

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 5102/Del/2019  
(Assessment Year: 2014-15)

DCIT,  
Central circle-2,  
Faridabad

(Appellant)

**PAN: AAECA1203A**

Vs. A2Z Infra Engineers Ltd,  
O-116, 1<sup>st</sup> Floor Shopping  
Mall, Arjun Marg, DLF,  
Phase-1, Gurgaon  
(Respondent)

ITA No. 5104/Del/2019  
(Assessment Year: 2014-15)

DCIT,  
Central circle-2,  
Faridabad

(Appellant)

**PAN: AAECA1203A**

Vs. A2Z Green Waste  
Management Ltd,  
Arjun Marg, DLF, Phase-1,  
Gurgaon  
(Respondent)

Assessee by :	Shri Sidharth Kothari, CA
Revenue by:	Shri Zafarul Haque Tanweer, CIT DR
Date of Hearing	08/11/2023
Date of pronouncement	16/01/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA Nos. 5102/Del/2019 and 5104/Del/2019 for AY 2014-15, arises out of the order of the Commissioner of Income Tax (Appeals)-3, Gurgaon [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 671/CIT(A)-3/GGN/2016-17 dated 20.03.2019 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 08.11.2016 and 10.11.2016 by the Assessing Officer, DCIT, Central Circle-II, Faridabad (hereinafter referred to as 'ld. AO').

2. Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience. Both the parties mutually consented that the appeal of the revenue in ITA No. 5102/Del/2019 may be taken as the lead case and the decision rendered thereon would apply with equal force for other appeal of the revenue in ITA No. 5104/Del/2019 also in view of identical facts, identical grounds except with variance in figures.

3. The first effective issue to be decided in all these appeal is as to whether the Id. CIT(A) was justified in deleting the disallowance of expenses made u/s 14A of the Act in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the materials available on record. The assessee company is engaged in providing maintenance and engineering services including supply, erection and maintenance of electrical transmission lines and allied services to power distribution companies. It is not in dispute that the assessee had not earned any exempt income during the year. The Id. AO however proceeded to make disallowance of expenses u/s 14A of the Act by applying the computation mechanism provided in second and third limb of Rule 8D(2) of the Income Tax Rules (hereinafter referred to as the 'Rules'). The Id. CIT(A) deleted the disallowance as there was no exempt income claimed by the assessee. This issue is no longer res integra in view of the decision of the Hon'ble Jurisdictional High Court in the case of PCIT vs Era Infrastructure (India) Ltd reported in 141 taxmann.com 289 (Del HC) wherein it was held that no disallowance u/s 14A of the Act could be made when there is no exempt income. Further it was held that the amendment made by Finance Act, 2022 to section 14A by inserting a non-obstante clause and Explanation will take effect from 1-4-2022 and cannot be presumed to have retrospective effect. Hence the entire arguments advanced by the Id. DR before us had already been addressed in this decision by the Hon'ble Jurisdictional High Court. Hence we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee in this regard. Accordingly, the ground raised by the revenue in this regard is dismissed.

5. The last issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the disallowance of interest u/s 36(1)(iii) of the Act in the facts and circumstances of the instant case.

6. We have heard the rival submissions and perused the materials available on record. The Id. AO observed that the assessee had debited finance cost of Rs 92,28,18,213/- in its profit and loss account. The Id. AO observed that the assessee had given certain interest free advances on one hand and had been paying interest on its borrowings on the other hand. Accordingly, he concluded that the borrowed funds were diverted for non-business purposes. The Id. AO disallowed interest u/s 36(1)(iii) on a proportionate basis to the extent of 12% of interest free advances in the assessment. The assessee furnished the details of loans and advances given by it in the ordinary course of business as under:-

**Long Term Loans and Advances**

Capital Advances	Rs 13,50,99,727/-
Advance recoverable in cash or in kind	Rs 1,06,58,477/-
Total	Rs 14,57,58,204/-

**Short Term Loans and Advances**

Advance recoverable in cash or in kind	Rs 39,20,72,926/-
Loans and Advances to Subsidiaries	Rs 50,80,66,384/-
Total	Rs 90,01,39,310/-

7. It was submitted that all the aforesaid advances were given for the purpose of business of the assessee company and as a measure of commercial expediency. We find that the Id. CIT(A) was apparently convinced with this argument of the assessee that the advances were indeed given by the assessee to various parties including its subsidiaries as a measure of commercial expediency in the ordinary course of business. However, the Id. CIT(A) called for the details of advance given to vendors which remain unadjusted till the date of proceedings before the Id. CIT(A). These details were given by the assessee and tabulated by the Id. CIT(A) in pages 11 and 12 of the order. The Id. CIT(A) found that total advance which remain unadjusted worked out to Rs 10,59,07,288/- and disallowed interest @

12% on the same amounting to Rs 1,27,08,875/-. Remaining disallowance of interest was deleted by the Id. CIT(A). It is pertinent to note that against the disallowance confirmed by the Id. CIT(A), the assessee is not in appeal before us.

8. We find that the Id. CIT(A) on going through the complete details of loans and advances given by the assessee had come to the conscious conclusion that only a sum of Rs 10,59,07,288/- had been advanced for non-business purposes. Hence it could be reasonably inferred that impliedly the Id. CIT(A) had accepted to the fact that the remaining advances were indeed given by the assessee for the purpose of its business as a measure of commercial expediency only. We find that the revenue was not able to bring on record any contrary evidences to the same before us. Once it is proved that the advances were given as a measure of commercial expediency and given in the ordinary course of business, there is no question of disallowance of interest u/s 36(1)(iii) of the Act. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of S A Builders Ltd reported in 288 ITR 1 (SC). Accordingly, we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee in this regard. Accordingly, the ground raised by the revenue in this regard is dismissed.

9. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 16/01/2024.

-Sd/-  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 16/01/2024  
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi