

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “E” BENCH: NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.6879/Del/2019  
[Assessment Year : 2016-17]**

Addl.CIT, Spl.Range-6, New Delhi-110002.	vs	Metro Institute of Medical Sciences Pvt.Ltd., 14, Metro Hospital & Heart Institute, Ring Road, Lajpat Nagar-IV, New Delhi-110024. <b>PAN-AAACU4178N</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Jeetendra Chand, Sr.DR	
<b>Respondent by</b>	Shri Nirbhay Mehta, Adv.	
<b>Date of Hearing</b>	05.09.2022	
<b>Date of Pronouncement</b>	20.09.2022	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the Revenue for the assessment year 2016-17 is directed against the order of Ld. CIT(A)-37, New Delhi dated 21.05.2019.

2. The Revenue has raised following grounds of appeal:-

1. *“Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in deleting the addition of Rs. 7,69,68,431/- on account of disallowance u/s 14A. As management and decisions about investments always entail certain administrative expenses. The scheme of 14A is very clear that in the case the assessee earned some exempt income and the assessing officer is satisfied that the amount disallowed u/s 14A is not correct, in that scenario the amount disallowed u/s 14A has to be computed by applying Rule 8D.*

2. *Whether on the fact and circumstances of the case, the Ld. CIT(A) is justified in deleting the addition of Rs. 19,19,163/- on account of disallowance u/s 2(24)(x) r.w.s. 36(1)(va). As per the provision of section 2(24)(x) of the Act, employee's contribution to provident fund/other welfare funds constitute income in the hands of the assessee. Further, the assessee is eligible for claim of deduction of deduction of the same u/s 36(1)(va), if the said amount is paid before due date as per the provisions of respective PF Act etc. In this case the assessee has failed to pay an amount of Rs. 19,19,163/- within due date. Further the assessee has failed to explain how the judgment quoted by it are applicable to the facts of this case."*

### **FACTS OF THE CASE**

3. Facts giving rise to the present appeal are that in this case, the assessee filed its return of income on 17.10.2016, declaring total income of Rs.30,01,77,660/-. The case was selected for scrutiny and assessment was framed u/s 143(3) of the Income Tax Act, 1961 ["the Act"] vide order dated 29.12.2018. While framing the assessment, the Assessing Officer ["AO"] made addition of Rs.19,19,163/- on account of late payment of employee's contribution to PF/ESIC, an amount of Rs.1,26,135/- u/s 43B of the Act, disallowance of donation and charity of Rs.31,600/-, disallowance of write-off expenses of Rs.1,76,657/-, disallowance by invoking the provision of section 14A r.w. Rule 8D of Income Tax Rules, 1962 of Rs.7,69,68,431/-. Thereby, the AO assessed the income at Rs.37,93,99,046/- against the declared income of Rs.30,01,77,060/-. Hence, the AO assessed the income at Rs.37,93,99,050/- for the Assessment Year under consideration.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal. Thereby, the Ld.CIT(A) deleted the addition related to employee's contribution towards PF & ESIC and the addition made by invoking the provision of section 14A of the Act.

5. Aggrieved against the order of Ld.CIT(A), the Revenue is in appeal before this Tribunal.

6. Apropos to Ground No, at the outset, Ld. Counsel for the assessee supported the order of Ld.CIT(A) and submitted that in this case, Ld.CIT(A) has given a finding on fact that during the year under consideration, the assessee did not earn any exempt income therefore, relying upon the judgement of Hon'ble High Court in the case of *Cheminvest Ltd.v s CIT-IV 378 ITR 33 [2015]*.

7. On the contrary, Ld. Sr. DR opposed the submissions and supported the orders of the AO.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has decided the issue by observing as under:-

**5.6.** *“Ground No.6 pertains to disallowance of Rs.7,69,68,431/- u/s 14A. In this case, the disallowance u/s 14A of the Act r.w.rule 8D of Rs.7,69,68,431/- has been contested by the appellant. The A.O. had made the disallowance u/s 14A of the Act read with rule 8D on the basis of the CBDT Circular No.5/2014 dated 11.02.2014. The A.O. has worked*

*out disallowance under 8D(ii) & 8D(iii) of the Rules. Total disallowance made by the A.O. is Rs.7,69,68,431/-. Admittedly, the appellant do not have any exempt income during the year under consideration. Therefore, the addition made u/s 14A of the Act is deleted in view of the decision Hon'ble Delhi High Court in the case of Cheminvest ltd. Reported in 378 ITR 33. In this case Hon'ble Jurisdictional High Court has held that if there is no exempt income, then no disallowance u/s 14A of the Act can be made. Ground No.6 is decided in favour of the appellant.”*

9. The finding of Ld.CIT(A) is that the assessee has not earned any exempt income which is not rebutted by the Revenue placing any cogent material on records. Ld. Counsel for the assessee brought to our notice that the decision of the Co-ordinate Bench of the Tribunal rendered in the case of *ACIT vs M/s. Hindustan EPC Company Ltd.* in *ITA No.1421/Del/2019 [Assessment Year-2015-16]* vide order dated 29.07.2022 wherein it has been held as under:-

5. *“The judgment rendered by the Hon'ble Delhi High Court in Joint Investment Pvt. Ltd. vs. CIT in ITA No.117/2015 order dated 25.02.2015, thus clinches the issue in favour of assessee. Thus, the CIT(A) has rightly restricted the disallowance to the extent of the exempt income. Significantly, the Hon'ble Delhi High Court in the case of PCIT vs. M/s. ERA Infrastructure (India) Ltd. in ITA No.204/2022 and CM APPL.31445/2022 judgment and order dated 20th July, 2022 had the occasion to examine the law on applicability of Section 14A having regard to the newly inserted Explanation to Section 14A as codified by Finance Act, 2022. The Hon'ble High Court held that the aforesaid Explanation cannot be presumed to be retrospective in operation. As a corollary, the law prevailing prior to the insertion of Explanation would continue to apply and shall not be guided by the Explanation being prospective. We therefore see no reason to interfere with the order of the CIT(A)*

*which is in sync with extant law as expounded by judicial precedents.”*

10. Therefore, respectfully following the above-mentioned binding precedents, we do not see any reason to disturb the finding of Ld.CIT(A), the same is hereby affirmed. Thus, Ground No.1 raised by the Revenue is dismissed.

11. Ground No.2 raised by the Revenue is against the deletion of addition of Rs.19,19,163/- paid on account of late payment of employee's contribution as per the Provident Fund Act. Ld. Counsel for the assessee contended that this issue is also covered in favour of the assessee by the judgement of Hon'ble Delhi High Court and Co-ordinate Bench of the Tribunal.

12. Ld. Sr. DR supported the order of the AO. However, he fairly considered that the issue is covered in favour of the assessee by the decision of Hon'ble Delhi High Court.

13. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that the Revenue has not brought any contrary material to rebut the finding of Ld.CIT(A). Since the issue is otherwise decided in favour of the assessee by the judgement of Hon'ble Delhi High Court in the case of *PCIT vs Pro Interactive Service (India) Pvt.Ltd. in ITA No.983/2018 [Del.]* order dated 10.09.2018 held as under:-

*“In view of the judgement of the Division Bench of Delhi High Court in Commissioner of Income Tax versus AIMIL Limited, (2010) 321 ITR 508 (Del.) the issue is covered against the Revenue and, therefore, no substantial question of law arises for consideration in this appeal.*

*The legislative intent was/is to ensure that the amount paid is allowed as an expenditure only when payment is actually made. We do not think that the legislative intent and objective is to treat belated payment of Employee's Provident Fund (EPF) and Employee's State Insurance Scheme (ESI) as deemed income of the employer under section 2(23)(x) of the Act."*

Therefore, respectfully following the ratios laid down by the Hon'ble Jurisdictional High Court in the above-mentioned binding precedents, we do not see any reason to interfere in the finding of Ld.CIT(A), the same is hereby affirmed. Ground No.2 raised by the Revenue is hereby, dismissed.

14. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 20<sup>th</sup> September, 2022.

**Sd/-**

**(N.K.BILLAIYA)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI