

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.936/Kol/2023
Assessment Year : 2017-18

Arthada Commerce Pvt. Ltd.....Appellant
Chandimara, Sapuipara,
P.O. Sapuipara, P.S.Nischinda,
Howrah-711206.
[PAN: AANCA4546P]

vs.

DCIT, Circle-13(1), Kolkata..... Respondent

Appearances by:

Shri Sourabh Gupta, AR, appeared on behalf of the appellant.

Shri B. K. Singh, JCIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 01, 2024

Date of pronouncing the order : February 02, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 11.08.2023 of the National Faceless Appeal Centre [hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The sole grievance raised by the assessee in this appeal is relating to the action of the ld. CIT(A) in disallowing a sum of Rs.12,82,633/- made by the Assessing Officer by invoking the provisions of section u/s 14A of the Act.

3. The ld. AR of the assessee has submitted that the assessee did not earn any tax exempt income during the year under consideration. He in this respect has relied upon the following case laws:

Cheminvest Ltd. vs. CIT 378 ITR 33 (Del).

CIT vs. M/s. Holcim India Pvt. Ltd. in ITA no. 486/2014 and ITA no. 299/2014; Judgment dt. 5-9-2014

CIT v. Shivam Motors (P.) Ltd. [2015] 230 Taxman 63

CIT vs. Ashika Global Securities Ltd. (G.A. No. 2122 of 2014) dt. 11/06/2018

In these case laws, Hon'ble High Courts have been unanimous to hold that where the assessee has not derived any tax exempt income from investments, then no disallowance is attracted u/s 14A of the Act.

4. The ld. D/R, however, has relied upon the newly inserted explanations to Section 14A of the Act, which is extracted for the sake of ready reference:-

“14A. [(1)] [Notwithstanding anything to the contrary contained in this Act, for the purposes of] computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.]

[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.]”

The ld. D/R has further relied on the decision of the Co-ordinate Bench of **ITAT Guwahati in the case of ACIT vs. Williamson Financial Services Ltd. reported in [2022] 140 taxmann.com 164** (Guwahati - Trib.). (Judicial Member herein being party to the said decision), to

submit that the said explanation to Section 14A of the Act being clarificatory, hence is retrospectively applicable.

5. However, the ld. A/R, has relied upon the recent decision of the Hon'ble Delhi High Court in the case of **PCIT Vs. Era Infrastructure (India) Ltd. (ITA 204/2022) judgment dt. 20/07/2022**, wherein, it has been held that the aforesaid explanation inserted to Section 14A of the Act is applicable prospectively.

6. Respectfully abiding by the principle of judicial hierarchy, the Hon'ble Delhi High Court being a Higher Court, and as no decision of the Hon'ble Jurisdictional High Court or Hon'ble Supreme Court is available on this issue as yet, hence applying the said decision of the Hon'ble Delhi High Court, we allow the appeal of the assessee.

6. In the result, the appeal of the stands allowed.

Kolkata, the 2nd February, 2024.

Sd/-

[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 02.02.2024.

RS

Copy of the order forwarded to:

1. Arthada Commerce Pvt. Ltd
2. DCIT, Circle-13(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches