

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA No.	A.Y.	Appellant	Respondent
1598/Mum/2023	2013-14	Miranda Tools Private Limited, 005, Peninsula Tower, Peninsula Corporate Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai PAN: AAACP7200N	Deputy Commissioner of Income Tax, -7(3)(2), Aayakar Bhavan, M.K. Road, Mumbai
1599/Mum/2023	2014-15		

For Assessee :	Shri Anuj Kisnadwala,
For Revenue :	Smt. Mahita Nair, Sr.DR

Date of Hearing :	06-08-2024
Date of Pronouncement :	13-09-2024

ORDER

PER OM PRAKASH KANT, A.M :

These appeals by the assessee are directed against two separate orders dated 20-03-2023 & 24-03-2023, passed by the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short Ld.CIT(A)] for the Assessment Years (AYs.) 2013-14 & 2014-15 respectively. In both these appeals, common ground of appeal is involved and, therefore, the same were heard together and disposed off by way of this consolidated order for convenience.

2. Briefly stated facts of the case are that the assessee filed returns of income for the AY. 2013-14 on 30-11-2013, declaring total income at Rs. 2,86,89,120/- and for the AY. 2014-15 on 30-11-2014, declaring total income at Rs. 1,23,44,770/-. The returns of income filed by the assessee were selected for scrutiny assessment, which were completed u/s. 143(3) of the Income Tax Act, 1961 (in short 'the Act') on 28-03-2016 and 26-12-2016 for the AYs. 2013-14 and 2014-15 respectively. In both the assessments, the Assessing Officer (AO) made additions including the disallowance of expenses for earning exempted income invoking section 14A r.w. Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules'). In the AY, 2013-14, the AO made disallowance u/s. 14A of the Act amounting to Rs. 47,40,450/-; whereas in the AY. 2014-15, the AO made disallowance amounting to Rs. 44,96,926/-.

3. On further appeals, the Ld.CIT(A) upheld the disallowance under section 14A of the Act and rejected the contentions of the assessee to restrict the disallowance u/s. 14A of the Act to the extent of exempt income earned by the assessee. The relevant finding of the Ld.CIT(A) for the AY. 2013-14 is reproduced as under:

"1. Disallowance u/s 14 R.W.R 8D to be restricted to investments yielding tax exempt income - Appellant has relied on many judicial pronouncements. However, it is seen that all the judicial pronouncements are made before 2021. The Finance Act 2022 has inserted an explanation to the section 14A 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

Thus, the explanation clearly states that the income accruing or arising or being received in the year is not the condition for application of this section. The AO had relied on the CBDT circular No. 5/2014 11/2/2014, the contents of which are now part of the IT Act. The Guwahati Tribunal in 1.T.A. Nos. 154 to 156/Gau/2019 in case of ACIT vs. Willamson Financial Services (pronounced 6/7/2022) held

that the stated explanation is restrospective in nature being only clarificatory.

A perusal of the said explanation reveals that a starts with the words "For the removal of doubts, it is hereby clarified....."

Then the wording in the body of the provision expressly states:

".....the provisions of this section shall apply and shall be deemed to have always applied....."

The opening words of the explanation reveal in an unambiguous manner that the said provision is clarificatory and has been inserted for removal of doubts. Further, as provided in the memorandum explaining the aforesaid provision, the aforesaid explanation has been inserted in order to make the intention clear and to make it free from any misinterpretation."

In respect to other judicial pronouncements, the Honourable Tribunal held that

"36. So far as the effect of decision rendered by the various High Courts holding that no disallowance is to be attracted if no exempt income is earned is concerned, it is to be noted that the aforesaid proposition laid by the High Courts has not attained the finality. The issue is still open before the Hon'ble Supreme Court, which, of course is relating to the interpretation of the provisions of section 14A as they existed before the insertion of the aforesaid explanation. The reference can be made to the case titled as PCIT vs. Delhi International Airport Pvt. Ltd. [2022] 138 taxmann.com 113 (SC) wherein the notice has been issued in the SLP filed by the Revenue against the order of the Karnataka High Court [2022] 138 taxmann.com 112 (Kar.) holding that where assessee company did not have exempt income no disallowance can be made u/s 14A. The case of the Revenue is that the said provisions of section 14A provide for disallowance of expenditure even when the assessee during the relevant year had not earned any exempt income. Similarly, notice on this issue has also been issued in another SLP filed by the Department against the decision of the Hon'ble Gujarat High Court in the case of PCIT vs. Adani Wilmar Ltd. [2021] 133 taxmann.com 443 (Guj.). Reference can also be made in this respect to the case titled as PCIT vs. Karnataka State Financial Corporation Ltd. [2022] 137 taxmann.com 195(SC) wherein the notice in the aforesaid SLP has also been issued on the I.T.A. Nos. 154 to 156/Gau/2019 Assessment Years: 2012-13 to 2014-15 IT.A. No.159/Gau/2019 Assessment Year: 2009-10 Williamson Financial Services Limited same issue. Another SLP of the Department pending on the issue is in the case of CIT vs. Sociedade De Fomento Industrial (P) Ltd. [2021] 130 taxmann.com 428 (SC). Hence, it cannot be said that the law is settled otherwise. The Revenue is contending same proposition that the actual or positive earning of exempt income has nothing to do with the disallowance of expenditure incurred for the purpose of earning of exempt income."

Thus, it was concluded that this is clarificatory explanation and therefore, all cases have to be interpreted in its light and laid out thus:

“...in view of this, it cannot be said that by the insertion of explanation to section 14A has the effect of any change of law or to fasten any new liability upon the tax payers It is only to make the intention of the legislature clear and to remove the confusion and doubts that has arisen pursuant to the aforesaid decisions of various High Courts.”

Further, it is seen that in arriving at the above conclusion, the Tribunal considered the various judgements made in this respect earlier. Also, there is no Apex Court ruling on the same, as noted in the quoted order too, that there needs to be exempt income to make the disallowance u/s 14A.

1. Disallowance u/s 14A must be restricted to the amount of exempt income - This is again contrary to the position of the law that the accrual of income or arising of income or its receipt is not related to the expenditure disallowance. Whether income is high or low or zero, has no meaning, as the expenditure disallowance is not linked to its quantum as made clear with this explanation to section 14A.

Thus, in view of all the above discussion, it is held that the AO was right in invoking the disallowance u/s section 14A as per the statutory enablement in Rule 8D and therefore, the addition to income u/s 14A is upheld.”

4. Aggrieved, the assessee is in appeal before the Tribunal by raising grounds as mentioned in appeal filed in prescribed proforma i.e. form no. 36. The grounds for AY 2013-14 are reproduced as under:

- 1. Disallowance under section 14A of the Income Tax Act (“Act”) amounting to Rs. 47,40,450/-
On the facts and in the circumstances of the case and in law, the National Faceless Appeal Centre (“CIT(A)”) erred in affirming the disallowing done by Ld.AO of sum of Rs. 47,40,450/- under section 14A of the Act r.w.r. 8D of the Income-tax Rules, 1962 (“Rules”). Therefore, the appellant prays that the same disallowance be deleted.*
- 2. Levy of interest u/s. 234B of the Act
On the facts and in the circumstances of the case and in law, the CIT(A) erred in affirming the levy of interest u/s. 234B of the Act by the Ld.AO. Thus, the appellant prays that the interest u/s. 234B of the Act be deleted.*
- 3. Inappropriate levy of interest under section 234C of the Act
On the facts and in the circumstances of the case and in law, the CIT(A) erred in affirming the levy of interest of Rs. 4,98,658/- instead of Rs. 4,50,757/- u/s. 234C of the Act. Therefore, the appellant prays that the*

interest charged u/s. 234C of the Act be Rs. 4,50,757/- as computed by the Appellant.”

5. We have heard rival submissions of the parties and perused the relevant material on record. Before us, the learned counsel for the assessee urged for restricting the disallowance u/s. 14A of the Act to the extent of exempt income earned, following the decision of the Hon’ble Delhi High Court in the case of **Joint Investments (P.) Ltd., vs. CIT reported in [2015] 59 taxmann.com 295 (Del)**. The learned counsel for the assessee submitted that in AY. 2013-14, exempt income of Rs. 4,36,420/- was declared and, therefore, the disallowance should be restricted to the extent of Rs. 4,36,420/-.

6. The Ld.DR, on the other hand, relied on the orders of the Ld.CIT(A) and submitted that the explanation to section 14A of the Act introduced by way of Finance Act, 2022 has been held to be retrospective by order dated 06-07-2022 of the Co-ordinate Bench of the Tribunal, Guwahati in 1.T.A. Nos. 154 to 156/Gau/2019 in the case of ACIT vs. Williamson Financial Services,. However, we find that the Hon’ble Delhi High Court in the case of **Pr. CIT vs. Era Infrastructure (India) Ltd., [2022] 141 taxmann.com 289 (Delhi)** has held the relevant explanation to section 14A of the Act as prospective in nature. The relevant finding of the Hon’ble Delhi High Court in the case of Era Infrastructure (India) Ltd., (supra) is reproduced as under:

“8. Consequently, this Court is of the view that the amendment of Section 14A, which is "for removal of doubts" cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood.

9. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date. Consequently, in view of the judgments passed by the Supreme Court in Kunhayammed vs. State of Kerala [2000] 113 Taxman 470/245 ITR 360 and Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association [1992] 3 SCC 1, the present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench in IL & FS Energy

Development Company Ltd (supra) and Cheminvest Ltd. v. CIT [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 (Delhi)."

7. Further, the Tribunal in the case of **M/s. PMP Auto Components Pvt. Ltd., vs. DCIT in ITA(TP) No. 587/Mum/2017, AY. 2012-13** has restricted the disallowance to the extent of dividend income observing as under:

"25. Issue no.5 is in connection with the disallowance of u/s 14A of Act. The assessee has earned the dividend income of Rs.1,11,636/- and suo-motu disallowed the sum of Rs.88,542/-. At the very outset, the assessee agreed to restrict the disallowance to the extent of dividend income, therefore, in the said circumstances and by relying upon the law settled in PCIT Vs. State Bank of Patiala (2018) 99 taxmann.com 285 we restrict the addition to the extent of dividend income to the tune of Rs. 1,11,636/-. Accordingly, this issue is decided in favour of the assessee against the revenue."

8. Since the facts of the instant case are being identical to the facts mentioned above, respectfully following the decision of the Hon'ble Delhi High Court (supra) and Co-ordinate Benches of the Tribunal (supra), we set aside the findings of the Ld.CIT(A) on the issue in dispute and direct the AO to restrict the disallowance u/s. 14A of the Act to the extent of exempted income earned by the assessee for the year under consideration. The respective grounds in both the appeals are accordingly allowed. The other grounds raised by the assessee are consequential in nature and, therefore, we are not required to adjudicate upon the same.

9. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 13th September, 2024

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai, Date : 13-09-2024

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "D" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai