

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' SMC BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member

आयकर अपील सं./I.T.A. No.459/Chny/2023  
निर्धारण वर्ष/Assessment Year: 2012-13

EH Building Consultancy Pvt. Ltd.,  
Flat No. 1C, First Floor, Gowri Chitra  
Garden Complex, 88/4, Arcot Road,  
Vadapalani, Chennai 600 026.  
**[PAN:AABCE8062E]**

Vs. The Income Tax Officer,  
Corporate Ward 2(1),  
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G. Tarun, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT  
सुनवाई की तारीख/ Date of hearing : 13.07.2023  
घोषणा की तारीख /Date of Pronouncement : 19.07.2023

**आदेश /ORDER**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi dated 15.02.2023 relevant to the assessment year 2012-13.

2. Brief facts of the case are that the assessee has filed the return of income for the assessment year 2012-13 on 30.09.2012 with returned income of ₹.Nil. The return of income was processed under section 143(1) of the Income Tax Act, 1961 ["Act" in short] dated 15.03.2013. Thereafter, the case was selected for scrutiny through nd notice under

section 143(2) of the Act dated 23.09.2013 was issued and duly served on the assessee. After considering the submissions of the assessee, the Assessing Officer has completed the assessment under section 143(3) of the Act dated 27.03.2015 by making additions towards disallowance under section 14A of the Act of ₹.39,61,902/-, disallowance of ROC fees of ₹.72,412/- and addition made towards TDS difference of ₹.2,18,830/-.

3. With regard to the disallowance under section 14A of the Act, from the details furnished by the assessee, the Assessing Officer has noted that in the balance sheet no disallowance under section 14A of the Act was shown by the assessee even though the assessee company has made investments in equity shares. When the assessee was asked as to why the provisions of section 14A of the Act should not be invoked, there was no response from the assessee. Accordingly, the Assessing Officer worked out the disallowance under section 14A of the Act at ₹.39,61,902/- and brought to tax. On appeal, the Id. CIT(A) confirmed the addition by following various decisions as well as in view of the amendment brought out in the Finance Act, 2022 to the provisions of section 14A of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the Id. CIT(A) has erroneously confirmed the addition made towards disallowance under

section 14A of the Act by considering the amendment brought out in the Finance Act, 2022 to the provisions under section 14A of the Act as retrospective. However, the Memorandum of the Finance Bill, 2022 explicitly stipulates that the amendment made to section 14A of the Act will take effect from 1<sup>st</sup> April, 2022. By relying upon the decision in the case of Maxivision Eye Hospital Pvt. Ltd. v. DCIT in ITA No. 139/Chny/2020 dated 22.07.2022, the Id. Counsel prayed for deleting the addition made by the Assessing Officer and confirmed by the Id. CIT(A).

5. On the other hand, the Id. DR has supported the order passed by the Id. CIT(A).

6. Heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the assessee has not earned any exempt income. However, the Id. CIT(A) confirmed the addition made towards disallowance under section 14A of the Act by considering the amendment brought out in the Finance Act, 2022 to the provisions under section 14A of the Act as retrospective. Whereas, perusal of the Memorandum of the Finance Bill, 2022 reveals that it explicitly stipulates that the amendment made to section 14A of the Act will take effect from 1<sup>st</sup> April, 2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years. Similar

issue was subject matter in appeal before the Tribunal and in the case of Maxivision Eye Hospital Pvt. Ltd. v. DCIT (supra), the Coordinate Benches of the Tribunal has observed and held as under:

6. *Today, during the course of hearing it was brought to the notice of the ld. Senior DR that this issue has been adjudicated by the Hon'ble High Court of Delhi in the case of PCIT vs. Era Infrastructure (India) Ltd., in ITA 204/2022 & CM Appl.31445/2022, order dated 20.07.2022, considering the amendment brought in by the Finance Act, 2022 and Explanation inserted to section 14A of the Act held as prospective by observing as under:-*

5. *However a perusal of the Memorandum of the Finance Bill, 2022 reveals that it explicitly stipulates that the amendment made to Section 14A will take effect from 1st April, 2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years. The relevant extract of Clauses 4, 5, 6 & 7 of the Memorandum of Finance Bill, 2022 are reproduced herein below:*

*“4. In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert an Explanation to section 14A of the Act 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.*

**5. This amendment will take effect from 1st April, 2022.**

*6. It is also proposed to amend sub-section (1) of the said section, so as to include a non-obstante clause in respect of other provisions of the Income-tax Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.*

*7. This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.”*

*(emphasis supplied)*

*6. Furthermore, the Supreme Court in Sedco Forex International Drill. Inc. v. CIT, (2005) 12 SCC 717 has held that a retrospective provision in a tax act which is “for the 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. The relevant extract of the said judgment is reproduced herein below:

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 .....

7. The aforesaid proposition of law has been reiterated by the Supreme Court in *M.M Aqua Technologies Ltd. V. Commissioner of Income Tax, Delhi-III*, 2021 SCC OnLine SC 575. The relevant portion of the said judgment is reproduced herein below:-

.....  
 .....

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 and Others vs. State of Kerala and Another*, (2000) 6 SCC 359 and *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras* (1992) 3 SCC 1, the present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench in *PCIT vs. IL & FS Energy Development Company Ltd (supra)* and *Cheminvest Limited vs. Commissioner of Income Tax-VI*, (2015) 378 ITR 33.

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 *PCIT vs. IL & FS Energy Development Company Ltd (supra)*.

7. After hearing rival contentions and going through the decision of Hon'ble Delhi High Court in the case of *Era Infrastructure (India) Ltd.*, supra, we are of the view that the explanation inserted in the provisions of section 14A of the Act by the Finance Act, 2022 is prospective and not retrospective. Accordingly, since the assessee has not earned any exempt income, no disallowance can be resorted to 11 ITA No.139/Chny/2020 by invoking the provisions of section 14A of the Act read with Rule 8D(2) of the Rules. The appeal of the assessee is allowed.

7. The Id. DR could not controvert the above decision of the Tribunal by filing any higher Court decision having modified or reverted. Hence, respectfully following the above decision of the Coordinate Benches of the Tribunal, it is held that the explanation inserted in the provisions of

section 14A of the Act by the Finance Act, 2022 is prospective and not retrospective and since the assessee has not earned any exempt income, the addition made towards disallowance under section 14A of the Act is deleted in view of the decision in the case of CIT v. Chettinad Logistics (P) Ltd. (2017) 80 taxmann.com 221 as well as the decision of Hon'ble Supreme Court in the case of CIT v. Chettinad Logistics (P) Ltd. (2018) 95 taxmann.com 250 (SC). This ground of appeal is allowed.

8. The next ground raised in the appeal relates to confirmation of disallowance of capital expenditure of ₹.72,412/-. In the balance sheet, the assessee has shown an increase in the share capital during the year and an amount of ₹.72,412/- has been debited to the profit and loss account on account of ROC fees. The Assessing Officer disallowed the same as it is in the nature of capital expenditure. On appeal, the Id. CIT(A) confirmed the addition.

9. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the assessee has incurred expenses on account of ROC fees and debited to the profit and loss account. However, the Assessing Officer has treated the expenses as capital in nature and disallowed. It was further submission that once the Assessing Officer has treated the expenses as capital in nature,

depreciation has to be allowed.

10. On the other hand, the Id. DR fairly conceded that the matter may be remitted back to the Assessing Officer for fresh consideration.

11. Heard both the sides, perused the materials available on record and gone through the orders of authorities below. Due to increase in share capital, the assessee has incurred expenses on account of ROC fees and the Assessing Officer has treated the same as capital in nature and disallowed the claim of the assessee, which was confirmed by the Id. CIT(A). When the Assessing Officer has treated the expenses as capital in nature, depreciation should have been allowed, which was not done in this case. Accordingly, we set aside the order of the Id. CIT(A) on this issue and remit the matter back to the file of the Assessing Officer to examine and decide the issue afresh in accordance with law by affording an opportunity of being heard to the assessee.

12. The next ground raised in the appeal relates to confirmation of disallowance of difference in TDS deductions. As per profit and loss account, the interest income reported was only ₹.49,80,109/- as against ₹.51,98,939/- being the actual receipts as per 26AS. Before the Assessing Officer, the AR of the assessee has explained that the

difference “may be TDS difference” has not been accepted and accordingly the difference amount of ₹.2,18,830/- was disallowed and added to the income of the assessee. On appeal, the Id. CIT(A) confirmed the addition by observing that since the assessee could not admit total receipts, thereby resulting in short reflection of gross receipts in the books of accounts for taxation. Before the Bench, the Id. Counsel for the assessee could not offer any convincing explanation towards short reflection of gross receipts. Accordingly, the ground raised by the assessee is dismissed.

13. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on 19<sup>th</sup> July, 2023 at Chennai.

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 19.07.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.