

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 144/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

NCC Infrastructure Holdings Limited, Hyderabad [PAN No. AACCN1205B]	Vs.	The Assistant Commissioner of Income Tax, Circle-16(1), Hyderabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri C.S. Subramaniam, AR
राजस्व द्वारा/Revenue by: Shri Kumar Aditya, DR

सुनवाई की तारीख/Date of hearing: 01/06/2023
घोषणा की तारीख/Pronouncement on: 12/06/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 27/01/2023 passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of NCC Infrastructure Holdings Limited ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Brief facts of the case are that assessee is a company, filed its return of income for the assessment year 2017-18 on 30/10/2017 declaring loss of Rs. 2,76,89,21,681/- and book loss at Rs. 9,06,60,050/-. During the

course of scrutiny, learned Assessing Officer found that the assessee incurred interest expense and at the same time it made investments to the tune of Rs. 4,96,16,65,412/- learned Assessing Officer inferred that the assessee had incurred interest expenditure towards borrowings utilised for the purpose of investment and earning of exempt income and, therefore, by invoking section 14A of the Income Tax Act, 1961 (for short "the Act") read with rule 8D of the Income Tax Rules, 1962 (for short "the Rules") made addition equivalent to 1% of the annual average of the monthly averages of the opening and closing balances on the value of the investment.

3. Assessee preferred appeal and argued that no such disallowance can be made since it has not obtained any exempt income in the year under consideration. Learned CIT(A) while referring to the amendment to section 14A of the Act by insertion of explanation, which allows for such disallowance even if no exempt income had arisen, and also referring to the view taken by the Guwahati Bench of the Tribunal in the case of ACIT vs. Williamson Financial Services Limited, dated 06/07/2022 in ITA No. 159/Gau/2019 upheld the addition and dismissed the appeal.

4. Assessee preferred this appeal before us and contended that the amendment to section 14A by insertion of an explanation referred to by the learned CIT(A) is prospective in its operation and cannot be made applicable to the year under consideration. He placed reliance on various decisions of the Tribunal and also the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Era Infrastructure (India) Ltd. (2022) 141 taxmann.com 289 (Delhi) and PCIT vs. Delhi International Airport (P.) Ltd., (2022) 144 taxmann.com 80 (Delhi).

5. Learned DR submitted that the Tribunal at Hyderabad is not bound by the decisions of the Hon'ble Delhi High Court and the view taken by the learned CIT(A) legal and in accordance with the provisions of law and, therefore, the same cannot be justified.

6. We have gone through the record in the light of the submissions made on either side. There are no contrary findings of the authorities to the plea taken by the assessee that during the year under consideration, the assessee did not earn any exempt income. The basis for making the addition that the assessee incurred interest expenditure in respect of the amounts that were used for making investment also. In that process, learned CIT(A) relied upon the amendment to section 14A of the Act by insertion of explanation by Finance Act, 2022 and also to the decision of the Guwahati Bench of the Tribunal, referred above.

7. In the case of Era Infrastructure (India) Ltd., (supra) Hon'ble Delhi High Court considered the effect of amendment made by the Finance Act, 2022 to section 14A of the Act by insertion of a non obstante clause and explanation after the proviso, subsequent to the decision of the Hon'ble Delhi High Court in the case of PCIT vs. IL&FS Energy Development Co. Ltd., (2017) 84 taxmann.com 186, Hon'ble Delhi High Court and also the memorandum of Finance Bill, 2022 accordingly to clauses 5 to 7 thereof. The Hon'ble High Court analysed the same in the light of the decision of the Hon'ble Supreme Court in the case of Sedco Forex International Drill. Inc. vs. CIT (2005) 149 Taxman 352 reiterated in M.M. Aqua Technologies Ltd. vs. CIT (2021) 129 taxmann.com 145 and held that the amendment of section 14A of the Act which is 'for removal of doubt' cannot be presumed to be retrospective even where such language is used, if it alters or changes law as it earlier stood.

8. Thereupon the Hon'ble High Court followed the decision of IL&FS Energy Development Co. Ltd., (supra) and concluded that no disallowance under section 14A of the Act can be made if the assessee had not earned any exempt income during the year under consideration. Hon'ble High Court, however, was pleased to clarify that the orders passed in the case of Era Infrastructure (India) Ltd., (supra) shall abide by the final decision of the Hon'ble Supreme Court in the SLP filed in the case of IL&FS Energy Development Co. Ltd., (supra). The decision in Era Infrastructure (India)

Ltd., (supra) was followed by the Hon'ble Delhi High Court in the case of Delhi International Airport (P.) Ltd., (supra).

9. We are not in agreement with the submissions made on behalf of the Revenue that since the Tribunal at Hyderabad is not bound by the decisions of the other Hon'ble High Courts, the findings of the learned CIT(A) following the provisions of law has to be upheld. It is pertinent to note that learned CIT(A) himself followed the decision of the Guwahati Bench of the Tribunal in the case of Williamson Financial Services Limited (supra). In the absence of any decision of the Hon'ble jurisdictional High Court/Hon'ble Supreme Court, the decisions of other Hon'ble High Courts will constitute the binding precedent to be followed by the Tribunal.

10. With this view of the matter, we allow the appeal of assessee, and in view of the direction of the Hon'ble Delhi High Court the orders now passed in this appeal shall abide by the final decision of the Supreme Court in the SLP filed in the case of IL&FS Energy Development Co. Ltd., (supra). Subject to the above observation, the appeal of assessee stands allowed.

Order pronounced in the open court on this the 12th day of June, 2023.

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 12/06/2023

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

TNMM

Copy forwarded to:

1. NCC Infrastructure Holdings Limited, 9th Floor, NCC House, Madhapur, Hyderabad.
2. The Asst. Commissioner of Income Tax, Circle-16(1), Hyderabad.
3. DR, ITAT, Hyderabad.
4. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD