

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

Before

SRI MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. No.: 397/Kol/2022

Assessment Year: 2017-18

Miller Traders Pvt. Ltd.....Appellant
[PAN: AADCM 0843 P]

Vs.

ITO, Ward-4(2), Kolkata.....Respondent

Appearances by:

Sh. Manoj Kataruka, Adv., appeared on behalf of the Assessee.

Sh. Biswanath Das, CIT(D/R), appeared on behalf of the Revenue.

Date of concluding the hearing : August 22nd, 2022

Date of pronouncing the order : August 25th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short ld. "CIT(A)"] dated 29.04.2022 arising out of the assessment order framed u/s 143(3) of the Act dated 30.09.2019.

2. The assessee is in appeal before this Tribunal raising the following grounds:

"1. That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to confirm the addition made by the A.O. is without providing reasonable opportunity of being heard in violation of the

principles of natural justice and therefore the order passed is bad in law.

2. That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to confirm the addition made by the A.O. by passing an ex-parte order is without considering the submissions recorded in the statement of facts and in violation of the principles of natural justice without providing reasonable opportunity of being heard and therefore the order passed is arbitrary, excessive and illegal.

3. That without prejudice to the above grounds, the action of the Ld. CIT(A) to confirm the addition made by the A.O. of Rs.2,03,906/- u/s 14A of the Act is illegal and bad in law.

4. That the order of the Ld.CIT(A) confirming the addition made by the A.O. is arbitrary, excessive and illegal.

5. That the above grounds of appeal will be argued in details at the time of hearing and the appellant craves leaves to submit additional grounds of appeal if any and or alter, vary, modify or rectify the statement of facts and grounds of appeal at or before the time of hearing.”

3. At the outset, ld. Counsel for the assessee submitted that the case of the assessee is squarely covered by the judgment of Hon'ble Delhi High Court in the case of *PCIT vs. Era Infrastructure (India) Ltd.* reported in (2022) 6 NYPCTR 790 (Del) dated 20.07.2022 and the impugned addition of disallowance u/s 14A of the Act deserves to be deleted as the assessee has not earned any exempt income during the year.

4. Per contra, ld. D/R could not controvert this fact that the case of the assessee is squarely covered by the decision of Hon'ble Delhi High Court in the case of *Era Infrastructure (India) Ltd.* (*Supra*).

5. I have heard rival contentions and perused the records placed before me. The assessee is a private limited company and declared

income of Rs. 2,860/- in the return filed u/s 139(1) of the Act on 18.01.2018. It remains an undisputed fact at the end of both the parties that the assessee company has not earned any dividend income/exempt income on the investments made in the unquoted equity shares during the year under consideration.

6. Now, for the issue that whether disallowance u/s 14A of the Act is called for in case assessee has not earned any exempt income, ld. Counsel for the assessee has relied on the judgment of Hon'ble Delhi High Court in the case of *Era Infrastructure (India) Ltd. (Supra)*.

7. On perusal of the said judgment of Hon'ble Delhi High Court firstly, it is held that the amendment brought into effect u/s 14A of the Act by Finance Act, 2022 is prospective in nature and secondly, Hon'ble Court has held that where there is no exempt income, disallowance u/s 14A of the Act cannot be made. Para 8, 9 & 10 of this judgment are reproduced below:

"8. Consequently, this Court is of the view that the amendment of s. 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 & Ors. vs. State of Kerala* (2000) 162 CTR (SC) 97 : (2000) 6 SCC 359 and *Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI Cinod Secretariat* (1992) 3 SCC 1, the present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench in *Principal Principal CIT vs. IL&FS Energy Development Co. Ltd. (supra)* and *Cheminvest Ltd. vs. CIT* (2015) 281 CTR (Del) 447 : (2015) 126 DTR (Del) 289 : (2015) 378 ITR 33 (Del).*

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 Principal CIT vs. IL&FS Energy Development Co. Ltd. (supra).”

8. Respectfully following the ratio laid down by the Hon’ble High Court of Delhi referred above, I find that it is squarely applicable on the facts of the instant case. I am inclined to hold that since the assessee has not earned any exempt income during the year, disallowance u/s 14A of the Act at Rs. 2,03,906/- is uncalled for. I, therefore, delete the disallowance u/s 14A of the Act and allow ground no. 3 raised by the assessee.

9. Other grounds are either general or consequential in nature which need no adjudication.

10. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 25th August, 2022.

Sd/-
[Manish Borad]
Accountant Member

Dated: 25.08.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Miller Traders Pvt. Ltd., 9, Ezra Street, 2nd Floor, Room No. 47, Kolkata-700 001.**
- 2. ITO, Ward-4(2), Kolkata.**
3. CIT(A)- NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata