theTAXtalk

Gauri Gaekwad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 2702 OF 2018

PR. COMMISSIONER OF INCOME TAX – 15,
Aaykar Bhavan, M.K. Road,
Mumbai – 400 020. …APPELLANT

~ versus ~

HCC CONCESSIONS LTD.,
Hincon House, 11th Floor, 247 Park,
LBS Marg, Vikroli (W), Mumbai – …RESPONDENT

APPEARANCE

For the Appellant Mr. Akhileshwar Sharma.

For the Respondent Mr. Sanjiv M. Shah.

CORAM : SUMAN SHYAM &
GAUTAM A. ANKHAD, JJ.

RESERVED ON : 1st OCTOBER 2026.

PRONOUNCED ON : 30th OCTOBER 2026.

JUDGMENT (*Per Gautam Ankhad, J*):-

1. The matter is heard finally at the stage of admission, with the consent of the parties.

Uploaded on - 30/10/2026 Downloaded on - 12/11/2026 14:03:02

theTAXtalk

2. The Appellant-Revenue has preferred this Appeal under Section 260A of the Income Tax Act, 1961 ("**the Act**"), challenging the order dated 3rd January, 2018 passed by the Income Tax Appellate Tribunal, Mumbai ("**the Tribunal**"), in relation to Assessment Year 2012-13.

3. The Respondent-Assessee is a company engaged in the business of infrastructure development, which it carries on both directly and through its subsidiaries. By an assessment order dated 13th March, 2015, the Assessing Officer disallowed expenditure of Rs.17.57 crores under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962, on the ground that the expenditure was incurred in relation to income which did not form part of the total income. The amount so disallowed was added to the total income of the Assessee.

4. The Assessee challenged the assessment order and the Commissioner of Income Tax (Appeals) ["**CIT(A)**"] by its order dated 10th August, 2016 partly allowed the Appeal and held that Assessing Officer was not justified in making the disallowance. Aggrieved by the said order, the Appellant filed an Appeal before the Tribunal.

Uploaded on - 30/10/2026 Downloaded on - 12/11/2026 14:03:02

theTAXtalk

5. After considering the record, the Tribunal noted the factual findings of the CIT(A) that the Assessee had not earned any exempt income during the relevant Assessment Year. It also took note of the finding that the Assessee's own funds were in excess of the investments made. The Tribunal held that, in the absence of exempt income during the relevant Assessment Year and claim of expenditure made against such income, no disallowance could be made under Section 14A of the Act. In reaching this conclusion, the Tribunal relied upon the decision of the Delhi High Court in ***Cheminvest Ltd. v/s. Commissioner of Income Tax***[1]. The Tribunal accordingly dismissed the Revenue's Appeal by the impugned order dated 3rd January, 2018.

6. Mr. Sharma, learned counsel for the Appellant, referred to the following substantial questions of law framed in the Appeal paper-book and submitted that the same ought to be considered by this Court :

> I. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was correct in law, in deleting the addition of Rs.17,57,51,160/- made on account of disallowance of expenses u/s 14A of the Income Tax Act, holding that no disallowance

1. (2015) 378 ITR 33

Uploaded on - 30/10/2026 Downloaded on - 12/11/2026 14:03:02

theTAXtalk

u/s 14A is called for, when there is no exempt income received by the assessee during the year under consideration?

II. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was correct in law, in deleting the addition of Rs.17,57,51,160/- made on account of disallowance of expenses u/s 14A of the Income Tax Act, ignoring the CBDT Circular No.5/2014 dated 11.02.2014, wherein it is clarified that even if there is no exempt income earned by the assessee in the year under consideration, disallowance under Rule 8D of the Income Tax Rules read with Section 14A of the Income Tax Act is required to be made?

7. We are unable to agree with the submissions of Mr. Sharma. The jurisdiction of this Court under Section 260A of the Act is confined to substantial questions of law arising from the orders of the Tribunal. The principles governing the determination of what constitutes a substantial question of law has been stated by the Hon'ble Supreme Court in several judgments including in ***Sir Chunilal V. Mehta and Sons Ltd. v/s. The Century Spinning and Manufacturing Co. Ltd.***[2] and ***Vijay Kumar Talwar v/s. Commissioner of Income Tax, Delhi.***[3] In our view, the questions formulated by the Appellant are based on facts and do not give rise

2. AIR 1962 SC 1314

3. 2011 (1) SCC 673

Uploaded on - 30/10/2026 Downloaded on - 12/11/2026 14:03:02

theTAXtalk

to a substantial question of law warranting the exercise of jurisdiction under Section 260A of the said Act.

8. Secondly, in the present case, the concurrent findings recorded by the CIT(A) and the Tribunal is that the Assessee did not earn any exempt income during the relevant Assessment Year and the disallowance under Section 14A could not have been made by the Assessing Officer. The Appellant has not demonstrated that these findings are unsupported by the material on record or perverse. In the absence of any such infirmity, the concurrent findings of fact does not warrant interference in an Appeal under Section 260A of the Act.

9. In addition, Mr. Shah, learned counsel for the Respondent, has tendered a copy of the order dated 23rd April, 2019 passed in ***M/s. Nirved Traders Pvt. Ltd. v/s. Deputy Commissioner of Income Tax, Circle -1(2), Mumbai***[4] and submits that this Court has considered the question concerning disallowance under Section 14A of the said Act in the absence of exempt income and has decided the same in favour of the Assessee. Therefore, the legal issue sought to be raised by the Revenue does not survive for consideration by this

4. Income Tax Appeal No.149 of 2017

Uploaded on - 30/10/2026 Downloaded on - 12/11/2026 14:03:02

theTAXtalk

Court. After examining the said decision of this Court, we find ourselves in agreement with such submission of Mr. Shah.

10. The Appeal, therefore, does not merit admission and is accordingly dismissed.

(GAUTAM A. ANKHAD, J.) (SUMAN SHYAM, J.)

Uploaded on - 30/10/2026 Downloaded on - 12/11/2026 14:03:02