

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 319/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2013-14)

Dy. Commissioner of Income Tax,
Central Circle-1(3),
Hyderabad

Vs. M/s. VIZ Infra Consultants
Pvt. Ltd.,
Mumbai
[PAN No. AABCS1770M]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri H. Srinivasulu, AR
राजस्व द्वारा / Revenue by: Ms. Sheetal Sarin, DR

सुनवाई की तारीख/Date of hearing: 09/10/2023
घोषणा की तारीख/Pronouncement on: 10/10/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 21/03/2023 passed by the learned Commissioner of Income Tax (Appeals)-11, Hyderabad ("Ld. CIT(A)"), in the case of VIZ Infra Consultants Private Limited [presently known as Motorcity

Enterprises Pvt. Ltd.] (“the assessee”) for the assessment year 2013-14, Revenue preferred this appeal.

2. Only question involved in this appeal is, as in the assessment year 2013-14, if the assessee does not earn any exempt income, whether any disallowance could be made under section 14A of the Income Tax Act, 1961 (for short “the Act”), read with Rule 8D of Income Tax Rules, 1962 (“Rules”). On facts there is no dispute that the assessee did not earn any exempt income during the year.

3. According to the learned DR, whether or not the assessee earned any exempt income during the year, in view of the amendment to section 14A of the Act by way of Finance Act, 2022 with effect from 01/04/2022, by inserting an explanation to such section, the provisions of section 14A of the Act shall always be applied even where any income not forming part of the total income has not been earned during the year. She accordingly submits that a plain reading of this explanation makes it abundantly clear that this explanation is deemed to have applied for the assessment year 2013-14 also.

4. Per contra, learned AR, placed reliance on the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Era Infrastructure (India) Ltd. (2022) 141 taxmann.com 289 (Delhi) and Cheminvest Ltd., Vs. CIT (2015) [378 ITR 33] (Del) and submitted that the amendment referred to by the learned DR by way of Finance Act, 2022 is only prospective in nature and in view of the decision in the case of Cheminvest Ltd., (supra), no disallowance could be made by invoking 14A of the Act read with Rule 8D

of the Rules, if the assessee does not earn any exempt income during the year.

5. We have gone through the record in the light of the submissions made on either side. In the case of Era Infrastructure (India) Ltd., (supra) Hon'ble Delhi High Court considered the effect of amendment made by the Finance Act, 2022 to section 14A of the Act by insertion of a non obstante clause and explanation after the proviso, subsequent to the decision of the Hon'ble Delhi High Court in the case of PCIT vs. IL&FS Energy Development Co. Ltd., (2017) 84 taxmann.com 186, Hon'ble Delhi High Court and also the memorandum of Finance Bill, 2022 accordingly to clauses 5 to 7 thereof. The Hon'ble High Court analysed the same in the light of the decision of the Hon'ble Supreme Court in the case of Sedco Forex International Drill. Inc. vs. CIT (2005) 149 Taxman 352 reiterated in M.M. Aqua Technologies Ltd. vs. CIT (2021) 129 taxmann.com 145 and held that the amendment of section 14A of the Act which is 'for removal of doubt' cannot be presumed to be retrospective even where such language is used, if it alters or changes law as it earlier stood.

6. Respectfully following the decision of Hon'ble Delhi High Court in the case of Era Infrastructure (India) Ltd., (supra), we hold that the operation of explanation to provisions under section 14A by way of Finance Act, 2022 is only prospective in nature and cannot be made applicable to the year under consideration.

7. Since it is an undisputed fact that there is no dividend income earned in the relevant previous year, by respectfully following the decision in the case of Cheminvest Ltd (supra), we hold that Section 14A read with

Rule 8D applies only in relation to an assessee's exempt income and not otherwise. we accordingly answer the issue in favour of the assessee.

8. In the result, appeal of Revenue is dismissed.

Order pronounced in the open court on this the 10th day of October, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 10/10/2023

TNMM

Copy forwarded to:

1. Dy. Commissioner of Income Tax, Central Circle-1(3), Hyderabad.
2. M/s. VIZ Infra Consultants Pvt. Ltd., (presently known as Motorcity Enterprises Pvt. Ltd.), 6-D/2, Court Chambers, Plot No. 15-A, New Marine Lines, Mumbai.
3. Pr.CIT(Central)-Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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