

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 534/Kol/2023
Assessment Year: 2015-16

| | | |
|--|--------|--------------------------|
| Mangalkamna Suppliers Pvt. Ltd. 441, Rabindra Sarani Ground Floor Kolkata - 700005 [PAN : AAGCM9574Q] | V S | CIT(A), NFAC, Income Tax |
|--|--------|--------------------------|

| | |
|------------------------|--------------------------|
| अपीलार्थी/ (Appellant) | प्रत्यर्थी/ (Respondent) |
|------------------------|--------------------------|

| | |
|---------------|--|
| Assessee by : | None |
| Revenue by : | Shri Braj Kishore Singh, JCIT, CIT D/R |

सुनवाई की तारीख/Date of Hearing : 13/07/2023
घोषणा की तारीख /Date of Pronouncement: 24/07/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "Id. CIT(A)") dated 27/03/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2015-16.

2. The Registry has pointed out that there is a delay of 3 (three) days in filing the present appeal before the Tribunal. The assessee has filed a petition for condonation stating the reasons for the said delay. After perusing the same, we are convinced that the assessee was prevented by sufficient cause from filing the appeal in time. Accordingly, we condone the delay and proceed to admit the appeal for hearing.

3. None appeared on behalf of the assessee when the case was called out for hearing. The Director of the assessee company has filed

an application for adjournment. However, on perusal of the grounds of appeal, we find that the only issue that arises for our consideration in this appeal is regarding the disallowance u/s 14A r.w.r. 8D. Therefore, in our opinion, this case is not fit for grant of adjournment and the same is being disposed off after hearing the ld. D/R and perusing the material available on record.

4. We have heard the ld. D/R and perused the material placed before us. Vide Ground No. 5, the assessee has submitted that, there is no exempt income earned generated during the year or likely to be generated from the investments made and hence the disallowance u/s 14A r.w.r. 8D, is uncalled for. The ld. Assessing Officer has passed an *ex-parte* order u/s 144 of the Act. The Hon'ble Delhi High Court in the case of *PCIT Vs. Era Infrastructure (India) Ltd. (ITA 204/2022) judgment dt. 20/07/2022*, has held that the amendment made in Section 14A of the Act by Finance Act, 2022, will be applicable prospectively and also held that *disallowance u/s 14A of the Act should not exceed the exempt income earned by the assessee during the year.*

5. Accordingly, we set aside the issue to the file of the Assessing Officer with a direction to examine the issue of disallowance u/s 14A of the Act in the light of the judgment of the Hon'ble Delhi High Court in the case of *Era Infrastructure (supra)* after providing the assessee sufficient opportunity of being heard. In case the assessee is able to prove that no exempt income was earned during the year then, under

these circumstances, the Id. Assessing Officer is directed not to make any disallowance u/s 14A of the Act and in case otherwise, the Id. Assessing Officer can decide the issue in accordance with law, considering the settled judicial precedent of the Hon'ble Delhi High court.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 24th July, 2023 at Kolkata.

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 24/07/2023

**SC S.P.*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata