

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.417/Mum/2024
(Assessment Year :2013-14)**

Infina Finance Private Limited, 7 th Floor, Dani Corporate Park Santacruz Maharashtra-400 098	Vs.	DCIT 2(2)1 Room No.545 Aayakar Bhavan Mumbai – 400 020
PAN/GIR No.AACCM1561D		
(Appellant)	..	(Respondent)

Assessee by	Shri Gautam Nayak
Revenue by	Shri H.M. Bhatt
Date of Hearing	08/05/2024
Date of Pronouncement	10/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 29/11/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2013-14.

2. The only issue raised by the assessee in various grounds is disallowance of Rs.61,92,705/- made by the ld. AO u/s.14A by invoking the provisions under Rule 8D(2)(ii).

3. Here in this case, the brief facts are that the ld. AO noted that assessee has made substantial investments in equity shares and units of mutual fund which are capable of giving rise to dividend income. The assessee in the computation of income had made *suo-motto* disallowance of Rs.17,95,360/- u/s.14A. However, ld. AO had made disallowance of Rs.61,92,705/- by taking 0.5% of average value of investment as disclosed in the balance sheet.

4. Before the ld. CIT (A) had submitted that only those investments should be taken for the purpose of disallowance which had yielded exempt income, whereas in the case of the assessee, one particular investment in Business Standard Limited, which was a strategic investment, the average value of investment was Rs.87,94,68,993/- had not yielded exempt income, which should be removed from the working of disallowance. However, the ld. CIT(A) held that amendment brought in the statute by Finance Act, 2022 w.e.f. 01/04/2022 with insertion of Explanation, even if there is no exempt income u/s.14A, disallowance can be made and such an amendment is retrospective. His relevant observation and finding in this regard reads as under:-

“6.1.10 Thus, the intention of the Legislature in bringing the explanation to Section 14A clearly reinforces the Circular No.5/2014 dated 11/02/2014 regarding the computation of disallowance u/s 14A as per Rule 8D. The question of applicability of the explanation prospectively or retrospectively will only come if there had been no circular. However, the explanation was introduced as clarification and reinforcing the Circular No. 5/2014 issued by CBDT. The reliance placed by the appellant-company on the decision of Hon. Delhi ITAT Special Bench in the case of ACIT Vs. Vireet Investment Pvt.

Ltd., [165 ITD 27] needs to be distinguished as the decision did not consider the clarificatory explanation brought out in Section 14A of the IT Act.

6.1.11 The explanation clarifies that 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 total income. The clarificatory explanation clearly shows that the explanation is retrospective in nature with the use of the words shall be deemed to have always applied..". The decision of the Hon'ble ITAT Guwahati in the case of ACIT vs Williamsons Financial Services Ltd [2022] 140 taxmann.com 164 (Guwahati Trib.) has also held that the explanation to Section 14A inserted with Finance Act, 2022 is clarificatory in nature and that disallowance under Rule 8D was upheld."

4. He has also referred to various cases on certain provisions where retrospective amendment has been upheld.

5. After hearing both the parties and on perusal of the order, we find that the only short issue involved is, whether for the purpose of disallowance u/s.14A, the investments which has not yielded any exempt income during the year should be removed from the working of Rule 8D(2)(iii) for computing disallowance u/s.14A or not. The ld. CIT (A) has relied upon Explanation to Section 14A inserted by the Finance Act 2022 w.e.f. 01/04/2022 which reads as under:-

"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 Income of total income.”

6. The ld. CIT (A) has held that such an amendment has to be applied retrospective, because it is mere clarificatory nature and for which he has referred to certain decisions. Now this issue has been decided by the Hon'ble Delhi High Court firstly in the case of **PCIT vs. Era Infrastructure (India) Ltd., reported in (2022) 448 ITR 624** wherein the Hon'ble High Court held that amendment to Section 14A which is *“for removal of doubts cannot be presumed to be retrospective even if such language is used if it alters or changes the law as it earlier stood.”* For coming to this conclusion, the Hon'ble High Court had referred to the various decisions of the Hon'ble Supreme Court and Hon'ble High Court specially in the case of Sedco Forex International Drill Inc vs. CIT reported in 291 ITR 310 and M.M. Aqua Technologies Ltd., reported in 436 ITR 582.

7. Further, in the case of **DCIT vs. L&FS Energy Development Company Ltd** reported in **(2017) 399 ITR 483** have dealt with the **Circular No.5 of 2014 dated 11/02/2014** which has been referred and relied upon by the ld. CIT(A). The Hon'ble High Court held that the said circular cannot override the expressions provisions of Section 14A r.w.r. 8D. Thus, we agree with the contention of the ld. Counsel that such an amendment cannot be held to be retrospective.

8. Further difference between the working of disallowance by the Id. AO and assessee by removing the strategic investment made in the Business Standard Limit which has not yielded exempt income, is as under:-

ASSESSMENT YEAR 2013-14 (PREVIOUS YEAR ENDED 31ST MARCH 2013)						
APPEAL NO. CIT(A)-5/Mum/IT-40/13-14						
GROUND NO 1 - DISALLOWANCE U/S 14A						
Name of the Company	As per AO			As per Appellant		
	Amount Rs as on 31.3.12	Amount Rs as on 31.3.13	Average	Amount Rs as on 31.3.12	Amount Rs as on 31.3.13	Average
Strategic Investments						
Business Standard Ltd	89,43,57,090	86,45,80,896	87,94,68,993			
Total (A)	89,43,57,090	86,45,80,896				
Stock in trade (B)						
Investment in taxfree bonds						
National Highway Authority of India -	34,61,33,000	-		34,61,33,000		
Indian Railway Finance Corporation Ltd	3,26,26,000	-		3,26,26,000		
Other Investment						
Mahindra Automobile Distributor Pvt Ltd [Equity share]	3,81,64,646	3,81,64,006		3,81,64,646	3,81,64,006	
Indiabulls Infrastructure and Power Limited [Equity share]	54,838			54,838		
Professional Arbitrage Concepts Pvt. Ltd [Preference share]	1,00,00,000			1,00,00,000		
Other Shares / Venture capital fund						
Investment in Equity shares of listed companies	1,12,75,543	1,74,79,264		1,12,75,543	1,74,79,264	
Investment in VCF - KAOIF	8,74,82,709	7,74,12,863		8,74,82,709	7,74,12,863	
Fearing Capital India Evolving Fund - PMS	2,24,50,000	3,68,99,966		2,24,50,000	3,68,99,966	
Total (C)	54,81,86,736	16,99,56,099	35,90,71,418	54,81,86,736	16,99,56,099	35,90,71,418
Total (A)+(B) +(C)	1,44,25,43,826	1,03,45,36,995	1,23,85,40,411	54,81,86,736	16,99,56,099	35,90,71,418
0.50% of Average Investments		<u>61,92,705</u>			<u>17,95,362</u>	

9. Accordingly, we hold that the disallowance offered by the assessee of Rs.17,95,362/- should alone be made and balance addition is directed to be deleted.

10. In the result, appeal of the assessee is allowed.

Order pronounced on 10th May, 2024.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 10/05/2024
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai