

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIALMEMBER**

**ITA No.2294/DEL/2024
(Assessment Year : 2017-18)**

DCIT, Circle 1 (1),
Delhi.

vs.

ACB (India) Power Limited,
North West Delhi,
C-102, LGF Surya Enclave,
New Multan Nagar,
B.O. New Multan Nagar Village,
Delhi – 110 056.

(PAN: AAICA7305D)

**CO No.68/Del/2024
(in ITA No.2294/DEL/2024)
(Assessment Year : 2017-18)**

ACB (India) Power Limited,
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vs.

DCIT, Circle 1 (1),
Delhi.

(PAN: AAICA7305D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Kapoor, Advocate
Ms. Ananya Kapoor, Advocate
Shri Tarun Chanana, Advocate
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 19.09.2024

Date of Order : 26.11.2024

ORDER**PER S. RIFAUR RAHMAN, AM :**

1. This appeal filed by the Revenue and cross objections filed by the assessee are filed against the order of Id. Commissioner of Income-tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to 'Ld. CIT (A)') dated 13.03.2024 for AY 2017-18.
2. Brief facts of the case are, assessee filed its return of income declaring an income of Rs.1,81,00,580/- on 31.10.2017. The case was selected for scrutiny under CASS, accordingly notices under section 143(2) and 142(1) of the Income-tax Act, 1961 were issued and served upon the assessee and in response, the assessee filed relevant information and clarifications as called for.
3. Assessee is engaged in the business of production, generation, storage, transmission, distribution and supply of electricity in bulk and retail etc. During the course of assessment proceedings, the Assessing Officer observed that assessee has made non-current investments, like, investment in subsidiaries, joint venture associate and other investments during the year. The assessee was asked to submit as to why the disallowance under section 14 of the Act should not be made and added to the total income.

Assessee in reply submitted that assessee has not earned any income which does not form part of the total income, hence no disallowance can be made under section 14A of that Act. Further assessee submitted detailed submissions. After considering the submissions, the Assessing Officer rejected the same and disallowed Rs.965,84,130/- under section 14A of the Act.

4. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A) and submitted detailed submissions indicating that assessee has not earned any exempt income during the year. After considering the detailed submissions, Id. CIT (A) deleted the additions by observing as under :-

“7.7 In view of the facts and circumstances of the case, and the prevailing position of law applicable on such facts for the assessment year under consideration in the instant appeal, and my predecessor's (for AY 2011-12, 2012-13,2013-14 & 2014-15) and Hon'ble Jurisdictional Tribunal's order in appellant's own case for AY 2011-12 & 2013-14 on the very same issue, 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-company. Accordingly, the Assessing Officer (A.O.) is directed to delete the disallowance of expenditure of Rs. 9,65,84,130/-

under section 14A made on this account. These grounds of appeal are allowed.”

5. Aggrieved with the above order, Revenue is in the appeal before us raising following grounds of appeal :-

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance Rs.9,65,84,130/- made u/s 14A r.w.r. 8D of Income Tax Rules without considering the circular no. 512014 dated 11.02.2024 which clarifies that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in particular year has not earned any exempt income:

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance Rs.9,65,84,130/- made u/s 14A r.w.r. 8D of Income Tax Rules without appreciating the facts that the changes in the provisions of Section 14A inserted vide the Finance Act 2022, are prospective in nature and this very facts was clarified in the decision of Hon’ble Jurisdictional Delhi High Court in the case of ACIT Vs. Era Infrastructure (India) Ltd. in its order dated 20.07.2022 and hence, the amended provision is not applicable in year under consideration.”

6. At the time of hearing, ld. DR for the Revenue submitted that no doubt, assessee has not earned any exempt income, however made substantial investments in the investments which may earn exempt income and incurred expenditure for making investment which will earn exempt income. He relied on the findings of the AO and CBDT circular.
7. On the other hand, ld. AR for the assessee relied on the findings of the ld. CIT(A) and submitted that the additions were made in the earlier Assessment Years 2011-12 to 2014-15 and ITAT has considered the similar issue and allowed the appeal of the assessee in Assessment Years 2011-12 and 2013-14. Ld. CIT (A) has relied on the decision of ITAT in assessee's own case and allowed the appeal of the assessee. He prayed that the same may be considered and further submitted that assessee has filed cross objections in support of the findings of the ld. CIT (A).
8. Considered the rival submissions and material available on record. We observed that Assessing Officer has made disallowance under section 14A of the Act even after recording that assessee has not earned any exempt income during the year. It is settled position of law that when the assessee does not earn any exempt income during the year, no disallowance can be made and similar aspect was adjudicated by the coordinate Bench of the ITAT in assessee's own case in Assessment Years 2011-12 and 2013-14.

Therefore, the issue under consideration is already covered in favour of the assessee. Accordingly the appeal filed by the Revenue is dismissed,

9. Since we have already dismissed the appeal of the Revenue, the cross objection filed by the assessee becomes infructuous. Accordingly the same is also dismissed,
10. In the result, the appeal filed by the Revenue and cross objections filed by the assessee is dismissed.

Order pronounced in the open court on this 26th day of November, 2024.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated : 26.11.2024
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**