

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

[Before Shri Sonjoy Sarma, Judicial Member &  
Shri Girish Agrawal, Accountant Member]

**I.T.A. No. 1165/Kol/2023**  
**Assessment Year : 2017-18**

M/s. Vedanga Vinimoy Private Limited	vs	ITO, Ward-2(1), Kolkata
PAN: AAACV 9110 B		
Appellant		Respondent

Date of Hearing	02.01.2024
Date of Pronouncement	30.01.2024
For the Assessee	Shri Ankit Jalan, Advocate
For the Revenue	Shri Anindya Kumar Bandopadhyay, Addl. CIT

**ORDER**

**Per Sonjoy Sarma, JM:**

This appeal of the assessee for the assessment year 2017-18 is directed against the order dated 27.02.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the 'Id. CIT(A)']. The assessee has raised the following grounds of appeal:

*"1. For that on the facts and circumstances of the case, the impugned order passed by the Ld. A.O. as well as the appellate order passed by the Ld. CIT(A), NFAC confirming the order of the Ld. A.O. is unjustified, perverse, arbitrary, whimsical, biased and bad in law.*

*2. For that on the facts and in the circumstances of the case, the Ld. A.O. as well as Ld. CIT(A), NFAC was vehemently wrong and unjustified in disallowing expenditure to the tune of Rs 3,20,125/- invoking the provision of section 14A of the Income Tax Act, 1961, even though there was no exempt income earned by the appellant. The addition to the tune of Rs. 3,20,125/- is unjustified and liable to be deleted.*

*3. For that on the facts and circumstances of the case, the Ld. CIT(A), NFAC grossly erred in not considering the facts of the case that there was no exempt income earned by the appellant before confirming the addition*

*made by the Ld. A.O. of Rs 3,20,125/- by invoking the provision of section 14A of the Income Tax Act, 1961.*

*4. For that on the facts and circumstances of the case, the Ld. CIT(A), NFAC was vehemently wrong and unjustified in applying the amendments introduced in the provisions of section 14A of the Income Tax Act, 1961, vide Finance Act, 2022 retrospectively instead of the fact that the non-obstante clause introduced has a prospective effect from 1<sup>st</sup> April 2022 thus the disallowance of expense amounting to Rs 3,20,125/- is devoid of merit and is gross violation of the principles of natural justice hence is liable to be quashed. Relief Claimed: The addition to the tune of Rs 3,20,125/ - is liable to be deleted.*

*5. That the appellant craves leave to add/alter, modify, amend, delete and/or withdraw any or all of the grounds of appeal.”*

2. At the outset, we find that there is a delay of 187 days in filing of the appeal by the assessee. We after perusing the petition for condonation are convinced that the assessee was prevented by sufficient cause from filing the appeal in time. Hence delay is condoned and appeal is admitted for adjudication.

3. Though the assessee has taken five grounds of appeal. However, the main grievance revolves around a single issue stating that ld. CIT(A) has erred in confirming the disallowance of Rs. 3,20,125/- while framing the assessment year in question. The instant disallowance have been made by the AO u/s 14A of the Act, 1961 ('the Act') read with Rule 8D of the Income Tax Rules, 1962 ('the Rules').

4. At the time of hearing, the ld. AR has submitted before the bench stating that the ld. Assessing Officer has disallowed the expenditure with the help of Rule 8D of the Income Tax Rules and such disallowance has been made for the reason that the assessee

must have incurred expenditure for maintaining the investment in shares.

5. The ld. Counsel for the assessee submitted before the bench that the assessee has no exempt income during the assessment year in question hence there should not be any disallowance u/s 14A r.w.r. 8D of I.T. Rules. In order to substantiate his contention, the ld. AR relied upon the judgement of the Hon'ble Gujarat High Court decision in the case of *CIT vs. Corroteck Engineering Pvt. Ltd.* 372 ITR 97. During the course of hearing, the amendment to Section 14A of the Act by way of Finance Act, 2022, has been brought to our notice by the Revenue but the ld. Counsel for the assessee put reliance upon the decision of the Hon'ble Delhi High Court in the case of *Pr. CIT vs. Era Infrastructure (India) Ltd.* in ITA 204/2022 dt. 20/07/2022. In this judgment it has been held that the amendments made in Section 14A of the Act by Finance Act, 2022, will be applicable prospectively and not on pending appeals. It is a very brief judgment and, therefore, we deem it proper to take note of the complete judgment, which reads as under:-

*"3. He submits that the ITAT erred in relying on the decision of this Court in PCIT vs. IL & FS Energy Development Company Ltd., 2017 SCC Online Del 9893 (wherein it has been held that no disallowance under [Section 14A](#) of the Act can be made if the assessee had not earned any exempt income), as the revenue has not been accepted the said decision and has preferred an SLP against the said decision.*

*4. Learned counsel for the petitioner also submits that in view of the amendment made by the [Finance Act, 2022](#) to [Section 14A](#) of the Act by inserting a non obstante clause and an explanation after the proviso, a change in law has been brought about and consequently, the judgments relied upon by the authorities below including PCIT vs. IL & FS Energy Development Company Ltd (supra) are no longer good law. The amendment to [Section 14A](#) of the Act is reproduced hereinbelow:-*

"Amendment of [section 14A](#).

In [section 14A](#) of the Income-tax Act, -

(a) in sub-section (1), for the words "For the purposes of", the words "Notwithstanding anything to the contrary contained in this Act, for the purposes of" shall be substituted;

(b) after the proviso, the following Explanation shall be inserted, namely:-  
"[Explanation.--For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, 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 income not forming part of the total income.]"

Signature Not Verified Digitally Signed By:JASWANT SINGH RAWAT  
Signing Date:21.07.2022

5. However a perusal of the Memorandum of the Finance Bill, 2022 reveals that it explicitly stipulates that the amendment made to [Section 14A](#) will take effect from 1st April, 2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years. The relevant extract of Clauses 4, 5, 6 & 7 of the Memorandum of Finance Bill, 2022 are reproduced hereinbelow:

"4. In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert an Explanation to [section 14A](#) of the Act to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section 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.

5. This amendment will take effect from 1st April, 2022.

6. It is also proposed to amend sub-section (1) of the said section, so as to include a non-obstante clause in respect of other provisions of the [Income-tax Act](#) and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.

7. This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years."  
 (emphasis supplied)

6. Furthermore, the Supreme Court in *Sedco Forex International Drill. Inc. v. CIT*, (2005) 12 SCC 717 has held that a retrospective provision in a tax act which is "for the removal of doubts" cannot be presumed to be retrospective, even where such language is used, if it alters or changes the law as it earlier stood. The relevant extract of the said judgment is reproduced herein below:

Signature Not Verified Digitally Signed By:JASWANT SINGH RAWAT  
 Signing Date:21.07.2022 "9. The High Court did not refer to the 1999 Explanation in upholding the inclusion of salary for the field break periods in the assessable income of the employees of the appellant. However, the respondents have urged the point before us.

10. In our view the 1999 Explanation could not apply to assessment years for the simple reason that it had not come into effect then. Prior to introducing the 1999 Explanation, the decision in *CIT v. S.G. Pgnatale* [(1980) 124 ITR 391 (Guj)] was followed in 1989 by a Division Bench of the Gauhati High Court in *CIT v. Goslino Mario* [(2000) 241 ITR 314 (Gau)] . It found that the 1983 Explanation had been given effect from 1-4-1979 whereas the year in question in that case was 1976-77 and said: (ITR p. 318) "[I]t is settled law that assessment has to be made with reference to the law which is in existence at the relevant time. The mere fact that the assessments in question has (sic) somehow remained pending on 1-4-1979, cannot be cogent reason to make the Explanation applicable to the cases of the present assesseees. This fortuitous circumstance cannot take away the vested rights of the assesseees at hand."

11. The reasoning of the Gauhati High Court was expressly affirmed by this Court in *CIT v. Goslino Mario* [(2000) 10 SCC 165 : (2000) 241 ITR 312] . These decisions are thus authorities for the proposition that the 1983 Explanation expressly introduced with effect from a particular date would not effect the earlier assessment years.

12. In this state of the law, on 27-2-1999 the Finance Bill, 1999 substituted the Explanation to [Section 9\(1\)\(ii\)](#) (or what has been referred to by us as the 1999 Explanation). [Section 5](#) of the Bill expressly stated that with effect from 1-4-2000, the substituted Explanation would read:

"Explanation.--For the removal of doubts, it is hereby declared that the income of the nature referred to in this clause payable for—

(a) service rendered in India; and

(b) the rest period or leave period which is preceded and Signature Not Verified Digitally Signed By:JASWANT SINGH RAWAT Signing Date:21.07.2022 succeeded by services rendered in India and forms part of the service contract of employment, shall be regarded as income earned in India."

The Finance Act, 1999 which followed the Bill incorporated the substituted Explanation to [Section 9\(1\)\(ii\)](#) without any change.

13. The Explanation as introduced in 1983 was construed by the Kerala High Court in [CIT v. S.R. Patton](#) [(1992) 193 ITR 49 (Ker)] while following the Gujarat High Court's decision in S.G. Pgnatale [(1980) 124 ITR 391 (Guj)] to hold that the Explanation was not declaratory but widened the scope of [Section 9\(1\)\(ii\)](#). It was further held that even if it were assumed to be clarificatory or that it removed whatever ambiguity there was in [Section 9\(1\)\(ii\)](#) of the Act, it did not operate in respect of periods which were prior to 1-4-1979. It was held that since the Explanation came into force from 1-4-1979, it could not be relied on for any purpose for an anterior period.

14. In the appeal preferred from the decision by the Revenue before this Court, the Revenue did not question this reading of the Explanation by the Kerala High Court, but restricted itself to a question of fact viz. whether the Tribunal had correctly found that the salary of the assessee was paid by a foreign company. This Court dismissed the appeal holding that it was a question of fact. ([CIT v. S.R. Patton](#) [(1998) 8 SCC 608] .)

15. Given this legislative history of [Section 9\(1\)\(ii\)](#), we can only assume that it was deliberately introduced with effect from 1-4- 2000 and therefore intended to apply prospectively [[See CIT v. Patel Bros. & Co. Ltd.](#), (1995) 4 SCC 485, 494 (para 18) : (1995) 215 ITR 165] . It was also understood as such by CBDT which issued Circular No. 779 dated 14-9-1999 containing Explanatory Notes on the provisions of the [Finance Act](#), 1999 insofar as it related to direct taxes. It said in paras 5.2 and 5.3. "5.2 [The Act](#) has expanded the existing Explanation which states that salary paid for services rendered in India shall be regarded as income earned in India, so as to specifically provide that any salary payable for the rest period or leave period which is both preceded and succeeded by

service in India and forms part of the service contract of employment will also be regarded as income earned in India.

Signature Not Verified Digitally Signed By:JASWANT SINGH RAWAT  
 Signing Date:21.07.2022 5.3 This amendment will take effect from 1-4-2000, and will accordingly, apply in relation to Assessment Year 2000-2001 and subsequent years."

16. The departmental understanding of the effect of the 1999 Amendment even if it were assumed not to bind the respondents under Section 119 of the Act, nevertheless affords a reasonable construction of it, and there is no reason why we should not adopt it.

17. As was affirmed by this Court in *Goslino Mario* [(2000) 10 SCC 165 : (2000) 241 ITR 312] a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. (See also [Reliance Jute and Industries Ltd. v. CIT](#) [(1980) 1 SCC 139 : 1980 SCC (Tax) 67] .) An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section [See [Sonia Bhatia v. State of U.P.](#), (1981) 2 SCC 585, 598 : AIR 1981 SC 1274, 1282 para 24] . If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force [See [Shyam Sunder v. Ram Kumar](#), (2001) 8 SCC 24 (para 44); [Brij Mohan Das Laxman Das v. CIT](#), (1997) 1 SCC 352, 354; [CIT v. Podar Cement \(P\) Ltd.](#), (1997) 5 SCC 482, 506] . But if it changes the law it is not presumed to be retrospective, irrespective of the fact that the phrases used are "it is declared" or "for the removal of doubts"."

(emphasis supplied)

7. The aforesaid proposition of law has been reiterated by the Supreme Court in [M.M Aqua Technologies Ltd. V. Commissioner of Income Tax, Delhi-III](#), 2021 SCC OnLine SC 575. The relevant portion of the said judgment is reproduced hereinbelow:-

"22. Second, a retrospective provision in a tax act which is "for the removal of doubts" cannot be presumed to be retrospective, even where such language is used, if it alters or changes the law as it earlier stood. This was stated in *Sedco Forex International* Signature Not Verified Digitally Signed By:JASWANT SINGH RAWAT Signing Date:21.07.2022 Drill. [Inc. v. CIT](#), (2005) 12 SCC 717 as follows:

17. As was affirmed by this Court in *Goslino Mario* [(2000) 10 SCC 165] a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. (See also [Reliance Jute and Industries Ltd. v. CIT](#) [(1980) 1 SCC 139].) An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section [See [Sonia Bhatia v. State of U.P.](#), (1981) 2 SCC 585]. If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force [See [Shyam Sunder v. Ram Kumar](#), (2001) 8 SCC 24; [Brij Mohan Das Laxman Das v. CIT](#), (1997) 1 SCC 352; [CIT v. Podar Cement \(P\) Ltd.](#), (1997) 5 SCC 482]. But if it changes the law it is not presumed to be retrospective, irrespective of the fact that the phrases used are "it is declared" or "for the removal of doubts".

18. There was and is no ambiguity in the main provision of [Section 9\(1\)\(ii\)](#). It includes salaries in the total income of an assessee if the assessee has earned it in India. The word "earned" had been judicially defined in *S.G. Pgnatale* [(1980) 124 ITR 391 (Guj)] by the High Court of Gujarat, in our view, correctly, to mean as income "arising or accruing in India". The amendment to the section by way of an Explanation in 1983 effected a change in the scope of that judicial definition so as to include with effect from 1979, "income payable for service rendered in India".

19. When the Explanation seeks to give an artificial meaning to "earned in India" and brings about a change effectively in the existing law and in addition is stated to come into force with effect from a future date, there is no principle of interpretation which would justify reading the Explanation as operating retrospectively."

(emphasis supplied) Signature Not Verified Digitally Signed By: JASWANT SINGH RAWAT Signing Date: 21.07.2022.

8. Consequently, this Court is of the view that the amendment of [Section 14A](#), which is "for removal of doubts" cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood.

9. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date. Consequently, in view of the judgments passed by the Supreme Court in [Kunhayammed and Others vs. State of Kerala and](#)

Another, (2000) 6 SCC 359 and Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1, the present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench in PCIT vs. IL & FS Energy Development Company Ltd (supra) and Cheminvest Limited vs. Commissioner of Income Tax-VI, (2015) 378 ITR 33.

10. Accordingly, the appeal and application are dismissed. However, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the SLP filed in the case of PCIT vs. IL & FS Energy Development Company Ltd (supra).”

6. Respectfully following the decision of the Hon’ble Delhi High Court coupled with the proposition of law laid down by the Hon’ble Gujarat High Court, “It is to be held that in case no exempt income has been earned by the assessee before the application of Finance Act, 2022, then, no disallowance u/s 14A r.w.r. 8D has to be made.” In view of the above, we allow the appeal of the assessee and delete the addition confirmed by the ld. CIT(A) in the impugned order.

7. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in the open court on 30.01.2024.

Sd/-

Sd/-

(Girish Agrawal)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 30.01.2024  
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s. Vedanga Vinimoy Private Limited, 7, Ganesh Chandra Avenue, 4<sup>th</sup> Floor, Bowbazar, Kolkata-700 013.
2. Respondent – ITO, Ward-37(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata