agricultural land held as stock in trade in real estate business. The assessee company acquired these lands for the purpose of business for converting the same into residential colony in real estate business, the land was held as "Inventory-Real Estate Business" in the books of account of the assessee. In the assessment year under appeal, the said land was acquired by the Government and compensation was received both for the land as well as nursery, plants and produce on the said land. The profit on compulsory acquisition have been shown by the assessee-company as income under the Head "Other Operating revenue". The compensation received for nursery and plants have been shown as agricultural income which is non-taxable income. The assessee also claimed that no expenditure have been incurred to earn such agricultural income because it was incidental income which were received by way of compensation on acquisition of land by the Government. The explanation of assessee was supported by Notification for acquiring the land and Award given by the Government on Joint Inspection conducted by the

Government Officials and compensation fixed for taking over trees and nursery for the purpose of acquisition. In the Joint Inspection Report and other Government Records, at the time of acquiring the impugned land, it is mentioned that the said land is under cultivation and several plants, trees and nursery were found grown-up on the said land. Thus, documentary evidences were filed before assessing officer and the assessing officer after going through the same, accepted the explanation of the assessee that assessee has earned exempt agricultural income. The assessing officer was, however, of the view that the disallowance shall have to be made under section 14A of the Income Tax Act read with Rule 8D because assessee earned exempt income in assessment under appeal. The assessing officer made addition of Rs.16,77,341/- on account of disallowance under section 14A of the Income Tax Act. The A.O. accepted the earning of exempt income by assessee on account of incidental agricultural income earned by the assessee on account of compulsory acquisition of land and the Award given by the Government. The assessing officer,

therefore, considered the disallowance of expenses under section 14A of the Income Tax Act in respect of exempt agricultural income. The assessing officer did not consider agricultural income as taxable income.

20.1. The Ld. CIT(A), however, noted that the nursery and plants etc., are spontaneous growth without any basis and without bringing any evidence on record. The Ld. CIT(A) has not given any basis or justification how he has treated the nursery and trees in the impugned agricultural land as spontaneous growth. Thus, the Ld. CIT(A) considered a new source of income for the purpose of making addition considering the amount of compensation of Rs.3.39 crores as non-agricultural income. It is well settled Law that appellate authority has no power to consider a new source of income. It is also well settled Law that power of enhancement was restricted to the subject matter of the assessment or the source of income, which had been considered expressly or by clear implication by the assessing officer from the point of view of taxability and that the Appellate Commissioner had no power to assess the

source of income which had not been taken into consideration by the assessing officer. The Ld. CIT(A), however, as against the Law has considered the new source of income for the purpose of making the addition by enhancing the income of the assessee from different new source, which have not been considered by the assessing officer. Thus, the Ld. CIT(A) clearly acted beyond his power and jurisdiction. We rely upon Judgment of the full bench of the Delhi High Court in the case of Sardari Lal & Company (2001) 251 ITR 864 (Del.) in which it was held as under :

> *"In CIT v. Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC), the matter related to provisions of the Indian Income Tax Act, 1922. It was held, inter alia, that in an appeal filed by the assessed, the Appellate Assistant Commissioner has no power to enhance the assessment by discovering a new source of income not considered by the Income Tax Officer in the order appealed against. A similar view was expressed in CIT v. Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443*

(SC). That also related to a case under section 31(3) of the old Act was restricted to the subject-matter of the assessment or the source of income, which had been considered expressly or by clear implication by the assessing officer from the point of view of taxability and that the Appellate Assistant Commissioner had no power to assess a source of income, which had not been taken into consideration by the assessing officer. In CIT v. Nirbheram Daluram (1997) 224 ITR 610 it was observed by the Apex Court that the appellate powers conferred on the first appellate authority under section 251 of the Act were not confined to the matter, which had been considered by the Income Tax Officer, as the first appellate authority had been is vested with wide powers that the A.O. may have while making the assessment, but the issue whether these wide powers also include the power to discover a new source of income was not commented upon. Consequently, the view

expressed in Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC) and CIT v. Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443 (SC) still holds good. Whenever the question of taxability of income from a new source which had not been considered by the assessing officer is concerned, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147/148 of the Act and section 263 of the Act, if requisite conditions are fulfillled. In the presence of such specific provisions, a similar power is not available to the first appellate authority."

20.2. In view of the above, it is established that the assessing officer did not consider the agricultural income to be taxable income and assessing officer has considered the issue with reference to disallowance of expenses under section 14A of the Income Tax Act. Therefore, Ld. CIT(A) was not justified in enhancing the income by considering it as source of income on account of Agricultural income considered to be taxable income without any basis as to

how the agricultural produce was spontaneous growth. Therefore, on this ground itself, the Order of the Ld. CIT(A) in enhancing the income of assessee by Rs.3,39,19,015/- cannot be sustained. We, accordingly, set aside the orders of the Ld. CIT(A) and delete the addition of Rs.3,39,19,015/- In view of the above, the issue on merit is left with academic discussion. However, we may briefly note that assessee produced Joint Inspection Report of the Revenue Officials, copy of the Award passed by the Government and other related documents proving compulsory acquiring the land by the Government, would clearly reveal that at the time of Joint Inspection by the Government Officials, it was found that cultivation was going on in the impugned land and there was nursery, trees and plants for which valuation was done and at the time of acquisition of the land in question, apart from compensation granted for acquisition of the land, assessee was also Awarded the compensation for acquiring trees, plants and nursery etc., The Government Officials would not make these findings in favour of the assessee unless verified the claim because so many Government

Authorities were involved in making Joint Inspection Report of the impugned agricultural land. The assessee has objected to the acquisition of the land, therefore, there would not be any collusion with the Government Officials. Further, the assessee claimed that land was acquired by assessee for the purpose of business for converting the agricultural land into residential colony for real estate business. Therefore, assessee did not have any intention to earn agricultural income out of the same. The assessee. Therefore, rightly contended that way back in 2004, the assessee grew nursery and plants etc., in the impugned land which were ultimately acquired by the Government and assessee got compensation for the same. Therefore, it was an agricultural income earned by the assessee on account of compulsory acquisition of land along with plants and and nursery. Thus, the case of the assessee is fully corroborated by the documentary evidences on record i.e., assessee earned agricultural income, for which compensation have been received. The claim of assessee of agricultural income is thus accepted that it is not taxable income. Even

otherwise compensation received by assessee for takingover nursery and plants etc., by Government would not be taxable as it was incidental receipt in the hands of assessee.

20.3. In view of these peculiar facts and circumstances, the decisions relied upon by the Ld. D.R. would not support the case of the Revenue. Therefore, no addition could be made of Rs.3.39 cross against the assessee. Further the assessee has challenged the addition made by the assessing officer under section 14A of the Income Tax Act by disallowing expenses. In this case, assessee has not made any investment to earn agricultural income because land was acquired for real estate business purposes. No expenses have been incur ed to earn any agricultural income. The assessee has sufficient own funds to make investment in agricultural land. Therefore, disallowance under section 14A is also not permissible in the facts and circumstances of the case and our findings on Ground No.3 above, would also support that the addition made by the assessing officer under section 14A of the Income Tax Act, 1961, was also not permissible. In view of the above discussion, we set

aside the orders of the authorities below and delete the entire addition made by the assessing officer as well as an enhanced by the Ld. CIT(A). Ground No.4 of the appeal of assessee is allowed.

21. In the result, appeal of Assessee is partly allowed.

Order pronounced in the open Court.

Sd/-	Sd/
(O.P. KANT)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 08th March, 2019.

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.