

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1034/Mum/2023  
(Assessment Year: 2020-21)**

DCIT, CC – 6(4) Room No. 1925, 19 <sup>th</sup> Floor, Air India Bldg Nariman Point, Mumbai – 400021.	<b>बनाम/ Vs.</b>	AjayShankarlalMittal, 62-A, Mittal Bhavan, Dr.Gopalrao Deshmukh Road, Peddar Road, Mumbai- 400026.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGPM6550R</b>		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

<b>Appellant by :</b>	Mr.Ujjawal Kumar .DR
<b>Repondent by :</b>	None.

सुनवाई की तारीख / <b>Date of Hearing</b>	15/06/2023
घोषणा की तारीख / <b>Date of Pronouncement</b>	21/06/2023

आदेश / ORDER

**PER PAVAN KUMAR GADALE - JM:**

The appeal is filed by the revenue against the order of the National Faceless Appeal Centre (NFAC)/CIT(A), Delhi passed u/s 250 of the Act. The revenue has raised the following grounds of appeal:

*i."On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made u/s 14A by holding that the disallowance u/s 14A cannot exceed the exempt income by ignoring the CBDT circular no 5/2014 which is clarificatory in nature."*

*ii. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the explanation to the section 14A introduced w.e.f. 01.04.2022 which clearly states that the provisions of the section 14A shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income."*

*iii" The craves to leave, to add, to amend and / or to alter any of the ground of appeal if need be."*

2 The brief facts of the case are that, the assessee is a partner in the partnership firm M/s Mittal & sons and derives income from house property and income from other sources and claimed exemption of share of profit from partnership firm u/s 10(2A) of the Act. The assessee has filed the return of income for the A.Y 2020-21 on 30.12.2020 disclosing a total income of Rs. 10,24,870/- and the assessee has filed the revised return of income on 30.12.2020 with same total income. Subsequently the case was selected for the scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act are issued. In compliance to the notices, the assessee has filed reply on income tax e-portal on various dates. The Assessing Officer (A.O) on perusal of financial statements found that the assessee is holding huge investments having the potential of earning exempt income. Since the assessee has not made the disallowance u/s 14A r.w.r 8D of IT Rules, hence the AO has issued notice u/s 142(1) of the Act for invoking the

provisions. Whereas the assessee vide letter dated 10-03-2022 submitted the details of investments and mentioned that he has received dividend income of Rs2,040/- and share of profit from partnership firm of Rs.13,37,601/- and claimed exemption U/sec10(2A) of the Act. Whereas the A.O was not satisfied with the explanations and dealt on the provisions and computed disallowance u/s 14A r.w.r. 8D(2)(iii) of the I T rules of Rs.2,79,90,304/- and passed the order u/s 143(3) of the Act dated 23.03.2022.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee, finding of the A.O, and dealt on the facts, provisions of the Act and judicial decisions and directed the A.O to restrict the disallowance to the extent of exempt income earned and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the revenue has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing the Ld. DR submitted that the CIT(A) erred in granting relief to the assessee irrespective of the facts that the disallowance u/s 14A r.w.r 8D has to be computed and cannot be restricted to the earning of the exempt income and relied on the order of the Assessing Officer.

5. We heard the Ld. DR submissions and perused the material available on record. The sole grievance of the

revenue that the CIT(A) has erred in granting relief to the assessee by restricting the disallowance u/s 14A r.w.r 8D to the extent of exempt income earned without considering the facts that the assessee must have incurred the expenditure for making investments and CIT(A) overlooked the facts and findings of the AO. At this juncture, we consider it appropriate to refer to the findings of the CIT(A) in granting relief to the assessee at Page 12 Para 7.4 to 7.9 of the order read as under;

*7.4 In view of the above, it is clear that the aforesaid decision of Hon'ble Madras High Court in the case of Chettinad Logistics P Ltd (supra) and the decision of the Hon'ble Bombay High Court in the case of Nirved Traders favor the assessee and the disallowance made by the AO u/s 14A is not tenable and has to be restricted to the extent of the exempt income earned.*

*7.5 It is also, however, pertinent to point out that vide the Finance Act 2022 the following Explanation was inserted in section 14A w.e.f 01.04.2022:*

*"Explanation. For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income."*

*7.6 The legislative intent behind insertion of the aforesaid Explanation to section 14A of the Act was to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.*

*7.7 However, the Hon'ble ITAT Mumbai vide its order dated 29.06.2022 in the case of Bajaj Capital Ventures P Ltd(2022141 taxmann.com 1 (Mumbai-Trib) has held that the amendment by way of insertion of the aforesaid explanation was prospective in nature and that prior to 1-4-*

2022, no disallowance could be made under section 14A with respect to expenditure incurred by assessee to earn exempt income, when no exempt income was earned during relevant assessment year. The relevant extract of the said decision is reproduced as under:

7. We find that there is no dispute about the fact that the assessee did not have any tax exempt income during the relevant previous year and that the period before us pertains to the period prior to insertion of explanation to section 14A. In this view of the matter, and in the light of consistent stand by co-ordinate benches, following Hon'ble Delhi High Court's judgment in the case of *Cheminvest Ltd v. CIT* [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33, we uphold the plea of the assessee that no disallowance under section 14A was and in the circumstances of the case. The plea of the Assessing Officer is thus rejected".

7.8 The same view that the insertion of the explanation in section 14A is prospective in nature has also been held by the Hon'ble Delhi High Court in the case of *Era Infrastructure (India) Ltd* (2022) 141 taxmann.com 289 (Delhi). The relevant extract is reproduced as under:

"8. Consequently, this Court is of the view that the amendment of 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.

9. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date. Consequently, in view of the judgments passed by the Supreme Court in *Kunhayammed v State of Kerala* [2000] 113 Taxman 470/245 ITR 360 and *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association* [1992] 3 SCC 1, the present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench in *IL & FS Energy Development Co. Ltd. (supra)* and *Cheminvest Ltd. v CIT* [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 (Delhi).

10. Accordingly, the appeal and application are dismissed. However, it is clarified that the order passed in the present 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)*."

7.9 In light of the decision of the Hon'ble Delhi High Court being in favour of the appellant and also the decision in favour of the appellant by the jurisdictional ITAT, I am bound by the decision of the jurisdictional ITAT which has been discussed above. In light of the above decisions, it is held that the AO is not correct in making the disallowance u/s 14A when during the year the assessee has earned exempt income of only Rs. 13,39,641/- as dividend income and share of profits from Partnership firms. The AO is thus directed to restrict the disallowance u/s 14A to the extent of the tax exempt income earned

*during the year. In view of the above, this ground of appeal of the appellant is partly allowed.*

6. We find the CIT(A) has dealt on the facts, provisions of law, notes and judicial decisions. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent material or information on the disputed issues to take different view. We considered the facts, circumstances, submissions, ratio of judicial decisions and the explanation inserted in section 14A of the Act in Finance Act 2022 w.e.f 1-04-2022 is prospective in nature and the CIT(A) has considered the amendment and passed a reasoned order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 21.06.2023.

Sd/-

Sd/-

**(S RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated 21/06/2023

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai

6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai

		Date
1.	Draft dictated on	15.06.2023
2.	Draft placed before author	21.06.2023
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on	
7.	File sent to the Bench Clerk	
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk	
10.	Date of dispatch of Order.	
11.	Dictation Pad is enclosed	