

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

I.T.A. No.2067/DEL/2023
Assessment Year 2021-22

DCIT Central Circle – 30 New Delhi	Vs.	Krishak Bharati Cooperative Ltd. A-60, Kailash Colony New Delhi
TAN/PAN: AAAAK 0203 G (Appellant)		(Respondent)

Appellant by:	Shri KVSr Krishna, C.A.		
Respondent by:	Mr. Waseem Arshad, CIT (DR)		
Date of hearing:	16	04	2024
Date of pronouncement:	25	04	2024

ORDER

PER PRADIP KUMAR KEDIA-AM:

The captioned appeal filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-30, New Delhi ('CIT(A)' in short) dated 18.05.2023 arising from the assessment order dated 29.12.2022 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2021-22.

2. As per ground of appeal, the solitary issue in controversy at the instance of the Revenue is towards disallowance of Rs.10,67,35,658/- towards expenditure incurred as attributable to exempt income in terms of section 14A of the Act.

3. When the matter was called for hearing, the learned DR for the Revenue relied upon the first appellate order and the assessment order framed in this regard. The learned DR in furtherance submitted that in view of the clarificatory Explanation inserted to section 14A by the Finance Act, 2022, the provision of section 14A are squarely attracted notwithstanding the presence of exempt income or otherwise.

4. Per contra, the ld. counsel adverted to the assessment order and the first appellate order to submit that the assessee has not earned any exempt income against which the impugned disallowance of expenses under section 14A has been carried out. The learned Counsel submitted that in the event there being no exempt income, the disallowance of expenses carried out under section 14A of the Act is not sustainable in law in consonance with the view taken in assessee's own case in ITA No.581/Del/2022 order dated 15.11.2022. The learned Counsel also referred to the judgment rendered by Hon'ble Delhi High Court in the case of *PCIT vs. M/s ERA Infrastructure (India) Pvt. Ltd. (2022) 448 ITR 674 (Delhi)* to submit that in the light of the aforesaid judgment, the Explanation to section 14A of the Act inserted by Finance Act, 2022 is to be construed prospective in nature and therefore, is applicable to A.Y. 2022-23 onwards. Hence, A.Y. 2021-22 in question is outside the ambit of such Explanation. The learned Counsel thus submitted that impugned disallowance under section 14A is not called for in the absence of any exempt income in view of the erstwhile law covering the issue.

5. We have heard the rival submission on the issue. It was pointed out on behalf of the assessee that the assessee has not earned any exempt income during the year under review. Such fact is vouched from record and also not rebutted on behalf of Revenue. It is the case of the assessee that in the absence of any exempt income, the provisions of Section 14A of the Act could not be invoked. We find merit in the aforesaid plea of the assessee. Various Courts have held in chorus that disallowance under Section 14A of the Act cannot be carried out when no exempt income is found to have been earned by the assessee. The Hon'ble Delhi High Court in *PCIT vs IL&FS Energy Development Company Ltd. (2017) 84 Taxman.com 186 (Delhi)* and the Hon'ble Madras High Court in *CIT v. Chettinad Logistics (P.) Limited (2017) 80 taxmann.com 221(Madras)* have expressed a clear disagreement with CBDT Circular and held that where there is no exempt income in relevant year there cannot be a disallowance of expenditure under S.14A of the Act. Similar proposition

has been laid down by the Hon'ble Gujarat High Court in the case of *Corrtech Energy (P.) Ltd (2014) 45 taxmann.com. 116 (Guj)* and *Pr.CIT vs. India Gelatine and Chemicals Ltd. (2016) 66 taxmann.com 356 (Guj)*. The aforesaid judicial fiat was reiterated by the Hon'ble Delhi High Court in the case of *Joint Investments Pvt. Ltd. vs. CIT reported in 372 ITR 692 (Delhi)* wherein Hon'ble Delhi High Court has categorically ruled that disallowance under S.14A of the Act cannot exceed the amount of tax exempt income. Notably, the SLP filed against the decision of Hon'ble Madras High Court in *Chettinad Logistics (supra)* has been dismissed by Hon'ble Supreme Court in *CIT vs. Chettinad Logistics (P.) Ltd. (2018) 95 taxmann.com 250 (SC)*. Hence, in conformity with the judicial precedents, we find substantial merit in the conclusion drawn by the CIT(A) which essentially holds that Section 14A of the Act can be triggered only if assessee seeks to square off expenditure against the income which does not form part of total income under the Act and Section 14A of the Act cannot be invoked where no exempt income was earned in the relevant assessment year. Thus, in consonance with the judicial precedents, we do not see any infirmity in the conclusion drawn by the CIT(A) for non applicability of Section 14A of the Act in the facts of the case.

6. Significantly, the Hon'ble Delhi High Court in the case of *PCIT vs. M/s. ERA Infrastructure (India) Ltd. (2022) 448 ITR 674 (Delhi)* had an occasion to examine the law on applicability of Section 14A having regard to the newly inserted Explanation to Section 14A as codified by Finance Act, 2022. The Hon'ble High Court held that the aforesaid Explanation cannot be presumed to be retrospective in operation. As a corollary, the law prevailing prior to the insertion of Explanation would continue to apply and shall not be guided by the Explanation being prospective. We therefore see no reason to interfere with the order of the CIT(A) which is in sync with extant law as expounded by judicial precedents.

7. In view of the judicial fiat available in this regard and in consonance with the view taken by the Co-ordinate Bench in assessee's own case, we do not find any infirmity in the order of the CIT(A).

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 25/04/2024

Sd/-

**[SUDHIR PAREEK]
JUDICIAL MEMBER**

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: **25/04/2024**

*Priti Yadav, Sr. PS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar