

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**Before Shri Satbeer Singh Godara, Judicial Member &
Shri Amarjit Singh, Accountant Member**

ITA No.712/Coch/2023 : Asst.Year 2013-2014
SA No.163/Coch/2023

Gemwood (Division of GMD International), Devi Kripa Chittoor Road, Valanjambalam Cochin – 682 016 PAN : AABFG8896R.	v.	The Assistant Commissioner of Income-tax, Non-Corporate Circle 1(1) Kochi.
(Appellant/Applicant)		(Respondent)

Appellant/Applicant by : Sri.K.Sankaranarayanan, CA
Respondent by : Smt.V.Swarnalatha, Sr.DR

Date of Hearing : 16.08.2024	Date of Pronouncement : 23.10.2024
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ORDER

Per Bench :

This assessee's appeal in ITA No.712/Coch/2023 (alongwith its stay application SA No.163/Coch/2023 therein) for assessment year 2012-2013 arises out of the order of the Commissioner of Income-tax (Appeals) / NFAC vide DIN & Order No.ITBA/NFAC/S/250/2023-24/1055274733(1) dated 21.08.2023 in proceedings u/s.143(3) of the Income-tax Act, 1961; in short "the Act" hereinafter.

Heard both the parties. Case files perused.

2. Coming to the assessee's first and foremost substantive ground challenging sec.14A r.w.r.8D disallowance of

Rs.4,53,683 made in the course of assessment proceedings dated 17.12.2016 as upheld in the CIT(A) order herein, the clinching fact which emerges at the outset is that the tax payer had not derived any exempt income and therefore, we quote [2015] CIT v. Corrttech Energy Pvt. Ltd. [2015] 372 ITR 97(Guj.)' Cheminvest Ltd., v. CIT [2015] 378 ITR 33 (Del.); PCIT vs. Avantha Realty Ltd., {2024} 164 taxmann.com 376 (Cal.) to delete the same. The assessee succeeds in its first and foremost substantive ground.

3. The assessee's latter substantive ground challenging PF/ESI of Rs.48,217 is concerned, learned counsel vehemently submits that the same had been credited to the corresponding account before the "due" date of filing return u/s.139(1) of the Act. He could hardly rebut the fact that the hon'ble apex court's recent landmark decision in Checkmate Services (P.) Limited v. CIT (2022) 448 ITR 518 (SC) has already decided the issue against the assessee and in favour of the department that the relevant "due" date is as per the corresponding statute than that u/s.139(1) of the Act. We accordingly confirm this latter disallowance in the above terms. This, assessee's appeal ITA No. 712/Coch/2023 is partly allowed and it's stay application SA No.194/Coch/2023 is dismissed as rendered infructuous. Ordered accordingly.

4. To sum up, this assessee's appeal ITA No.712/Coch/2023 is partly allowed and the SA No.194/Coch/2023 is dismissed as rendered infructuous

above terms. A copy of the common order be placed in the case files.

Order pronounced in the open court on this 23rd day of October, 2024.

Sd/-
(Amarjit Singh)
ACCOUNTANT MEMBER

Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER

Cochin ; Dated : 23rd October, 2024.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT Concerned.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin