

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 583/Chd/2022
निर्धारण वर्ष / Assessment Year : 2018-19

The ITO Ward, Palampur, H.P	बनाम	The Kangra Central Co-operative Bank Limited, Head Office-Civil Lines, Dharamsala, Distt: Kangra, H.P.
स्थायी लेखा सं. / PAN NO: AAAJT0749B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Ashwani Kumar, C.A and
Ms. Deepali Aggarwal, C.A
राजस्व की ओर से / Revenue by : Smt. Kusum Bansal, CIT, DR
सुनवाई की तारीख / Date of Hearing : 14/05/2024
उद्घोषणा की तारीख / Date of Pronouncement : 31/05/2024

आदेश / Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the Income Tax Department through Income Tax Officer Ward, Palampur, H.P against DIN & Order No. ITBA/NFAC/S/250/2022-23/1043402011(1) dt. 10/06/2022 passed under section 250 of the Income Tax Act, 1961. The appeal before us is filed under section 253 of the Income Tax Act, as amended from time to time. The Respondent is a Cooperative Bank.

2. The Appellant Income Tax Department has raised following grounds of appeal in the Form No. 36.

i) Whether on the facts and in the circumstances of the case and in law, the First Appellate Authority is justified in allowing the Appeal of the Assessee without adjudicating on the proposition of law under Section 14A of the Income Tax Act, 1961, as propounded by the Central Board of Direct Taxes vide Circular No. 5 of 2014 dated 11.02.2014 that Section 14A is triggered for disallowance of expenditure incurred which is relatable to tax exempt income even though no tax exempt income under the Act has been earned during a particular year?

ii) Whether the First Appellate Authority is right in law in deleting the disallowance under Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 ignoring the legislative intent of the statute, further clarified vide Circular No 5 of 2014 dated 11.02.2014, which provides for disallowance of expenditure even where the Assessee in a particular year has not earned any exempt income?

iii) Whether on the facts and in the circumstances of the case, the First Appellate Authority was right in law in deleting the disallowance under Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 ignoring the scheme of Section 14A of the Income Tax Act, 1961 that expression "income that does not form part of total income implies not only income that "has not formed" part of total income in any given year, but also income that "shall not" form part of total income, and in complete disregard to the Central Board of Direct Taxes Circular No. 5 of 2014 dated 11.02.2014, which clarified that Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 provides for disallowance of the expenditure even where tax payer in a particular year has not earned any exempt income?

iv) Whether the First Appellate Authority has erred in ignoring the legislative intent expressed in Circular No. 5 of 2014 dated 11.02.2014, which explicitly states that expenses relatable to earning of exempt income have to be considered for disallowance irrespective of the fact whether any such income has been earned during the Financial Year or not, as confirmed by the Hon'ble Apex Court in the matter of Maxopp investment Ltd. Vs. Commissioner of Income Tax, reported as (2018) 402 ITR 640 (SC)?

v) Whether the First Appellate Authority is right in deleting the disallowance under Section 14A of the Income Tax Act, 1961 read with Rule 8D(2)(ii) of the Income Tax Rules, 1962 and implicitly declaring the Circular No. 5 of 2014 dated 11.02.2014 illegal?

vi) Whether the order passed by the First Appellate Authority deleting the disallowance under Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 is legally sustainable in the wake of clarificatory Explanation, inserted by the Finance Act, 2022, to be read in to the main provision and applicable w.e.f. the date the main provision was inserted?

vii), It is prayed that the order of the Ld.CIT(A) be cancelled and that of the assessing officer may be restored.

viii) The appellant craves leave to add or amend any grounds of appeal before the appeal is heard or is disposed off.

Factual Matrix

3. The Respondent is a Co-operative bank registered under the Co-operative Societies Act. The appellant is being assessed to tax in the status of Artificial Juridical Person (AJP). The return of income for Assessment Year 2018-19 was filed on 30.10.2018 declaring the total income at Rs 7,03,81,150/-. Thereafter, the return of income was revised on 20.02.2019 declaring the total income at Rs 7,03,81,150/-. The case was selected for scrutiny under CASS, for verification of various issues, viz. refund claim, unsecured loans, ICDS compliance and adjustment, expenses incurred for earning exempt income, and verification of transactions.

3.1 Assessment was completed, in accordance with the faceless assessment scheme, under section 143(3) of the Act on 29.09.2021, determining total income at Rs. 117,79,99,660/- after making following additions/disallowance on account of-

(i) expenditure incurred in relation to exempt income under section 14A amounting Rs 44,08,23,002/-, (ii) interest due on Non-Performing Assets amounting Rs 66,53,09,400/-, and (iii) interest on Income-tax refund amounting Rs. 14,86,111/-.

3.2 The order of AO is dt. 29/09/2021 DIN No. is ITBA/AST/S/143(3)/2021-22/1035999175(1).

4. The Respondent herein being aggrieved as aforesaid preferred first appeal before the Ld. CIT(A) wherein they interalia has raised following grounds:

"1. Disallowance under section 14A of the Act for Rs 44,08,23,002/-. In this the AO has wrongly mentioned that the assessee has earned income from dividend which is exempt income and so there shall be disallowance of expenditure and disallowed the above amount. But it is stated that assessee received the show cause notice on 27/09/21 into which assessee replied on 28/09/2021 and the AO has not taken into account the reply filed by the assessee. Nor the AO has mentioned about the reply in order which seems to be great negligence on part of the AO. So again it is submitted that the assessee has not earned any income from dividend or any exempt income so there should be no disallowance of expenditure under section 14A of the Act. So the addition made shall be deleted.

2. The another additions made is on the account of income on NPA as per section 43D of the ACT for Rs 66,53,09,400/-. To this it is explained that from Finance Act 2017 w.e.f. 01.04.2018 there has been amendment in the finance Act and in which now they have included the co-operative banks under section 43D of the Act. So this provision is applicable for co-operative banks from AY 18- 19. Thus addition made shall be under section 43D shall be deleted as now 43D includes co-operative banks from AY. 2018 -19. Further it is explained that AO has not taken into account the reply filed by the assessee on 28/09/2021. So addition made shall be deleted.

3. AO has made addition on account of Interest on Income tax refund for Rs 14,86,111/-. The interest from Income Tax refund has been accounted for and has been included in the Interest shown in schedule 13 of the Balance sheet which was attached with this reply filed to the AO. So the addition made shall be deleted.

5. The Ld. CIT(A) in respect of above ground No. 1 wherein the Respondent has contested the disallowance of Rs. 44,08,23,002/- being the amount of expenditure incurred in relation to exempt income, under section 14A, mainly on the ground that the bank has not earned any exempt income during the year, has held as under:

5.5 In view of the facts and circumstances of the case, and the prevailing position of law applicable on such facts, and respectfully following the binding judicial precedents, as discussed above, I find that no disallowance of expenditure incurred in relation to exempt income under section 14A of the Act is required to be made in the hands of the appellant bank. Accordingly, the Jurisdictional Assessing Officer (J.A.O.) is directed to delete the disallowance of expenditure of Rs 44,08,23,002/- under section 14A made on this account. This ground of appeal is allowed.

6. The Ld. CIT(A) in respect of ground no. 2 wherein the Respondent herein has contested the disallowance of Rs. 66,53,09,400/- being interest accrued and due on Non-Performing Assets (NPAs), mainly on the ground that the special provisions of section 43D, as amended vide Finance Act 2017, are applicable to co-operative banks also from Assessment Year 2018-19 onwards. Thus, the bank has urged in this ground that interest due on NPAs shall be chargeable to tax in the hands of the appellant bank, only in the year in which it is credited to the Profit and Loss account.

6.1 The Ld. CIT(A) has held as under:

6.3 I have carefully considered the relevant and material facts on record, in respect of this ground of appeal, as brought out in the assessment order and submissions made during appeal proceedings. The appellant is a cooperative bank. This is an admitted position that the appellant is following mercantile system of accounting, and that the interest income which has become due on Non-Performing Asset(NPA) has not been recognized in the accounts on accrual basis. The appellant has submitted that it has recognized revenue in respect of interest income on advances classified as NPA on actual receipt basis, because of uncertain nature of recovery of interest. The appellant has also stated that it has consistently followed this system of accounting in respect of interest on NPA, in earlier years, and the same has been accepted as such by the Revenue. The appellant, being a non-scheduled bank, is required to follow RBI guidelines issued from time to time, which prescribe that banks should not take into account interest on NPAs on accrual basis. The appellant has also submitted that the benefit of Section 43D has been specifically extended to include a co-operative bank within its ambit, by virtue of the amendment made by the Finance Act 2017, with effect from 01.04.2018, which is applicable to the Assessment Year 2018-19.

6.4 I find that the identical issue has been decided by the CIT (Appeals), Palampur in favour of the appellant, in appellants own case, vide appellate order dated 23.12.2015 in Appeal No. IT/39/PLM/2014-15 for Assessment Year 2012-13, wherein the CIT(Appeals) has relied on the decisions of Hon'ble ITAT, Pune Bench in the case of ACIT Vs Usmanabad Janta Sahkari Bank_Ltd. (ITA No 795/PN/2011 dated 31.08.2012) and Hon'ble ITAT, Chandigarh Bench in the case of ACIT Vs Punjab State Co-operative Bank Ltd (2013) (143 ITD 57) and held that the provisions of section 43D can be extended to the appellant being a co-operative bank, for revenue recognition of interest income on NPAs, by following the accounting system regularly adopted by the appellant.

6.5 The aforementioned findings of CIT (Appeals) have been confirmed by the Hon'ble ITAT, Chandigarh Bench in its order dated 31.01.2018 in the case of DCIT Vs The Kangra Central Co-operative Bank Ltd (ITA Nos 323 & 324/Chd/2016 for Assessment Years 2012-13 and 2013-14) (i.e. appellants own case). Hon'ble ITAT, Chandigarh Bench has relied on its own order in the case of DCIT Vs. The Ludhiana Central Co-op Bank Ltd. (ITA No. 526/Chd/2013 dt. 03/01/2017) and held that in case of the assessee, being co-operative bank, the interest on sticky loans / NPAs has to be brought to tax on receipt basis.

6.6 Section 43D contains special provisions in case of income of specified category of financial institutions and banks, which inter alia provide that income by way of interest on certain prescribed category of bad and doubtful debts, shall be chargeable to tax in the year in which it is actually credited to the profit and loss account, or actually received, whichever is earlier. These provisions override other provisions of the Act, and thereby

carve out an exception in case of interest income due on NPAs, which is to be recognized on actual receipt basis, and not on accrual basis as per the mercantile system of accounting followed by banks.

6.7 Section 43D was inserted into the statute by Finance (No 2) Act, 1991 with effect from 1st April 1991. The need and rationale for insertion of section 43D has been explained by way of the CBDT Circular No 621 dated 19.12.1991 in the following words, -

"Changeability of Income from bad or doubtful debts in the case of financial institutions and banks"

22. The Reserve Bank of India has classified advances given by banks into eight categories called Health codes 1 to 8. Sticky advances which are doubtful of realization fall under Health codes 4 to 8. The banks and financial institutions normally credit interest from such sticky advances to the "Interest Suspense Account" and not to the "Profit and Loss Account". The issue whether interest on such bad and doubtful advances should be taxed in the year of accrual or of receipt has been a matter of controversy for a long time.

22.1 In view of the fact that interest from bad and doubtful debts in the case of banks and financial institutions are normally very difficult to recover, taxing such income on accrual basis reduces the liquidity of bank without any actual generation income.

22.2 With a view to improving the viability of banks, public financial institutions, state financial corporations and State industrial investment corporations, the Income-tax Act has been amended by inserting a new section 43D, so as to provide that interest on sticky loans shall be charged to tax only in the year in which the interest is actually received or is credited to the "Profit and Loss Account", whichever is earlier. The category of bad and doubtful debt in respect of which the interest will qualify for this exemption will be prescribed by the Central Board of Direct Taxes keeping in view the guidelines issued by the Reserve Bank of India in relation to such debts."

6.8 The provisions of section 43D were subsequently amended by Finance Act 2017, with effect from 1st April 2018, to include within its ambit cooperative banks, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The scope and effect of this amendment has been elaborated in the CBDT Circular No 2 of 2018 dated 15.02.2018, as under, -

"21. Extension of scope of section 43D to co-operative banks

21.1 Section 43D of the Income-tax Act specifies inter-alia that interest income received by certain institutions or banks or corporations or companies in relation to certain categories of bad or doubtful debts shall be chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received whichever is earlier. This provision is an exception to the accrual system of accounting which is regularly followed by such assessee for computation of income.

21.2 The benefit of this provision, before amendment by the Act, was available to scheduled banks, public financial institutions,, state financial corporations, state industrial investment corporations and certain public companies like housing finance companies. With a view to provide level playing field to co-operative banks vis-a-vis scheduled banks and to rationalize the scope of the section 43D, the said section has been amended so as to include co-operative banks, other than

a primary agricultural credit society or a primary co-operative agricultural and rural development bank, within its scope.

21.3 Consequently, as per matching principle in taxation, if the interest income on bad or doubtful debts is chargeable to tax on receipt basis, the interest payable on such bad or doubtful debts need to be allowed on actual payment. In view of this, section 43B of the Income-tax Act has also been amended to provide that any sum payable by the assessee as interest on any loan or advances from a co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank shall be allowed as deduction if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year.

21.4 This amendment takes effect from 01.04.2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years."

6.9 The appellant is admittedly a co-operative bank, registered under the Co-operative Societies Act. The year under consideration is Assessment Year 2018-19. It is evident from the above that the provisions of section 43D, as they stand amended by the Finance Act 2017, are applicable to the appellant being a co-operative bank, for the relevant Assessment Year. Consequently, the interest income due on NPAs shall be chargeable to tax in the hands of the appellant bank in the year of actual receipt, and not in the year in which the same has accrued.

6.10 In view of the facts and circumstances of the case, and the prevailing position of law applicable on such facts, and respectfully following the binding judicial precedents, as discussed above, I find that the special provisions of section 43D are applicable to the appellant, being a co-operative bank, for the relevant Assessment Year; and therefore interest income due on NPAs is required to be recognized only in the year of actual receipt, as per the accounting system regularly followed by the appellant bank. In that view, there is no justification for making; addition of Rs 66,53,09,400/- by applying notional interest rate of 12% on NPAs. Accordingly, the Jurisdictional Assessing Officer (J.A.O.) is directed to delete the addition of notional interest income of Rs 66,53,09,400/- made on this account. This ground of appeal is allowed.

7. The Ld. CIT(A) in respect of Ground No. 3 which relates to addition of Rs. 14,86,111/- on account of interest on Income-tax refund. During the course of assessment proceeding, the A.O. noticed that the assessee has received refund of Rs. 1,23,84,260/- relating to Assessment Year 2016-17 on 07.09.2017, i.e. during the Financial Year 2017-18, which is the year under consideration. On perusal of the schedules to the Profit and Loss account, the AO noted that the appellant has not credited the interest portion of the said refund in other income, and accordingly made an addition of Rs 14,86,111/- to the total income.

7.1 The Ld. CIT(A) has observed as under:

7.1 During the course of appellate proceedings, the appellant has made written submission with respect to this ground of appeal, wherein it is stated that interest income

from Income-tax refund has been accounted for, and has been included in the interest income as shown in Schedule 13 to the Balance Sheet, which was attached with the reply filed before the AO. The appellant has alleged that the AO did not check and verify the same and made an addition of Rs 14,86,111/-.

7.2 I have carefully considered the relevant and material facts on record, in respect of this ground of appeal, as brought out in the assessment order and submissions made during appeal proceedings. AO has reverted a categorical finding that no 'other income' has been offered in Schedule 13. During the appellate proceedings, however, the appellant has made a contradictory claim on facts, but has not furnished any evidence in support viz. copy of annual financial statements along with relevant schedules, to substantiate his claim.

And thereafter has held as follows:

7.3 In view of the facts and circumstances of the case, and in the interest of substantive justice, the Jurisdictional Assessing Officer (JAO) is hereby directed to make due verification, to satisfy himself whether the interest on Income Tax refund received during the year has indeed been offered to tax by the appellant; and if so, delete the addition of Rs 14,86,111/- made on this account. The JAO shall provide a reasonable opportunity to the appellant to adduce evidence in support of its claim. This ground of appeal is therefore partly allowed.

8. In result, the appeal is partly allowed.

Physical record of personal hearing

8. The physical personal hearing before the Tribunal took place on 14/05/2024 when both the parties appeared before us and were heard for some time on their respective cases / submissions.

9. The position with regard to judicial pronouncements were discussed ascertained.

10. During the course the Ld. AR of the Bank brought to our notice that the larger issue on the subject of Section 14A is currently pending before Hon'ble Supreme Court of India in SLP filed in case of Pr. CIT Vs. IL&FS energy Development Company Ltd. and that in view of Para 10 of the judgment in case of PCIT vs. Era Infrastructure (India) Ltd. reported in (2022) 448 ITR 674 (Del) dt. 20/07/2022 (which was tendered across Bar) was relied upon.

Based on the said judgment it was contended by Ld. AR of the Bank that case of the Department of Income Tax has failed and their appeal is dismissed. Consequently the order of the ITAT herein is sustained which had deleted the disallowance of Rs. 3,61,51,268/- made by AO under section 14A r.w.s 8D of Income Tax Rules 1962. Be it

noted that at this stage view of Department is that decision of PCIT Vs. IL&FS Energy Development Co. Ltd. reported in (2017) 399 ITR 483(Delhi) is not a good law or settled law or proposition (wherein it has been held that no disallowance under section 14A of the Act can be made if the assessee had not earned any exempt income) as the Revenue has not accepted the said decision and has preferred a **SLP** against the said decision. The undisputed position which emerged was that the said decision is pending before the Supreme Court of India and matter is **not stayed**.

11. The core issue thus identified is whether in view of the amendment made by the Finance Act-2022 to Section 14A of the Act by inserting a Non obstante clause and an explanation after proviso, a change in law has been brought about and consequently, the judgments relied upon by the authorities Pr. CIT Vs. IL&FS Energy Development Co. Ltd. are no longer good law in view of SLP as aforesaid (supra).

12. The Ld. AR for bank the Respondent herein besides supporting the Ld. CIT(A) order has contended that in view of para 10 of PCIT Vs. Era (supra) the law is settled at present that deletion of disallowance under section 14A on ground that assessee has not earned exempt income is justifiable and same is sustained. Consequently first ground of the Department fails.

13. The disallowance of Rs. 66,53,09,400/- being interest accrued and due on Non Performing Assets (NPAs) mainly on ground that the special provision of Section 43D as amended vide Finance Act-2017, are applicable to cooperative banks also from A.Y. 2018-19 onwards. Thus bank's ground that interest due on NPA shall be chargeable to tax in the hands of the Appellant bank only in the year in which it is credited to P&L Account is not expressly contested by the Department in their appeal, and in any case of AO is directed to delete the addition of notional interest income of Rs. 66,53,09,400/- made on this account.

14. With regard to addition of Rs. 14,86,111/- on account of interest on income tax refund whether it is shown in the interest income in schedule 13 to Balance Sheet the issue is directed back to the AO to make due verification to satisfy whether such income is offered to tax by bank or not and if so , delete addition of Rs. 14,86,111/-

made on this account. It was therefore contended that on this score issue is partly allowed.

Findings & Conclusions

15. In the foregoing in so far as broad issue whether no disallowance under section 14A can be made if the assessee had not earned any exempt income there is at present clear ruling of Hon'ble Delhi High Court in case of PCIT Vs. Era Infrastructure (India) Ltd. reported in (2022) 448 ITR 674 (Del) and contention of the Revenue that judgment in case of PCIT Vs. IL&FS Energy Development Co. Ltd. reported in (2017) 399 ITR 483 (Del) wherein it has been held that no disallowance under section 14A of the Act can be made if the assessee had not earned any exempt income as the Revenue has not accepted the said decision and has preferred a **SLP** against the said decision cannot be accepted as there is **no stay granted by the Hon'ble Supreme Court of India and matter is pending for final hearing**. In view of the aforesaid disallowance of expenditure of Rs. 44,08,23,002/- is liable to be deleted under section 14A made on this account. We upheld the finding of Ld. CIT(A) on this ground made in para 5.5 of his order.

16. In so far as issue of disallowance of Rs. 66,53,09,400/- being the amount of interest accrued and due on Non Performing Assets (NPAs) mainly on the ground that the special provision of section 43D, as amended vide Finance Act-2017, are applicable to cooperative banks also from A.Y 2018-19 onwards that interest due on NPAs shall be chargeable to tax in the hands of bank in the year in which it is credited to P&L Account. We follow Hon'ble Chandigarh Bench order dt. 30/01/2018 in case of DCIT Vs. the Kangra Central Cooperative Bank Ltd. (ITA Nos. 323 & 324/Chandi/2016) and Hon'ble Chandigarh Bench order dt. 03/01/2017 in case of DCIT Vs. the Ludhiana Central Cooperative Bank Ltd. (ITA No. 526/Chd/2013 dt. 03/01/2017) that the interest on sticky loans / **NPAs has to be brought to tax on receipt basis**.

We agree with CIT(A) with regard to his finding at para 6.8 and 6.9 which is as follows:-

6.8 The provisions of section 43D were subsequently amended by Finance Act 2017, with effect from 1st April 2018, to include within its ambit cooperative banks, other than a

primary agricultural credit society or a primary co-operative agricultural and rural development bank. The scope and effect of this amendment has been elaborated in the CBDT Circular No 2 of 2018 dated 15.02.2018, as under, -

"21. Extension of scope of section 43D to co-operative banks

21.1 Section 43D of the Income-tax Act specifies inter-alia that interest income received by certain institutions or banks or corporations or companies in relation to certain categories of bad or doubtful debts shall be chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received whichever is earlier. This provision is an exception to the accrual system of accounting which is regularly followed by such assessee for computation of income.

21.2 The benefit of this provision, before amendment by the Act, was available to scheduled banks, public financial institutions,, state financial corporations, state industrial investment corporations and certain public companies like housing finance companies. With a view to provide level playing field to co-operative banks vis-a-vis scheduled banks and to rationalize the scope of the section 43D, the said section has been amended so as to include co-operative banks, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, within its scope.

21.3 Consequently, as per matching principle in taxation, if the interest income on bad or doubtful debts is chargeable to tax on receipt basis, the interest payable on such bad or doubtful debts need to be allowed on actual payment. In view of this, section 43B of the Income-tax Act has also been amended to provide that any sum payable by the assessee as interest on any loan or advances from a co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank shall be allowed as deduction if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year.

21.4 This amendment takes effect from 01.04.2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years."

6.9 The appellant is admittedly a co-operative bank, registered under the Co-operative Societies Act. The year under consideration is Assessment Year 2018-19. It is evident from the above that the provisions of section 43D, as they stand amended by the Finance Act 2017, are applicable to the appellant being a co-operative bank, for the relevant Assessment Year. Consequently, the interest income due on NPAs shall be chargeable to tax in the hands of the appellant bank in the year of actual receipt, and not in the year in which the same has accrued.

We accordingly uphold the order of CIT(A) on this issue.

17. In so far as issue of addition of Rs. 14,86,111/- on account of interest on Income Tax refund of Rs. 1,23,84,260/- is concerned where it is bit doubtful whether it is accounted for or not we agree with Ld. CIT(A) that due verification be made by the

AO on this issue and if the same is accounted and offered for tax, delete the addition of Rs. 14,86,111/-. In brief decision on merits has to be taken by AO.

18. In view of foregoing, we uphold the order of CIT(A) dt. 10/06/2022 and reject the appeal of the Department. However Department would be at liberty to bring to our notice final decision of Supreme Court in case of Pr. CIT Vs. IL&FS Energy Development Company Ltd. (supra) as and when it is finally decided with reference to section 14A of the Act.

19. In the result, appeal of the Department is partly allowed for statistical purposes.

Order pronounced in the open Court on 31/05/2024.

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar