

आयकर अपीलीय अधिकरण  
मुंबई पीठ “एच” मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य, एवं  
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “H” BENCH  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
आ.आ.सं. ६२७/मुंबई/२०२३ (नि.वं. २०१८—१९)  
ITA No.627/MUM/2023 (A.Y.2018-19)

Deputy Commissioner of Income Tax, 6 (4)  
Room No.1925, 19<sup>th</sup> Floor,  
Air India Building,  
Nariman Point,  
Mumbai-400 021

..... अपीलार्थी/Appellant

बनाम Vs.

Kosmo One Business Park Private Limited  
M-62 & 63, 1<sup>st</sup> Floor,  
Cannaught Place,  
New Delhi-110 001  
PAN No. AABCI4397L

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा / Appellant by : Shri Sanjeev Ranjan, Sr. AR  
प्रतिवादी द्वारा / Respondent by : Shri K. Gopal, Advocate

सुनवाई की तिथि / Date of hearing : 09/05/2023  
घोषणा की तिथि / Date of pronouncement : 10/05/2023

आदेश / ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-54, Mumbai (hereinafter referred to as “the CIT(A)”) dated 27.12.2022, for the assessment year 2018-19.



2. Shri Sanjeev Ranjan representing the Department submits that the Department in appeal is assailing deleting of addition u/s 14A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The CIT(A) has erred in deleting the disallowance u/s 14A of the Act on the ground that disallowance cannot exceed exempt income earned. The CIT(A) while deciding the issue has failed to take note of the fact that Explanation to Section 14A introduced w.e.f. 01.04.2022 by the Finance Act, 2022 operates retrospectively.

3. Per contra, Shri K. Gopal appearing on behalf of the assessee submitted that it is a settled law that disallowance u/s 14A r.w.r. 8D cannot exceed exempt income earned. Insofar as the amendment introduced by the Finance Act, 2022, the Hon'ble Delhi High Court in the case of PCIT vs. Era Infrastructure (India) Limited, 448 ITR 674 has held that the amendment would operate prospectively. The CIT(A) has allowed the appeal of assessee, *inter-alia* considering the aforesaid decision of the Hon'ble Delhi High Court.

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. The limited issue in present appeal is with respect to deleting of disallowance u/s 14A of the Act. The Assessing Officer (AO) invoking the provisions of Rule 8D made disallowance of Rs.7,25,14,360/- u/s 14A of the Act. The case of the assessee is that the assessee has not earned any exempt income during the relevant period. This fact has not been disputed by the Department. It is no more *res-intergra* that disallowance u/s 14A of the Act cannot exceed exempt income earned during the relevant period. Hence, in the instant case, no disallowance u/s 14A of the Act could have been made by the AO.

5. The Finance Act, 2022 has inserted an Explanation to Section 14A w.e.f. 01.04.2022. The contention of the Revenue is that the said Explanation would apply retrospectively. The Hon'ble Delhi High Court in the case of PCIT vs. Era



Infrastructure (India) Limited (supra) after examining the Memorandum Explaining the Provisions of the Finance Bill, 2022 (440 ITR (St.) 226) held that the Memorandum explicitly stipulates that the amendment made to section 14A of the Act will take effect from 01.04.2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years. The amendment to 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.

6. Thus, in light of the facts of case and the settled law, we find no infirmity in the impugned order. The order of CIT(A) is upheld and appeal of the Revenue is dismissed, being devoid of any merits.

Order pronounced in the open court on Wednesday the 10<sup>th</sup> day of May 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai,

दिनांक/Dated: 10/05/2023

Mahesh R. Sonavane

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपी अग्रेषित of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/The Respondent.
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधी, आय. अपी. अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाईल/Guard file.



BY ORDER,

//True Copy//

(Dy. /Asst. Registrar)/  
Sr. Private Secretary  
**ITAT, Mumbai**