

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ , चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH**  
**BENCH 'B' CHANDIGARH**

**BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND**  
**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No. 316/CHD/2024**

निर्धारण वर्ष / Assessment Year : 2011-12

The ITO, Ward 5(5), Chandigarh.	बनाम VS	Jagan Industries Pvt. Ltd., SCF 18-19, Sector 28, Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AAACJ3694C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None

राजस्व की ओर से/ Revenue by : Shri Danish Abdullah, JCIT, Sr.DR

तारीख/Date of Hearing : 28.08.2024

उदघोषणा की तारीख/Date of Pronouncement : 03.09.2024

**PHYSICAL HEARING**

**आदेश/ORDER**

**PER A.D.JAIN, VICE PRESIDENT**

This is an appeal filed by the Revenue against the order of the Ld. CIT(A) NFAC, Delhi dated 30.01.2024 pertaining to assessment year 2011-12, taking the following grounds :

- 1. The Ld. CIT(A) has erred in deleting the addition of Rs 27.72.68 without appreciating the facts of the case.*
- 2. That the Ld. CIT(A) has erred in deleting the disallowance of Rs.27,72,581/- u/s 144 of the Income Tax Action the ground that disallowance cannot be made where there is no exempt income without appreciating the fact that applicability of section 14A or Rule SD does not depend on earning of income.*
- 3. That the Ld. CIT(A) has erred in ignoring the legislative intent expressed in clarificatory explanation inserted in section 14 as 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"*

*4. That the ld. CIT(A) has erred in ignoring the legislative intent expressed in CBDT's Circular No.5/2024 dated 15.03.2024; which explicitly state in 3.1 that where any under notification instruction or circular of the Board of the Government has been held to be to be illegal or ultra vires the Act or otherwise constitutionally invalid.*

*5. That the ld. CIT(A) has erred in holding that disallowance under Section 14A cannot be made where there is no exempt income, when Supreme Court has upheld the principles of appointment and department is in SLP on the same issue in the case of Moderate Leasing and Capital Services Ltd. in ITA No. 102/2018, ?.?. 2000 10 and Mams Cellular Services (P) Ltd. in ITA No. 484/2017 and SIP has also been approved against the decision of Hon'ble Jurisdiction High Court in the case of M/s Vardhman Chemtech Pvt. Ltd. in ITA No 322/2016.*

*6. The Ld. CIT( A) has erred in restricting the disallowance the self declared disallowance by the assessee without appreciating the fact that the disallowance has to be worked out as per the provision of Rule 8D specifically incorporated in the Income Tax Rules for this purpose.*

*7. It is prayed that the order of the Ld.CIT(A) be revoked and that of the assessing officer may be restored."*

2. None has put in appearance despite issuance of notice, which has not returned unserved. However, finding that the matter can be proceeded with in the absence of the assessee, we have heard the ld. DR.

3. It is noted that the tax effect involved in the present appeal is Rs. 8,56,758/-. Accordingly, in terms of the CBDT Circular dated 08.08.2019 wherein the Department has specified the monetary limit for an appeal to be filed by the

Revenue before the ITAT as Rs. 50 lacs, the appeal so filed by the Revenue is not maintainable.

4. In view of the above facts and circumstances, the present appeal filed by the Department is dismissed due to low tax effect with a liberty to seek recall in case the matter falls under any of the exceptions so carved out in the aforesaid circular.

5. It is, however, clarified that the dismissal of the above appeal shall not be taken to be affirmation of the order of the CIT(A) on merits. The legal issue raised by the Revenue is being left open to be adjudicated in an appropriate case.

6. In the result the appeal of the Revenue is dismissed.

Order pronounced on 03.09.2024.

**Sd/-**

**(VIKRAM SINGH YADAV)  
ACCOUNTANTMEMBER**

**Sd/-**

**(A.D.JAIN )  
VICE PRESIDENT**

“Poonam”

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

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

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar