

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI**

**BEFORE  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.6361/Del/2019  
Asstt. Year: 2016-17

DCIT, Circle-11(1), New Delhi.	Vs.	Hero Solar Energy Pvt. Ltd. 201, First Floor, Okhla Industrial Estate, Phase-III, New Delhi – 110 020 PAN AADCH1476P
(Appellant)		(Respondent)

Assessee by:	Dr. Rakesh Gupta, Advocate Shri Somil Agrawal, Advocate
Department by :	Shri Vipul Kashyap, Sr. DR
Date of Hearing	17.01.2023
Date of pronouncement	24.01.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

1. The appeal by the Revenue is directed against the order dated 02.05.2019 of the Ld. Commissioner of Income Tax Appeals-4, New Delhi (**"CIT(A)"**) pertaining to Assessment Year (**"AY"**) 2016-17.
2. The Revenue has taken the following grounds of appeal:
  - “1. Whether for application of section 14A(91) of the Income Tax Act, 1961 (the Act) the purpose for making investment and earning tax exempt income thereon is an essential legal requirement?
  2. Whether the term "in relation to" as used in section 14A of the Act contemplates a direct and proximate nexus between "expenditure incurred" and "earning exempt income"?

3. *Whether the CIT(A) is legally justified in not upholding disallowance u/s 14A of the Act without considering legislative intent of introducing section 14A by the Finance Act-2001 as clarified by CBDT Circular No. 5/2014 dated: 11.02.2014?*
4. *Whether the CIT(A) is legally justified in not upholding disallowance u/s 14A of the Act without considering a legal principle that allowability/disallowability of expenditure under the Act is not conditional upon the earning of the income as upheld by Hon'ble Supreme Court in case of CIT vs. Rajendra Prasad Moody [1978] 115 ITR 519?"*

3. Brief facts are that the assessee company is engaged in the business of generation of solar energy through its various subsidiaries (SPVs) specifically incorporated for the purpose. It filed its return for AY 2016-17 on 13.10.2016 declaring income of Rs. 3,09,76,320/-. The case was selected for scrutiny through CASS. During assessment proceedings, the Ld. Assessing Officer ("AO") noticed that the assessee has made investments during the year amounting to Rs. 12,00,00,000/- in M/s. Clear Solar Power Pvt. Ltd. and earned exempt income of Rs. 5,84,093/-. It was submitted by the assessee that direct cost attributable to earning exempt income incurred by way of interest has been disallowed under section 14A of the Income Tax Act, 1961 (**the "Act"**). The contentions raised by the assessee were not acceptable to the Ld. AO who computed the disallowance of Rs. 1,78,96,862/- under section 14A r.w. Rule 8D as under:-

<i>Expending to be aggregate of the following:</i>		
<i>i) The amount of expenditure directly relating to income which does not form part of total income.</i>	2,46,465/-	2,46,465/-
<i>ii) In a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :- A x B/C Where :</i>		

<p>A- Amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;</p> <p>B- The average of value of investment, income from which does not or shall not form part of the total income as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;</p> <p>C- The average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.</p>	<p>2,74,04,815/-</p> <p>51,61,00,000/-</p> <p>92,34,32,435/-</p>	<p>1,53,16,362/-</p>
<p>iii) An amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.</p>	<p>= 0.5% of Rs. 51,61,00,000/-</p>	<p>25,80,500/-</p>
	<p>Disallowance</p>	<p>1,81,43,327/-</p>
	<p>Disallowance already made by the assessee</p>	<p>2,46,465/-</p>
	<p>Total disallowance</p>	<p>1,78,96,862/-</p>

Accordingly, the Ld. AO determined the total income of the assessee at Rs. 4,88,73,180/- in assessment framed by him under section 143(3) of the Act on 9.12.2018.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A). The contention of the assessee before the Ld. CIT(A) was that the assessee suo

moto disallowed an amount of Rs. 2,46,465/- under section 14A r.w. Rule 8D(2)(i) as expenditure directly attributable to earning the exempt income of Rs. 5,84,093/- and argued relying on the decision of Hon'ble Delhi High Court in the case of Joint Investment Pvt. Ltd. vs. CIT in ITA 117/2015 that the disallowance cannot exceed the amount of exempt income earned by the assessee. Therefore, at best another amount of Rs. 3,37,628/- (Rs. 5,84,093 – 2,46,465) only could have been disallowed.

5. The submission of the assessee was acceptable to the Ld. CIT(A) who restricted the disallowance to Rs. 3,37,628/- giving relief of Rs. 1,75,59,234/- to the assessee. The Revenue is aggrieved and has come up in appeal before the Tribunal. In all the four grounds of appeal, the decision of the Ld. CIT(A) has been challenged.

6. The Ld. DR supported the order of the Ld. AO and contended that the disallowance made by the Ld. AO is in accordance with law.

7. The Ld. AR submitted before us copy of an order dated 20.10.2022 of the Delhi Bench of the Tribunal in DCIT vs. M/s. Hero Future Energies Pvt. Ltd. (ITA No. 1986/Del/2021) and order dated 19.10.2022 in M/s. Hero Wind Energy Pvt. Ltd. (ITA No. 1983/Del/2021) and also decision of Hon'ble Delhi High Court in Pr. CIT (Central) vs. Era Infrastructure (India) Ltd. (2022) 141 taxmann.com 289 (Delhi) and contended that the issue is covered in favour of the assessee by the aforesaid decisions (supra).

7. We have considered the submissions of the parties and perused the records. The grounds of the Revenue reveal that the main grievance of the Revenue is that the relief granted by the Ld. CIT(A) is not in accordance with CBDT Circular No. 5/2014 dated 11.2.2014 and that the recent amendment in the Act supports the view taken by the Ld. AO in making the impugned disallowance.

8. We have gone through the recent amendment and the decision of the Delhi High Court in Era Infrastructure (India) Ltd. (supra) and orders of the Delhi Bench of the Tribunal in M/s. Hero Future Energies Pvt. Ltd. (supra)

and M/s. Hero Wind Energy Pvt. Ltd. (supra). It is noticed that the decisions (supra) hold that Explanation to section 14A brought on the statute w.e.f. 1.4.2022 cannot be presumed to have retrospective effect. The Explanation seeks to bring those cases in the ambit of disallowance under section 14A where the assessee has not earned any exempt income. In the case before us, the AY involved is 2016-17 i.e. prior to the date on which the said Explanation to section 14A becomes effective as held in the decisions (supra). Respectfully following the decisions (supra) we uphold the order of the Ld. CIT(A) and reject the appeal of the Revenue.

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

**Order pronounced in the open court on 23<sup>rd</sup> January, 2023.**

sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

sd/-  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

Dated: 23/01/2023

**Veena**

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

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