

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 6366/Del/2019
Assessment Year: 2016-17**

DCIT, Circle 10(1),
New Delhi.

(Appellant)

Versus Genesis Colors Limited,
52, UdyogVihar, Phase-IV,
Gurgaon.

PAN: AABCG4825H
(Respondent)

Appellant by : Ms.SangeetaYadav, Ld. Sr.DR
Respondent by : Ms.Supriya Mehta, Ld. CA

Date of hearing : 12.08.2022
Date of order : 26.08.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Revenue Department against the order dated 15.05.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-4, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2016-17.

2. Brief facts relevant for adjudication of the instant appeal are that vide assessment order dated 24.12.2018 passed u/s. 143(3) of the Act, the Assessing Officer also made the addition of Rs.2,11,91,856/- u/s. 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 (in short "the Rules") in addition to making other additions which are not the subject matter herein.

3. The Assessee, aggrieved against the assessment order, preferred first appeal before the Id. Commissioner, who vide impugned order while following various decisions of the Higher Courts including of the jurisdictional High Court in the case of Cheminvest Ltd. vs. CIT-IV, (2015) 378 ITR 33(Del), deleted the addition on account of disallowance u/s. 14A read with Rule 8D of the Rules , on the premise that the Assessee has not earned any exempt income during the year under consideration on investments made therefore no disallowance u/s. 14A is called for.

3. The Revenue Department, being aggrieved, is in appeal before us.

4. We observe that vide amendment made by finance Act, 2022 to section 14A of the Act, a non-obstante clause and an Explanation after the proviso has been inserted and made applicable from 1st April, 2022, which reads as under :-

9. Amendment of section 14A. In section 14A of the Income-tax Act,—

(a) in sub-section (1), for the words “For the purposes of”, the words “Notwithstanding anything to the contrary contained in this Act, for the purposes of” shall be substituted;

(b) after the proviso, the following Explanation shall be inserted, namely:—

“Explanation.—For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income.”.

4.1 Recently, the Hon'ble jurisdictional High court in the case of Pr. CIT (Central)-2 Vs. M/s. Era Infrastructure (India) Ltd. (ITA No. 204/2022 & CM Application No. 31445/2022) decided on 20.07.2022 has taken into consideration the newly brought amendment to section 14A of the Act and while relying upon various judgements on the issue in hand, including in the case of Cheminvest Ltd. (supra) which was mainly relied upon the Ld. Commissioner while passing the impugned order, dismissed the appeal of the Revenue Department on the identical issue, by concluding as under:

“2. Learned Counsel for the Appellant states that ITAT has erred in law in deleting the disallowance of Rs.3,61,53,268/- made by the Assessing Officer under Rule 8D of Income Tax Rules, 1962 read with Section 14A of the Income Tax Act, 1961 (‘the Act’).

3. He submits that the ITAT erred in relying on the decision of this Court in PCIT vs. IL & FS Energy Development Company Ltd., 2017 SCC Online Del 9893 (wherein it has been held that no

disallowance under Section 14A of the Act can be made if the assessee had not earned any exempt income), as the revenue has not been accepted the said decision and has preferred an SLP against the said decision.

.....

8. Consequently, this Court is of the view that the amendment of Section 14A, which is ‘for removal of doubts’ cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood.

*9. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date. Consequently, in view of the judgments passed by the Supreme Court in Kunhayammed and Others vs. State of Kerala and Another, (2000) 6 SCC 359 and Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1, the present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench in PCIT vs. IL & FS Energy Development Company Ltd (supra) and **Cheminvest Limited vs. Commissioner of Income Tax-VI, (2015) 378ITR 33**.(highlighted by us)*

10. Accordingly, the appeal and application are dismissed. However, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the SLP filed in the case of PCIT vs. IL & FS Energy Development Company Ltd (supra).”

4. Considering the peculiar facts and circumstances of the case in totality, we do not find any reason and/or material to contradict the findings and the conclusions drawn by the Id. Commissioner. As the issue under consideration is squarely covered by the judgments referred above of the jurisdictional High Court, consequently, the appeal filed by the Revenue Department is liable to be dismissed.

5. In the result, the appeal filed by the Revenue Department stands dismissed.

Order pronounced in the open court on 26/08/2022.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-