

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, KOLKATA

Before

Dr. Manish Borad, Accountant Member

&

Shri Pradip Kumar Choubey, Judicial Member

I.T.A. No.1464/KOL/2023

Assessment Year: 2010-11

VRV Trading Company Private Limited Chatterjee International, 33A, J. L. Nehru Road, Kolkata- 700071. (PAN: AACCV3661K)	Vs.	ITO, Ward-5(1), Kolkata
(Appellant)		(Respondent)

Appearances by:

No one appeared for the Appellant

Shri L. N. Dash, Addl. CIT (DR) appeared for Respondent.

Date of concluding the hearing : 09.05.2024

Date of pronouncing the order : 28.05.2024

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2010-11 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the “Act”) by Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Id. “CIT(A)”] dated 02.06.2023 arising out of the assessment order passed u/s 143(3) read with section 147 of the Act by ITO, Ward-5(4), Kolkata (in short “AO”), dated 20.12.2017.

2. When the case was called for, neither any one appeared on behalf of the assessee nor filed any adjournment application. With the assistance of Ld. DR when the records were perused, it is noticed that

the only issue for consideration is regarding disallowance u/s. 14A of the Act.

3. We have heard Ld. CIT, DR and perused the material available on record. We note that the assessee is a Private Limited company and filed its return of income regularly. For AY 2010-11, return was filed declaring income of Rs. 3,54,145/-. After taking prior approval u/s. 151(1) of the Act notice u/s. 148 of the Act was issued on 29.03.2017 and duly served upon the assessee. Return of income was furnished in response to notice u/s. 148 of the Act followed by validly serving notice u/s. 143(2) of the Act. Ld. AO observed that the assessee had made investments which could earn exempt income and, therefore, section 14A read with Rule 8D is attracted. After considering the submissions of the Ld. AR, Ld. AO concluded the assessment making disallowance u/s. 14A of the Act at Rs.6,01,638/- @ 0.5% of average value of investments.

4. Aggrieved, assessee preferred appeal before the Ld. CIT(A) but failed to succeed as Ld. CIT(A) observed that in Finance Bill, 2022 explanation to section 14A of the Act has been inserted, which is clarificatory in nature and provides that even if there is no exempt income then also disallowance can be made u/s. 14A of the Act.

5. Aggrieved, assessee is now in appeal before this Tribunal and in the e-appeal has furnished the statement of facts. We observe that the exempt income earned during the year is only Rs.34,653/-. So far as the applicability of the explanation inserted through Finance Bill, 2022 is concerned, the same has been held to be prospective in nature by the Hon'ble High Court of Delhi in the case of PCIT Vs. Era Infrastructure (India) Ltd. in ITA No. 204/2022. Respectfully following the ratio laid down by the Hon'ble Delhi High Court in the

case of Era Infrastructure (India) Ltd. (supra), we are inclined to hold that the disallowance u/s. 14A of the Act in the instant case cannot exceed the exempt income of Rs.34,653/-. Accordingly, the assessee gets relief of Rs.5,66,985/-. The grounds of appeal raised by the assessee are partly allowed as indicated above.

6. In the result, appeal of the assessee is partly allowed.

Order is pronounced in the open court on 28th May, 2024.

Sd/-
[Pradip Kumar Choubey]
Judicial Member

Sd/-
[Dr. Manish Borad]
Accountant Member

Dated: 28th May, 2024

J.D. Sr. PS.

Copy of the order forwarded to:

1. **Appellant** –
2. **Respondent** –
3. CIT(A), NFAC, Delhi
4. CIT
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches