

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1434/Mum/2023  
(A.Y. 2018-19)**

Reliance Entertainment Networks Pvt. Ltd. Maneke Mahal, 6 <sup>th</sup> Floor, 90, Veer Nariman Road Churchgate Mumbai – 400020	Vs.	Principal Commissioner of Income Tax-8, Room No. 611, 6 <sup>th</sup> Floor, Aayakar Bhavan M.K.Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACR2367J		
Appellant	..	Respondent

Appellant by :	Jitendra Sanghvi & Amit Khatiwala
Respondent by :	Neena Jeph

Date of Hearing	25.07.2023
Date of Pronouncement	31.07.2023

**आदेश / O R D E R**

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order u/s 263 of the Act passed by the ld. Pr. CIT, Mumbai-8, dated 28.03.2023 for A.Y. 2018-19. The assessee has raised the following grounds before us:

- “1. Under the facts and circumstances of the case and in law, the Learned Principal Commissioner of Income Tax 08, Mumbai (the PCIT) erred in invoking the provisions of section 263 of the Act and directing setting aside of the assessment order passed under section 143(3) of the Act by the Deputy Commissioner of Income Tax, Circle -8(1)(1), Mumbai (the Assessing Officer) dated 3.3.2021 on the alleged ground that the said assessment order was erroneous and prejudicial to the interest of the revenue.

2. *Under the facts and in the circumstances of the case and in law, the learned PCIT erred in setting aside the assessment order passed under section 143(3) of the Act by the Assessing Officer to verify the applicability of section 14A of the Act*
3. *Under the facts and in the circumstances of the case and in law, the learned PCIT erred in setting aside the assessment order in respect of applicability of section 14A of the Act without appreciating the fact that proper inquiry has been made by the Assessing Officer during the course of assessment proceedings*
4. *Under the facts and in the circumstances of the case, the learned PCIT erred in holding that the Assessing Officer has failed to apply the CBDT Vide circular No 5/2014 dated 11 February 2014*
5. *Under the facts and in the circumstances of the case, the learned PCIT erred in appreciating fact that the one of the reasons for CASS selection was related to the expenses incurred for earning income and the Assessing Officer has examined all the details and explanations filed by the Appellant and therefore the order of assessment is neither erroneous nor prejudicial to the interest of revenue.*
6. *On the facts and in the circumstances of the case, the learned PCIT failed to appreciate that the assessment order had been passed after accepting the contentions, explanations of the appellant and after considering the facts of the case and the Supreme court & High Court judicial precedents relied by the appellant and thereby has taken a view following the binding precedent laid down by the Supreme Court and High Court on the issue of disallowance u/s 14A in cases where no exempt income is earned during the year and therefore the order of the assessment is neither erroneous nor prejudicial to the interest of the revenue.*
7. *On the facts and in the circumstances of the case, the learned PCIT failed to appreciate the fact that the Supreme Court and High Court decisions which were relied by the Appellant has been rendered post CBDT Circular No. 5/2014 dated 11.2.2014 and that the Assessing Officer has rightly not relied upon the circular while passing the assessment order u/s 143(3) of the Act dated 3.3.2021 and therefore the order of the assessment is neither erroneous nor prejudicial to the interest of the revenue.*
8. *The Appellant craves leave to add, alter, amend or vary from the aforesaid grounds of appeal before or at the time of hearing.”*

2. Fact in brief is that assessment u/s 143(3) of the Act in the case of the assessee company was finalised on 03.03.2021 and income was assessed at Rs. Nil as per the returned income. Subsequently, the Id. Pr.CIT on examination of the record noticed that during the year under consideration the assessee had borrowed Rs.3132.07 crores and it had

also made investment of Rs.1092.60 crores in its subsidiaries. The Pr.CIT was of the view that case of the assessee was selected for one of the reasons relating to incurring expenses for earning exempt income. During the course of assessment proceedings the assessee explained that it had not earned any exempt income, therefore, no disallowance u/s 14A of the Act was made.

However, the ld. Pr.CIT observed that vide CBDT circular No. 5/2014 dated 11.02.2014 it is clarified that expenditure relating to earning of exempt income has to be considered for disallowance irrespective of the fact whether any such income has been earned during the financial year or not. She also stated that it is not necessary that exempt income should necessarily be included in particular year's income for disallowance to be triggered. Therefore, she held that assessment order passed by the assessing officer is erroneous and prejudicial to the interest of revenue. Accordingly, the order passed by the AO was set aside with the direction to the AO to pass the order in accordance with the law after due verification.

3. During the course of appellate proceeding before us the ld. Counsel vehemently contended that the assessee has not earned any exempt income therefore, no disallowance could be made u/s 14A of the Act. In this regard, the ld. Counsel has also referred the detailed submission made during the course of assessment proceedings and submitted that vide notice u/s 142(1) of the Act the AO has categorically asked the expenses incurred for earning exempt income. The assessee vide letter dated 29.12.2020 has given the detailed submission along with the various judicial pronouncements of Hon'ble Supreme Court and Hon'ble High Court's wherein held that if not exempt income is reported no disallowance can be made u/s 14A of the Act.

On the other hand, the ld. D.R supported the order of lower authorities.

4. Heard both the sides and perused the material on record. It is undisputed fact that assessee has not earned any exempt income during the year under consideration. Hon'ble Delhi High Court in the case of Chem Investment Ltd. Vs. CIT (2015) 61 taxmann.com 18 (Delhi) held that provision of Section 14A will not be applied if no exempt income is received or receivable during the relevant previous year. We find that Pr.CIT has solely on the basis of CBDT Circular 5/2014 dated 11.02.2014 held that disallowance u/s 14A is to be made even if assessee has not earned any exempt income during the year under consideration. The assessee has also placed reliance on the decision of Hon'ble Delhi high Court in the case of ACB India Ltd. Vs. ACIT (ITA No. 615/2014) (Delhi) and decision of Hon'ble Allahabad High Court in the case of CIT Vs. Shivam Motors Pvt. Ltd. (2015) (55 taxmann.com 262) (All). We find that the amendment brought by the Finance Act 2022 w.e.f 01.04.2022 by inserting explanation to section 14A of the Act clarify that notwithstanding anything to the contrary contained in this Act, the provision of Sec. 14A 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. In this regard, we find that Hon'ble Delhi High Court in the case of PCIT Vs. Era Infrastructure (India) Ltd. held that amendment made by Finance Act 2022 to section 14A by inserting a non-obstante clause and Explanation will take effect from 1.04.2022 and cannot be presumed to have retrospective effects. Therefore, considering the decision of the Hon'ble Delhi High Court and other Court as cited above we find that observation made by the ld. Pr.CIT in treating the order passed by the assessing officer is erroneous

and prejudicial to the interest of revenue only on account of not disallowing the expenditure u/s 14A of the Act in the case of the assessee is not justified because assessee has not earned any income during the year under consideration. Therefore, we set aside the order of ld. Pr.CIT and allow the appeal of the assessee.

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

Order pronounced in the open court on 31.07.2023

Sd/-

(Amit Shukla)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 31.07.2023

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**