

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 484/KOL/2023
Assessment Year: 2012-2013**

***M/s. Vikash Fastners Pvt. Limited.....Appellant
Room No. 310, Diamond Prestige,
41A, A.J.C. Bose Road,
Kolkata-700017
[PAN: AABCV4998A]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-7(2), Kolka,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Miraj D. Shah, A.R., appeared on behalf of the
assessee*

*Shri B.K. Singh, JCIT (Sr. DR), appeared on behalf of the
Revenue*

Date of concluding the hearing : August 10, 2023

Date of pronouncing the order : October 9, 2023

ORDER

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income

Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 31st March, 2023 passed for A.Y. 2012-13.

2. Though the assessee has taken six grounds of appeal, but in brief, its grievances revolve around a single issue, namely whether a disallowance under section 14A of Rs.3,17,192/- could be made even if there is no tax-free income claim by the assessee.

3. With the assistance of ld. Representatives, we have gone through the record carefully. A perusal of the assessment order dated 27.03.2015 would reveal that ld. Assessing Officer has discussed this issue of disallowance under section 14A. The first two lines are important for the purpose of deciding this appeal and they read as under:-

"14A as per Rule 8D:

In the course of hearing, it was submitted by the A/R of the assessee that during the relevant year the company had not earned income from dividend".

The ld. Assessing Officer thereafter made reference to the total investment made by the Company and observed that in future year, the assessee will either claim dividend income or long-term capital gain, which will be exempt. Therefore, he commenced his inquiry and harboured a belief that disallowance under section 14A read with Rule 8D deserves to be made. He made an addition of Rs.3,17,192/- under Rule 8D(2)(iii), which

was calculated @ 0.5% the average value of investment. This disallowance was made under the Head of 'Administrative Expenses' in a way. The Hon'ble Delhi High Court in the case of M/s. Era Infrastructure (India) Limited in ITA No. 204 of 2022 has held that if no tax free income has been claimed by the assessee, then, no disallowance is to be made. In this decision, Hon'ble Delhi High Court has considered the latest position of section 14A introduced by Finance Act, 2022. After considering this, it has observed that unless Hon'ble Supreme Court has set aside the earlier judgment of this Hon'ble High Court, the position of law would be applicable as it is. By respectfully following the judgment of the Hon'ble Delhi High Court, we allow this appeal and delete the disallowance.

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

Order pronounced in the open Court on October 9, 2023.

Sd/-
(Girish Agrawal)
Accountant Member

Sd/-
(Rajpal Yadav)
Vice-President(KZ)

Kolkata, the 9th day of October, 2023

*Copies to : (1) M/s. Vikash Fastners Pvt. Limited,
Room No. 310, Diamond Prestige,
41A, A.J.C. Bose Road, Kolkata-700017*

*(2) Income Tax Officer,
Ward-7(2), Kolka,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre, Delhi,*

*(4) Commissioner of Income Tax ,
(5) The Departmental Representative
(6) Guard File
TRUE COPY*

By order

*Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.