

आयकर अपीलीय अधिकरण
दिल्ली पीठ "ए", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आअसं . 1225/दिल्ली/2024 (नि. व. 2018-19)
ITA No.1225/DEL/2024 (A.Y.2018-19)

Antara Senior Living Ltd.,
Block-B, 1 Max House, Dr. Jha Marg,
Okhla, Delhi 110020
PAN: AAJCA-4540-R
बनाम Vs.

..... अपीलार्थी/ Appellant

Deputy Commissioner of Income Tax,
Circle 1(1), C.R Building, I.P Estate,
Delhi

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : S/Shri Priyam Bhatnagar, and
Rohar Khare, Advocates

प्रतिवादीद्वारा/ Respondent by : Shri Kanv Bali, Sr.DR

सुनवाई की तिथि/ Date of hearing : 07/08/2024

घोषणा की तिथि/ Date of pronouncement : 28/08/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 03.02.2024, for Assessment Year 2018-19.

2. The solitary issue raised by the assessee in appeal is against disallowance u/s. 14A of the Act (hereinafter referred to as 'the Act').

3. Shri Priyam Bhatnagar, appearing on behalf of the assessee submitted at the outset that during the period relevant to assessment year under appeal, the assessee has not received any income exempt from tax. This fact has not been disputed by the Assessing Officer (AO). The AO for making disallowance u/s. 14A r.w.r 8D has referred to CBDT Circular No. 5/2014 dated 11.02.2014. Aggrieved by the assessment order dated 26.03.2021 passed u/s. 143(3) r.w.s. 143(3A) and 143(3B) of the Act, the assessee filed appeal before the CIT(A).

3.1. The CIT(A) referring to Explanation to section 14A(2) inserted by the Finance Act 2022 w.e.f. 01.04.2022 confirmed the addition. The Id. Counsel asserted that the amendment to section 14A of Act by the Finance Act 2022 is prospective and would not apply to the impugned assessment year. Since the amendment would not operate retrospectively, the CIT(A) has erred in invoking the amended provisions of section 14A of the Act in the instant case. To buttress his argument, he placed reliance on the decision of Hon'ble Delhi High Court in the case of *PCIT vs. Era Infrastructure (India) Ltd.*, 141 taxmann.com 289.

4. Per contra, Shri Kanv Bali representing the department vehemently defending the impugned order prayed for dismissing appeal of the assessee. The Id. DR submitted that as per explanation to section 14A(2) of the Act, irrespective of the fact whether the assessee has earned any exempt income or not, disallowance u/s. 14A of the Act is required to be made.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. During the period relevant to assessment year under appeal, the assessee has investments in unlisted equities to the tune of Rs. 241.72

crores and investment in mutual fund to the tune of Rs. 84.57 lakhs. The assessee has not earned any exempt income from the aforesaid investments. Hence, no *suo moto* disallowance of expenditure was made by the assessee u/s. 14A of the Act. The Hon'ble High Courts in various decisions have time and again held that no disallowance u/s. 14A of the Act is to be made where no exempt income is earned. This proposition has been upheld by the Hon'ble Apex Court in the case of *PCIT vs. State Bank of Patiala 259 Taxmann 314*.

6. The provisions of section 14A of the have been amended by the Finance Act 2022, by way of insertion of Explanation. The same reads as under:-

“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 of the total income.”

With the insertion of aforesaid explanation, the settled position has been reversed. The provisions of section 14A of the Act would now apply even if no exempt income is earned on the investments by the assessee. However, the said amendment would not apply retrospectively and would only operate w.e.f 01.04.2022. The Hon'ble Jurisdictional High Court in the case of *PCIT vs. Era Infrastructure (India) Ltd (supra)* after considering the Memorandum of Finance Bill 2022 and various decisions on this issue held that the amendment to section 14A of the Act by way of Explanation which starts from “For removal of doubts”, cannot be presumed to be retrospective even were such languages is used, if it alters or

changes the laws as it stood earlier. Thus, in light of aforesaid judgment we have no hesitation in holding that in the instant case amended provisions of section 14A are not attracted and hence, no disallowance of expenditure is warranted under section 14A of the Act where the assessee has not earned any income exempt from tax.

7. The assessee succeeds on ground no. 3 to 7 of appeal.

8. In ground no. 8 of appeal the assessee has assailed initiation of penalty proceedings u/s. 274 r.w.s 270A of the Act, challenge to penalty proceedings at this stage is premature, hence, ground no. 8 of appeal is dismissed.

9. Ground no. 1 & 2 of appeal are general in nature, hence, require no separate adjudication.

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

Order pronounced in the open court on Wednesday the 28th day of August, 2024.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 28/08/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI