

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

**Before Dr. Manish Borad, Accountant Member
&
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 137/KOL/2023
Assessment Year: 2016-2017**

***M/s. Mod Commodeal Pvt. Limited,.....Appellant
32/7, Sahapur Colony, Kolkata-700053
[PAN: AABCM8970B]***

-Vs.-

***Assistant Commissioner of Income Tax,....Respondent
Circle-3(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Amit Choudhary, A.R., appeared on behalf of the
assessee*

*Shri Vijay Kumar, Addl. CIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : April 11, 2023

Date of pronouncing the order : June 14th , 2023

O R D E R

Per Dr. Manish Borad, Accountant Member:-

This appeal at the instance of assessee for assessment year 2016-17 is directed against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 30.01.2023, which is arising out of the order under section 143(3) of

the Income Tax Act on 19.12.2018 framed by Id. ACIT, Circle-3(1), Kolkata.

2. The sole grievance of the assessee is that both the lower authorities erred in confirming the disallowance under section 14A of the Act considering the fact that the assessee has not earned any dividend income during the year. The fact, that the assessee has not earned any dividend income, stands uncontroverted by the Id. D.R.

3. Brief facts of the case are that the assessee-company was engaged in the business of trading of oxygen gas during the year and filed its return of income for the assessment year 2016-17 on 04.01.2017 declaring total income at Rs.7,06,442/- under normal provision. The case was selected for manual scrutiny vide CBDT Instruction No. 05/2017 dated 07.07.2017. The case was selected for scrutiny assessment and a search and seizure operation was conducted under section 132(1) by the Directorate of Income Tax (Investigation), Gauhati in Adhunik Cement Group on 11.03.2016. On the basis of the return and copy of accounts and materials collected during the course of assessment proceedings, the total income of the assessee was determined at Rs.5,83,709/- inter alia making the disallowance of a sum of Rs.5,83,709/- under section 14A read with Rule 8D of the Income Tax Act. Being aggrieved, the assessee went in appeal before the Id. CIT(Appeals). The Id. CIT(Appeals) upheld the order

of the Id. Assessing Officer. Being not satisfied, the assessee is in appeal before the Tribunal.

4. We have heard the rival contentions and gone through the material placed before us. The disallowance has been made under section 14A read with Rule 8D of the Income Tax Act. A perusal of the assessment order would suggest that the Id. Assessing Officer has recorded a finding that assessee has no exempt income during this year, but he disallowed the expenditure on the ground that on the investment in business, in future the assessee will earn tax-free income, thus the Id. Assessing Officer was of the opinion that the expenditure attributable to tax-free anticipated income deserves to be disallowed under section 14A read with Rule 8D of the Income Tax Act. He has observed that though in this year, the assessee has no tax-free income but in future years it will earn some income. Hence he calculated the disallowance.

5. On due consideration of the above facts and circumstances, we are of the view that this view of the Id. Assessing Officer is contrary to the judgment of the Hon'ble Delhi High Court in the case of Pr. Commissioner of Income Tax -vs.- M/s. Era Infrastructure Limited in ITA No. 204 of 2022. This decision has come on 20th July, 2022. The Hon'ble Delhi High Court has considered the latest amendment brought in section 14A by way of Finance Act, 2022 and thereafter held that if an assessee

has no tax-free income, then no expenditure would be disallowed to it. Following this judgment, we allow this ground of appeal for the assessment year and delete the disallowance.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 14th June, 2023.

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Manish Borad)
Accountant Member

Kolkata, the 14th day of June, 2023

*Copies to :(1) M/s. Mod Commodeal Pvt. Limited,
32/7, Sahapur Colony, Kolkata-700053*

*(2) Assistant Commissioner of Income Tax,
Circle-3(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

*(3) CIT(Appeals), National Faceless Appeal
Centre (NFAC), Delhi;*

(4) Commissioner of Income Tax- ;

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.