

आयकर अपीलीय अधिकरण  
मुंबई पीठ " एच ", मुंबई  
श्री विकस अवस्थी, न्यायिक सदस्य एवं  
सुश्री पद्मावती, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " H", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
MS. PADMAVATHY, ACCOUNTANT MEMBER

आअसं.1221 /मुं/2023(नि.व.2013-14)  
ITA NO.1221/MUM/2023(A.Y.2013-14)  
आअसं.1220 /मुं/2023(नि.व.2017-18)  
ITA NO.1220/MUM/2023(A.Y.2017-18)  
आअसं.1222 /मुं/2023(नि.व.2018-19)  
ITA NO.1222/MUM/2023(A.Y.2018-19)

HCC Infrastrucure Company Ltd.  
Hincon House, Lal Bahadur Shastri Marg,  
Vikhroli (West), Mumbai – 400 083.

PAN: AACCH-5516-M

..... अपीलार्थी/Appellant

बनाम Vs.

The Assistant Commissioner of Income Tax  
Income Tax Circle 15(2)(1)  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : S/Shri Kalpesh Unadkat and  
Hasmukh Ravaria

प्रतिवादी द्वारा/Respondent by : Smt. Usha Gaikhwad

सुनवाई की तिथि/ Date of hearing : 05/07/2023

घोषणाकी तिथि/ Date of pronouncement : 05/07/2023

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

These three appeals by the assessee are against the orders of  
Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi

[in short 'the CIT(A)']for the Assessment Years 2013-14, 2017-18 both orders dated 20/02/2023 and order for Assessment Year 2018-19 dated 08/03/2023.

2. Since, the grounds raised in all the three appeals emanates from same set of facts, these appeals are taken up together for adjudication and are decided by this composite order. The appeals are decided in seriatim of Assessment Years.

**ITA NO.1221/MUM/2023-A.Y.2013-14:**

3. The assessee in appeal has raised four grounds. The ground No.1 to 3 of appeal are in respect of disallowance made u/s. 14A of the Income Tax Act, 1961 [in short 'the Act'] r.w.r 8D of the Income Tax Rules,1962 [in short 'the Rules']. 4. Shri Kalpesh Unadkat appearing on behalf of the assessee submitted that during the period relevant to assessment year under appeal the assessee has not earned any exempt income, hence, no disallowance is warranted.

5. Per contra, Smt. Usha Gaikhwad representing the Department submitted that an Explanation to section 14A of the Act has been inserted by the Finance Act, 2022 clarifying that irrespective of the fact whether exempt income is earned during the previous year or not, if the expenditure is incurred in relation to earning of such income disallowance u/s. 14A of the Act has to be made. The said explanation is clarificatory in nature and operates retrospectively.

6. Both sides heard. The ground No.1 to 3 of appeal deal with single issue of disallowance u/s.14A r.w.r. 8D. The short contention of the assessee is that

since assessee has not earned any exempt income, no disallowance u/s. 14A of the Act is to be made. A perusal of the assessment order shows that it is not in dispute that the assessee has not earned any exempt income during previous year. The Assessing Officer has made disallowance u/s. 14A r.w.r 8D of Rs.112,38,04,540/-. It is no more res-integra that where the assessee has not earned any exempt income during the relevant period, no disallowance u/s.14A of the Act is required to be made.

7. An Explanation to Section 14A of the Act was inserted by the Finance Act,2022 w.e.f. 01/04/2022. The said Explanation reads as under:

*“ 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. ”*

A perusal of Memorandum to the Finance Bill, 2022 vide which the Explanation was inserted makes it clear that amendment will take effect from 01/04/2022 and will apply to assessment year 2022-23 and subsequent assessment years. In the case of PCIT vs. Era Infrastructure India Ltd., 141 taxmann.com 289 (Del), the Hon'ble Delhi High Court has clarified that Explanation to section 14A of the Act is prospective. Merely for the reason that explanation starts with the expression “For removal of doubts” it could not be presumed to be retrospective, if it alters or change the law as it earlier stood. Thus, in view of the facts of the case and the decision referred above, we hold that no disallowance could be made u/s. 14A of the Act, if no exempt income is

earned by the assessee during the relevant period. Consequently, ground No.1 to 3 of appeal are allowed.

8. In ground No.4 of appeal, the assessee has assailed disallowance of carry forward of losses of assessment year 2011-12.

9.. The Id.Authorized Representative of the assessee submits that in the return of income the assessee has claimed carry forward of losses of assessment year 2011-12, Rs.1,96,41,558/- and assessment year 2012-13, Rs.42,16,552/-. The Assessing Officer has allowed carry forward of losses for assessment year 2012-13, however, no reasoning has been given by the Assessing Officer for rejecting carry forward of losses for assessment year 2011-12. The assessee has filed an application dated 28/04/2016 u/s. 154 of the Act before the Assessing Officer and the said application is still pending. He submits that a direction may be given to Assessing Officer to decide the said application of assessee.

10. The Id. Departmental Representative relied on the order of CIT(A).

11. Both sides heard. A perusal of the impugned order shows that the CIT(A) has not adjudicated the ground raised by the assessee with respect to rejection of carry forward of losses for assessment year 2011-12. In view of the prayer made by Id.Authorized Representative of the assessee, the Assessing Officer is directed to decide the application dated 28/04/2016 filed by the assessee, expeditiously and preferably within a period of six months from the date of receipt of this order. The ground No.4 of appeal is thus, allowed for statistical purpose.

12. In the result, appeal of assessee is partly allowed.

**ITA NO.1220/MUM/2023-A.Y. 2017-18**

**ITA NO.1222/MUM/2023-A.Y. 2018-19**

13. Both sides are unanimous in stating that the facts germane to the issue raised in appeal with regard to disallowance u/s. 14A of the Act r.w.r. 8D are identical to assessment year 2013-14. Since, the facts in impugned assessment years are similar to assessment year 2013-14, the findings given by us while adjudicating the issue would *mutatis mutandis* apply to the present appeal. Consequently, ground No.1 and 2 raised in the appeals are allowed for parity of reasons.

13. In ground No.3 of appeal the assessee has assailed initiation of penalty proceedings u/s. 270A of the Act. Challenge to penalty proceedings at this stage is premature, hence, ground No.3 of the appeals is dismissed.

14. In the result, appeal of assessee for assessment year 2017-18 and 2018-19 are partly allowed.

15. To sum up ITA No.1221/Mum/2023 for A.Y. 2013-14, ITA No. 1220/Mum/2023 for A.Y. 2017-18 and ITA No. 1222/Mum/2023 for A.Y. 2018-19 are partly allowed.

Order pronounced in the open court on Wednesday the 5<sup>th</sup> day of July, 2023.

Sd/-

(PADMAVATHI. S )

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 05/07/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,  
(Dy./Asstt.Registrar) Mumbai