

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI SANDEEP SINGH KARHAIL, JM

**ITA No. 3054/Mum/2023**

(Assessment Year: 2013-14)

Dy. Commissioner of Income  
Tax, Central Circle 5(4)  
Room No. 1927, 19<sup>th</sup> Floor,  
Air India Building Nariman Point  
Mumbai-400 021

Vs.

Perfect Engineering Products  
Ltd.  
1101/1, Viraj Tower,  
Junction of Andheri Kurla  
Road,  
Western Express Highway  
Andheri (E),  
Mumbai-400 059

**(Appellant)**

**(Respondent)**

**PAN No. AABCP6180E**

**Assessee by** : Ms. Mamta Gada, AR  
**Revenue by** : Shri H.M. Bhatt, DR

**Date of hearing:** 21.03.2024  
**Date of pronouncement :** 22.03.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by The Deputy Commissioner Of Income Tax, Central Circle – 5 (4), Mumbai (the learned AO) for assessment year 2013 – 14 against appellate order passed by the learned CIT – A – 53, Mumbai dated 19/6/2023 wherein the appeal filed against the assessment order passed under section 143 (3) of the act dated 21/3/2016 by the learned assessing officer was partly allowed.

02. The learned AO is aggrieved raised following grounds:-

*"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing Research and Development expenses as a revenue expenditure ignoring the fact that expenditure on Research & Development is bound to result in enduring benefit for a longer period and hence the expenditure cannot be treated as revenue expenditure and Revenue has filed appeals before Hon'ble Bombay High Court for A.Yrs. 2007-08 and 2008-09 vide ITXA/879/2014 and ITXA/375/2014 against ITAT's order No. 33 & 36 /Mum/2012 dated 31.07.2013 on this issue which are pending for adjudication?*

*2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting disallowance made u/s 14A read with Rule 8D without discussing the issue on merits and merely relying on the jurisdictional High Court decision rendered in the case of PCIT Vs. Ballarpur Industries Ltd. in ITA No. 51 of 2016 wherein Hon'ble High Court dismissed the Revenue appeal for the reason that no question of Law is involved therein?*

*3. Whether on the facts and circumstances of case and in law, the Ld. CIT(A) was justified in ignoring the clarificatory Explanation of section 14A(1) inserted vide the Finance Act 2022 that the provisions of this section shall apply and shall be deemed to have always applied even in a case when exempt income has not accrued or arises or has not been*

*received during the previous year but expenditure has been incurred during the said previous year in relation to earning of such exempt income by relying on the fact that though the said explanation has been inserted vide the Finance Act 2022 but the provisions of section 14A as per the said explanation cannot be treated as retrospective in view of the decision Hon'ble Delhi High Court in the case of M/s. Era infrastructure (I) Ltd. vide in Income Tax Act, 1961 No. 204/2022 & CM APPL. 31445/2022 dated 20.07.2022 ?"*

03. Brief facts of the case shows that assessee is a company engaged in manufacturing automobile parts. Return of income was filed by the assessee on 30 September 2013 at Rs. Nil. The return was processed under section 143 (1) of the act. The case was selected for scrutiny by issue of notice under section 143 (2) of the act.
04. During the course of assessment proceedings it was found that assessee company has shown an addition of ₹ 27,022,304/- as research and development expenditure treating it as capital expenditure as intangible assets i.e. development expenditure. However as per the computation of total income filed by the assessee it has claimed the entire expenditure as deduction under section 37 (1) of the act. Thus assessee in its accounts treated this expenditure as capital expenditure and in computation of total income claimed it as revenue expenditure treating it as expenditure wholly and exclusively incurred for the

purposes of the business. The learned assessing officer questioned the assessee on this.

05. Assessee explained that identical issue arose in the case of the assessee for earlier assessment years and disallowances made have been allowed by the income tax appellate Tribunal. However the learned assessing officer held that revenue has challenged the decision of the coordinate bench before the honourable Bombay High Court and therefore it disallowed the resultant research and development expenditure of ₹ 27,022,304/- as capital expenditure but allowed depreciation at the rate of 25% on the same.
06. The another issue of the contention in the appeal is that the learned AO noted that assessee has made an investment of ₹ 6.37 crores in the balance sheet however no disallowance is made under section 14 A of the act. The AO questioned the assessee and thereafter computed the disallowance by invoking the provisions of rule 8D amounting to ₹ 1,519,149.
07. Several other disallowances were made but which are not in dispute before us and therefore based on this the computation of total income was made by the learned assessing officer at Rs. Nil after setting off of the brought forward depreciation by order dated 21/3/2016 passed under section 143 (3) of the act.

08. The assessee aggrieved with the same preferred an appeal before the learned CIT – A. The learned CIT – A category noted that
- i. That issue of disallowance of research and development expenses is squarely covered in favour of the assessee by the decision of the coordinate bench holding it to be revenue expenditure against the finding of the learned assessing officer that it is a capital expenditure. Accordingly the net disallowance of ₹ 22,041,893/- made by the AO has deleted.
  - ii. With respect to the disallowance under section 14 A of the act the learned CIT – A has categorically noted that AO contended before the assessing officer that it has not incurred any expenditure for earning any exempt income and has also not claimed any income as exempt. The learned CIT – A relying on the decision of the honourable Delhi High Court in case of Era infrastructure (India) Ltd in ITA number 204/2022 and CM application 31445/2022 dated 20/7/2022 deleted the disallowance under section 14 A. He further held that when there is no exempt income earned by the assessee no disallowance can be made under that section. He further held that the introduction of explanation to section 14 A inserted by The Finance Act 2022 is not clarificatory in nature but applies prospectively.
09. The learned assessing officer is aggrieved with both the above issues and is in appeal before us.



010. The learned departmental representative vehemently supported the order of the learned assessing officer.
011. Before us it was submitted by the learned authorised representative that the above assessee company has been referred to the corporate insolvency resolution process and ARCK resolution professional LLP has been appointed as resolution professional. It was the claim of the learned authorised representative that no order can be passed against the assessee in view of pending resolution process. No arguments on merits were made.
012. We have carefully considered the rival contention and perused the orders of the lower authorities. The basic intent of Insolvency resolution processes is that the assets of the corporate debtor should not be further impaired during the resolution process. However in the present case both the issues are covered in favour of the assessee, first by the decision of the coordinate bench in case of research and development expenditure and second by the honourable Delhi High Court and jurisdictional High Court with respect to the disallowance under section 14 A of the act.
013. So far as on the first issue whether the research and development expenditure claimed by the assessee is revenue expenditure or capital expenditure has already been decided by the coordinate bench in favour of the assessee where the revenue has challenged such order of the coordinate bench before the honourable Bombay High Court. But that cannot come into the way of disposal of



this ground of appeal against the learned assessing officer following the decision of the coordinate bench in assessee's own case for earlier year. Accordingly we dismiss ground number 1 of the appeal.

014. With respect to the disallowance under section 14 A of the act we find that assessee has not earned any exempt income during the year, so no disallowance can be made. Therefore the issue is squarely covered in favour of the assessee by the decision of the honourable jurisdictional High Court in case of PCIT versus Ballarpur industries limited. Further with respect to the introduction of explanation to section 14 A of the act by the finance act 2022, honourable Delhi High Court has dealt with this issue in case of Era infrastructure Ltd wherein it has been held that the amendment made is prospective in nature. Accordingly, we dismiss ground number 2 and 3 of the appeal.

015. In the result, appeal filed by the learned AO is dismissed.

Order pronounced in the open court on 22.03.2024.

Sd/-  
(SANDEEP SINGH KARHAIL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 22.03. 2024  
Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai