

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं./ITA No. 194/RPR/2023
निर्धारण वर्ष /Assessment Year: 2018-19

Abis Export India Pvt. Ltd. IB, Corporate House, Indamara, Rajnandgaon (C.G.)-491 441	Vs	The Deputy Commissioner of Income Tax, Circle-1(1), Bhilai
PAN: AACCA2881J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Bikram Jain, CA
राजस्व की ओर से /Revenue by	:	Smt. Ila M. Parmar, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	22/08/2023
घोषणा की तारीख/ Date of Pronouncement	:	17/10/2023

आदेश / O R D E R

Per Arun Khodpia, AM:

The captioned appeal is filed by the assessee against the order passed by the Ld. Pr. Commissioner of Income Tax (Appeals), NFAC, Delhi u/s. 263 of the Income Tax Act, 1961 (for short 'the Act') dated 28.03.2023 for A.Y.2018-19. The grounds of the appeal raised by the assessee are as under:

“1. On the fact and in the circumstances of the case, the Ld. Principal Commissioner of Income Tax—Raipur-1 has erred in holding the assessment order passed by the National e-assessment Centre (NEAC) on 01.03.2021 as erroneous and prejudicial to the interest of revenue as the order was passed without making any enquiry on the issues of applicability of section 14A of the I. T. Act, 1961. The assessment order passed by the NEAC is neither erroneous nor prejudicial to the interest of revenue and therefore the order u/s 263 passed by the Ld. CIT is unjustified, unwarranted, and uncalled.

2. The assessee reserves the right to add, amend or alter any grounds of appeal at any time of hearing.”

2. Brief facts in this case are that the assessee company is engaged in the business of manufacturing and trading of poultry feeds, cattle feed, pet food, aqua feed and soya value added products and poultry equipment etc. The assessee company has 5 boilers for generating steam power and claimed deduction u/s.80IA (4)(iv) at the rate 25% on it. The case of the assessee was selected for complete scrutiny assessment on the following issues:

- i. Claim of Any Other Amount Allowable as Deduction in Schedule BP
- ii. Reduction of Income in Revised Return & Claim of Refund
- iii. Refund Claim
- iv. Duty Drawback
- v. Deduction Claimed for Industrial Undertaking
u/s 80IA /80IAB /80IAC /IB/IC/IBA/801D/801E/10A/10AA
- vi. ICDS Compliance and Adjustment
- vii. Deduction from Total Income under Chapter VI-A.

3. The assessee company had filed its return of income declaring total income of Rs.146,66,64,660/-. The return of income was processed u/s.143(1) of the Act accepting the returned income. Again, the assessee company revised return declaring income of Rs.143,24,43,070/- on 31.03.2019 after claiming deduction under chapter VIA of Rs.4,98,22,513/-. The case of the assessee was selected for scrutiny through CASS, accordingly statutory notice u/s.143(2) of the Act was issued and served on 23.09.2019. Assessment was thereafter framed by the A.O 143(3) r.w.s. 143(3A) & 143(3B) of the Act dated 01.03.2021 accepted the revised return of the assessee without making any addition by the A.O.

4. Later, on examination of the online record pertaining to the case of the assessee, the Ld. Pr. CIT observed that there was a substantial investment of Rs.3278.38 lacs in F.Y.2017-18 (investment shown in balance sheet in share and securities), income from which do not form part of total income. However, Ld Ao has not disallowed any expenditure incurred u/s.14A r.w.r. 8D in this respect, as

per CBDT Circular No.5/2014 dated 11.02.2014 wherein it was clarified that disallowance u/s. 14A r.w.r. 8D can be made irrespective of the fact whether any such income had been earned during the financial year or not. The total disallowance u/s.14A of the Act is worked out at Rs.16,94,37,000/-, calculation of disallowance as arrived at by the Ld. Pr. CIT is culled out as under:

A * B / C

$$2537.70 \text{ Lakhs} * 1639.19 \text{ Lakhs} / 74900.27 \text{ Lakhs} = 55.54 \text{ Lakhs}$$

Where **A** is amount of expenditure by way of Interest (Financial Costs), i.e. 2537.30 Lacs and

B is average value of Investment (FY 16-17 & 17-18), i.e 1639.19 Lakhs (3278.38+0)/2 and,

C is average value of total assets appeared in balance sheet (FY 16-17 & 17-18) i.e. 74900.27 Lakhs (78485.26 + 71315.28)/2,

The average value of Investment , i.e. (B)*0.5% = 1639.19 Lakhs

The total disallowance thus would be 1694.37 Lakhs (1639.19 Lakhs + 55.54 Lakhs).

Considering the aforesaid working, according to the facts narrated by the Ld. Pr. CIT, it was observed by the Ld. Pr. CIT that the assessment order passed u/s.143(3) r.w.s. 143(3A) & 143(3B) of the Act dated 01.03.2021 was considered to be erroneous in so far it was prejudicial to the interest of the revenue, therefore, needs to be revised under provisions of Section 263 of the Act since the issue discussed had not been properly verified while passing assessment order by conducting proper enquiries and examination of the accounts, therefore, assessment order passed u/s.143(3) r.w.s. 143(3A) & 143(3B) of the Act dated 01.03.2021 is erroneous in so far as it was prejudicial to the interest of revenue in light of section 263 of the Act. In respect to the notice u/s.263 of the Act issued by the Ld. Pr. CIT, the assessee submitted reply asserting that provisions of Section 14A in the present case of the assessee is not applicable because the

pre-requisite for applying provision of section 14A is not fulfilled. The assessee has placed reliance on the various judgments and requested the Ld. Pr. CIT to drop the revisionary proceedings initiated u/s.263 of the Act. Considering the replies of the assessee wherein the assessee had raised two specific contentions viz. (i) with respect to exempt income that the assessee had not earned any exempt income in the relevant year, therefore, disallowance u/s.14A could not be made; (ii) contention of the assessee that it had sufficient interest free funds available to cover up the investment. However, as observed by the Ld. Pr. CIT, on a perusal of the accounts of the assessee, this contention does not seem to be correct. Under such observations wherein the assessee's contentions were not found to be satisfactory and convincing by the Ld. Pr. CIT, he set-aside the order of A.O to his file for making necessary enquiries and to pass a speaking order after proving adequate opportunity of being heard to the assessee.

5. Aggrieved with the said order of the Ld. Pr. CIT, the assessee has preferred an appeal before us.

6. At the very outset, the Ld. AR of the assessee has filed written submissions/replies which are extracted as under:

"Ground of Appeal

"On the fact and in the circumstances of the case, the Ld. PCIT -Raipur-1 has erred in holding the assessment order passed by the National e-assessment Centre (NEAC) on 01.03.2021 as erroneous and prejudicial to the interest of revenue as the order was passed without making any enquiry on the issues of applicability of section 14A of the I.T.Act, 1961. The assessment order passed by NEAC is neither erroneous nor prejudicial to the interest of the revenue and therefore the order u/s 263 passed by Ld. PCIT is unjustified, unwarranted and uncalled for. "

Brief fact of the case, Submission before PCIT during 263 proceeding and observation of the PCIT

1. The assessee is engaged in the business of solvent extraction, refining and sale of edible oil (soya and rice bran), manufacture and trading of

poultry feed , cattle feed , pet food , aqua food and soya value added product. The assessee has filed its revised return of income electronically on 31.03.2019 for A. Y. 2018-19 declaring total income at Rs. 143,24,43,070/-. The case of the assessee was selected for complete scrutiny and assessment order was passed u/s 143(3) by National e-assessment centre on 01.03.2021 by accepting the returned income as assessed income.

2. Thereafter the PCIT, Raipur had issued notice for hearing in respect of revision proceeding u/s 263 of the I.T.Act, 1961 by stating that "The assessee company had shown substantial investment of Rs. 3278.38 lakh in F.Y. 2017-18 (Investment shown in balance sheet in shares and securities) , income from which does not form part of total income . However no expenditure was disallowed u/s 14A r.w.r 8D of the I.T.Rules in this respect. The RAP has referred CBDT circular No 5/2014 dated 11.02.2014, it was clarified that disallowances u/s 14A r.w.r. 8D can be made irrespective of the fact whether any such income has been earned during the financial year or not. Total disallowances u/s 14A of the Act was worked out at Rs. 16,94,37,000/-". In view of this order passed by the A.O. is erroneous and prejudicial to the Interest of the revenue and therefore, needs to be revised under the provisions of section 263 of the I.T.Act, 1961. "(For notice of hearing kindly refer page 1-2 of PB).

3. The assessee has submitted briefly four arguments along with various case laws in support of the argument, during 263 proceeding. (Reply is enclosed at pages 3-11 of PB) These are as under: -

- i. No dividend income earned out of these investment during the year.
- ii. Sufficient interest free fund to cover the Investment
- iii. CBDT circular cannot be basis for making addition. iv. Jurisdiction ITAT judgements are binding to the A.O.

4. The PCIT without properly considering the submission of the assessee, set aside the order of the A.O. by treating the order of the A.O. as erroneous and prejudicial to the interest of the revenue by giving following observation (refer page no 11-16 of the 263 order) :-

- i. The assessee is not having sufficient interest free fund, The funds are in the nature of security premium which is a restrictive fund and cannot be used for making the Investment.
- ii. The assessee hold the shares as stock in trade and 14A gets triggered if the shares are held as stock in trade even though in absence of dividend income.

Submission before Honorable Bench of ITAT

1. Before going into the discussion regarding applicability of section 14A , we would like to draw your honor attention regarding the method and rule of calculation adopted for disallowance u/s 14A r.w.r. 8D by the PCIT:-

In the present case the method adopted as per rule 8D of Income Tax Rule, 1962 by the PCIT is not correct. In the 263 order, the PCIT has adopted old method which has been substituted on 02.06.2016. Kindly

refer page no 82 of PB for rule 8D of the Income Tax Rule, 1962. Further there are also certain error in calculation as per old method also.

The revised working of disallowances if any as per current method is enclosed at page 84 of paper book. As per revised working, the disallowances if any required to be made as per the 263 order, the same should be Rs. 32,78,381/-.

Legal Reply — Regarding initiation of 263 on the basis of audit objection and applicability of section 14A of the I.T.Act, 1961

2. Revision u/s 263 cannot be initiated on the basis of RAP objection (audit objection). The said contention of the assessee is supported by various judicial pronouncement are as under :-

- Commissioner Of Income Tax Vs. Sohana Woollen Mills, (2006) 74 CCH 0755 PHHC (Refer page no 1-2 of PB-II)
- Sri Kumar Pappu Singh Vs. Deputy Commissioner Of Income Tax, (2018) 103 CCH 0343 Vihakapatnam Trib(Refer page no 3-4 of PB-II)
- Sarlaben Bhansali Charities Trust Vs. Commissioner Of Income Tax (Exemptions) (2017) 51 CCH 0464 Kol Trib (Refer page no 5-6 of PB-II)
- Surinder Kumar Jain Vs. Income Tax Officer, (2016) 48 CCH 0158 DelTrib(Refer page no 7-9 of PB-II)

3. Further, the observation of the PCIT as mentioned in order passed u/s 263 is not correct. The assessee is having sufficient Interest free fund in the form of Share capital, retained earning and securities premium to cover the Investment. The detail of share capital and reserves & surplus is as under: -

Particulars	F.Y.2017-18 (In lacs)	Page No. of PB.	F.Y. 2016-17 (In lacs)	Page No. of PB
Equity Share Capital	845.90	26,29	845.90	26,29
Other Equity	40865.02	26,29	31421.67	26,29
Total	41710.92	26,29	32267.57	26,29
Bifurcation of Other Equity (Reserve and Surplus)				
Securities Premium	10262.33	29	10262.33	29
Capital Reserve	100	29	100	29
Retained Earning	30502.69	29	21059.34	29
Total	40865.02		31421.67	
Investment	3278.38	26,42	3278.38	26,42

In view of above chart it is evident that the assessee is having sufficient interest free fund to cover the Investment and it is a settled principle that where interest free fund are sufficient to cover the Investment, then it can be presumed that investments are made from the said funds and also no disallowances is required to be made u/s 14A of the I.T. Act. The assessee has relied various case laws including jurisdictional ITAT judgements in support of the said contention are as under:-

- *South India Bank Limited vs. Commissioner of Income Tax [(2021) 112 CCH 0005 ISCC] -Refer page no 85-87 of PB*
- *CIT vs. Reliance Industries Limited [(2019) 104 CCH 0038], Apex Court-Refer page no 88-91 of PB*
- *PCIT vs. M/s Ashok Apprels Pvt. Ltd [(2020) 423 ITR 0412], Mumbai HC -Refer page no 92-93 of PB*
- *Shree Nakoda Industries Limited vs. DCIT , ITA No. 81/RPR/2016, Raipur Bench of ITAT - Refer page no 101-108 of PB*
- *M/s S.B. Multimedia Pvt. Ltd vs. DCIT , ITA No. 173/RPR/2016 , Raipur Bench of ITAT- Refer page no 109-114 of PB*
- *DCIT vs. Arvind Smart Spaces Ltd. [(2020) 58 CCH 0311], Ahmd. Trib Refer page no 94-997 of PB*
- *Maruti Udyog Limited vs. DCIT [(2005) 92 TTJ 987] Del Trib :- Refer page no 98-100 of PB*

4. Further during the year the assessee has not received any dividend income out of the investment. Kindly refer computation of Income at page 13 of PB and also page 49-50 of PB i.e. the schedule of Other Income of financial statement. Since there is no exempt income earned during the year , 14A cannot be invoked in the present case of the assessee. The said contention is supported by various judicial pronouncement are as under :-

- *CIT vs. Chettinad Logistic Pvt. Ltd [(2017) 98 CCH 0151], Chennai HC -Refer page no 115-121 of PB*
- *PCIT vs. Oil Industries Development Board [(2018) 101 CCH 0452], Del HC - Refer page no 122-124 of PB*
- *CIT vs. Holcim India Pvt. Ltd [(2014) 90 CCH 081], Delhi -HC, Refer page no 127-129 of PB*
- *Sgepl Infrastructure Pvt. Limited vs. ACIT-3(1), Raipur, ITA No.65/RPR/2018, Raipur Bench of ITAT*

Further the shares are not held as stock in trade and the same is showing as investment (non-current assets). Kindly refer page no 26 and 42 of the paper book. Case law of "Maxopp" is not correctly interpreted by PCIT.

5. Further as regard to one dividend item showing in other Income under audited financial statement (Refer Note no 21 of the Balance sheet at page 50 of the PB), it is to submit that it is not in the nature of Dividend , this is the nomenclature used asper Ind -AS . The detail of dividend of Rs. 22.43 lacs showing at page no 50 of the PB is as under :-

Particulars	Amount	Page no of PB
Long Term Gain on sale of Mutual Fund	34,60,461	13
Less:-		
Ind AS adjustment for fair valuation of Investment (Mark to market loss of Mutual fund as on 31.03.2018)	12,17,377	13
Total showing as dividend at Note no 21 (refer page 50 of PB) in audited financial statement	22,43,084	

6. CBDT circular dated 11.05.2014 cannot override the expressed provisions of section 14A rw 8D. The said contention is supported by following judicial pronouncement are as under :-

- *PCIT vs. IL& FS Energy Development Pvt. Limited (399 ITR 483) Delhi HC.(Refer page no 73-179 of PB)*
- *CIT vs. Greenworld corporation , [(2009) 314 ITR0081],Apex Court (Refer page no 165-168 of PB)*

7. There are numbers of judgements of Jurisdiction ITAT where in the ITAT has held that if the Interest free fund is sufficient to cover the investment or in case of no dividend income earned during the year, section 14A cannot be invoked. Further, Jurisdiction ITAT decisions are binding to the lower authorities. Therefore, in the present case also it is binding to the lower authorities. The said contention that Jurisdictional ITAT decisions are binding to lower authorities is supported by various judicial pronouncement are as under: -

- *Union of India vs. Kamalakshi Finance Corporation (24.09.1991) , AIR 1992 SC 711(Apex Court) (Refer page no 10-12 of PB-II)*
- *Agrawal warehousing & Leasing Limited vs. CIT, HC of Madhya Pradesh, [(2002) 70 CCH 0522] (Refer page no 13-14 of PB-I)*
- *Ganesh Builder vs. CIT, [(2013) 35 CCH 0306], ITAT Jodhpur Bench (Refer page no 15-17 of PB-II)*

8. In view of all the aforesaid facts and case laws relied upon the assessment order set aside by the Pr. CIT is not correct and therefore the order passed u/s.263 deserves to be quashed.”

7. Reiterating the submission of the assessee before the Ld. Pr. CIT, the Ld. AR submitted that as the contention raised by him before Ld. Pr. CIT were not properly considered, therefore, setting aside the order of the A.O is erroneous in

so far as it was prejudicial to the interest of the revenue was bad in law. The Ld. AR further submitted that there were number of case laws involved in the assessee's contention raised which are extracted hereinabove in the written submission of the Ld. AR. The first contention of the assessee is that if there is no dividend income earned by the assessee during the relevant assessment year there could not be any addition in the hands of the assessee and if there is certain exempt income then the addition should be restricted to the amount of such exempt income. Second contention raised by the assessee is that sufficient interest free funds were available with the assessee to cover up the investment therefore, there could not be any addition. Third contention of the assessee pertains to the CBDT Circular that CBDT circular cannot be the basis for making any addition, since, jurisdictional ITAT had dealt and decided the identical issue pertaining to the addition u/s.14A and such order is binding upon the A.O. Under such circumstances, it was submitted by the Ld. AR that the order of the A.O could not be treated as erroneous in so far as it was prejudicial to the interest of the revenue.

8. The Ld. AR also submitted that calculation of the proposed addition u/s. 14A r.w.r. 8D made by the Pr. CIT in the order u/s.263 of the Act was found to be on the basis of incorrect working and on the basis of old rules which are amended and thus are irrelevant for the year under consideration, therefore, what should be the correct working, the same was furnished by the Ld. AR which is available at Page 84 of paper book and extracted as under:

ABIS EXPORT (INDIA) PRIVATE LIMITED**A.Y. 2018-19****REVISED WORKING OF 14A AS PER ORDER U/S 263**

PARTICULARS	SI.NO	(Amount in ₹.)
INVESTMENT AS ON 01.04.2017	A	32,78,38,194.00
INVESTMENT AS ON 31.03.2018	B	32,78,38,194.00
ANNUAL AVERAGE OF THE MONTHLY AVERAGE OF OPENING AND CLOSING VALUE OF THE INVESTMENT	$C=(A+B)/2$	32,78,38,194.00
i) THE AMOUNT OF EXPENDITURE DIRECTLY RELATING TO INCOME WHICH DOES NOT FORM PART OF TOTAL INCOME	D	-
II) AN AMOUNT EQUAL TO ONE PER CENT OF THE ANNUAL AVERAGE OF THE MONTHLY AVERAGE OF THE OPENING AND CLOSING BALANCES OF THE VALUE OF	$E=C*1\%$	32,78,381.94

9. The Ld. CIT-DR on the other hand vehemently supported the order of the Pr. CIT, wherein opportunity of being heard was granted to the assessee and also to submit his contention before the A.O, was provided, therefore, the order of the Pr. CIT cannot be termed as perverse, cryptic and bad in law and the same deserves to be sustained.

10. We have heard the rival contentions and perused the material available on record as well as case laws submitted by the assessee for our consideration. It is a matter of fact borne from record that the case of the assessee was selected for complete scrutiny wherein any addition u/s.14A r.w.r. 8D was supposed to be examined by the A.O. While referring to the copy of notice u/s.143(2) of the Act dated 23.09.2019 at Point No.4, the A.O has mentioned that in the course of assessment proceedings, if required, specific questionnaire (s) or requisition(s)

for information/document may be issued subsequently. Such a mention by the A.O was found to be correct as per draft assessment order wherein it is stated that notice u/s.142(1) a/w. questionnaire was issued and served on the assessee on 13.01.2021 and 22.01.2021 through system and in response, the assessee has filed details through system on the manufacturing and trading of poultry feeds, cattle feed, pet food, aqua feed and soya value added products and poultry equipment etc. respectively.

11. Apart from the aforesaid facts, on perusal of the records placed before us, ostensibly, it was not emanating that the A.O had made any enquiry with respect to the disallowance u/s.14A r.w.s. 8D. Also, no document or evidence furnished by the assessee in the paper book which shows that any such query was raised and answered by the assessee. Therefore, the first question that such information was never called for by the A.O nor examination or analysis in light of the provisions of Section 14A. Therefore, the order of the Ld. A.O is found to be erroneous when enquires were not made by the A.O which are mandatory and such situation is squarely comes within the ambit of Explanation 2 to Section 263 of the Act.

12. On the aspect pertains to making an addition u/s.14A of the Act, ITAT, Raipur had taken a view in various cases one of them is reproduced herein under wherein it has been held that in case there is no exempt income earned during the year by the assessee, then, disallowance u/s.14A cannot be invoked. The ITAT, Raipur in the case of Sgepl Infrastructure Pvt. Ltd. Vs. ACIT-3(1), Raipur, ITA No.65/RPR/2018 dated 02.06.2022 on the issue had held as under:

“8. Before the assessee has raised three grounds and first ground being general in nature need not require adjudication. In respect of ground no. 2 after having given a thoughtful consideration to the contentions advanced by the Ld. Authorized

Representative of both the parties, we find substantial force in the claim of the Ld. AR that now when the assessee company had admittedly not received any exempt income during the year under consideration, therefore, no disallowance u/s.14A of the Act was called for in its hand. Our aforesaid view is fortified by the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Chettinad Logistics Pvt. Ltd. (2018) 257 Taxmann 2 (SC) and also of the Hon'ble High Court of Delhi in the case of Cheminvest Limited Vs. CIT, (2015) 378 ITR 33 (Delhi). Backed by the aforesaid judicial pronouncements, it was submitted by the Ld. AR that as per the settled position of law no disallowance u/s.14A in absence of any exempt income could have been made in the hands of the assessee. In the backdrop of the facts involved in the case before us read with the aforesaid settled position of law we find substance in the claim of the Ld. AR that now when the assessee company had not received any exempt dividend income during the year under consideration, therefore, no disallowance u/s.14A of the Act was warranted in its case. We, thus, in terms of our aforesaid observations vacate the disallowance of Rs.21,99,136/- made by the assessing officer and thus the ground of appeal no. 2 is allowed.”

Similar view has been taken by the Hon'ble Delhi High Court in the case of PCIT Vs. Oil Industries Development Board (2018) 101 CCH 452 (Del-HC) and that of CIT Vs. Holcim India Pvt. Ltd., (2014) 90 CCH 81 (Del-HC).

12.1 Another contention of the assessee that, if Sufficient interest free fund are available with the assessee to cover the Investment, then disallowance under section 14A r.w.r. 80D cannot be triggered. We find force in this contention also, in view of various judgments relied upon by the Ld. AR, listed as under: -

- *South India Bank Limited vs. Commissioner of Income Tax [(2021) 112 CCH 0005 ISCC] -Refer page no 85-87 of PB*
- *CIT vs. Reliance Industries Limited [(2019) 104 CCH 0038], Apex Court-Refer page no 88-91 of PB*
- *PCIT vs. M/s Ashok Apprels Pvt. Ltd [(2020) 423 ITR 0412], Mumbai HC -Refer page no 92-93 of PB*
- *Shree Nakoda Industries Limited vs. DCIT , ITA No. 81/RPR/2016, Raipur Bench of ITAT - Refer page no 101-108 of PB*
- *M/s S.B. Multimedia Pvt. Ltd vs. DCIT , ITA No. 173/RPR/2016 , Raipur Bench of ITAT- Refer page no 109-114 of PB*
- *DCIT vs. Arvind Smart Spaces Ltd. [(2020) 58 CCH 0311], Ahmd. Trib Refer page no 94-997 of PB*
- *Maruti Udyog Limited vs. DCIT [(2005) 92 TTJ 987] Del Trib :- Refer page no 98-100 of PB*

13. In view of the aforesaid judicial pronouncements and settled principle of law laid down by the Hon'ble high court and Hon'ble Apex Court, we are of the considered view that, if the assessee company had not earned any exempt income during the year under consideration or there are sufficient funds available to cover the investment in question then no disallowance u/s 14A can be made. Such contentions were raised by the assessee before the Ld PCIT also but the same were disregarded on account of insufficient information or by distinguishing the interpretation of judgments. However, in our considered opinion the settled position of law as laid down by the Hon'ble Apex Court and various high courts, the issues are now reached to a logical conclusion, but of course with the verification of facts. Revenue authorities are thus duty bound to follow such ratio of law.

14. After holding that the order of Ld AO considered for revision u/s 263 of Act by Ld PCIT, was an erroneous order and dealing with the contention of the assessee qua the disallowance under the provisions of section 14A r.w.r.8D. Now, the question remains whether the order passed by the A.O, was prejudicial to the interest of the revenue or not? To answer this question that whether the assessee company had not earned any exempt income during the year under consideration or there are sufficient funds available to cover the investment in question, since the relevant facts were not verified by the Ld AO neither Ld. PCIT has made any observation in this context, therefore, the order of the Ld. Pr. CIT where in such issue has been raised and responded by the assessee but not found satisfactory by the Ld PCIT, it was concluded that the order of the A.O is erroneous in so far it was prejudicial to the interest of the revenue and the same was set aside for verification and enquiry by the A.O, found to be on right footing,

therefore, no infirmity did emerge from the said order. Accordingly, we uphold the same. At the same time, assessee is at liberty to explain its claim and also submitted necessary documents/evidence before the Ld A.O in order to substantiate the contention raised, thus, the order of the Pr. CIT could not be said to be causing any prejudice or damage to the rights of assessee to represent its case, thus, the same though found to be incorrect on account of calculation made qua addition or disallowance u/s.14A r.w.s. 8D could not be termed as inferior, but needs further enquiries and verification of facts.

14. Before parting with, since the matter is remanded back to the file of the A.O to verify the limited aspect as observed by Ld PCIT, we are of the view that the same shall be in consideration of the settled principle of law as laid down in case laws referred to (supra) and our aforesaid observations pertaining to addition/disallowance u/s 14A.

15. In the result, appeal of the assessee is dismissed in terms of our aforesaid observations.

Order pronounced in the open court on 17/10/2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

रायपुर/Raipur; दिनांक Dated 17 /10/2023

SB

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

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

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

// True Copy //

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur

		Date	Initial	
1.	Draft dictated on			Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the Sr.PS			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			