

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

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

**ITA No.2527/DEL/2024
(Assessment Year : 2018-19)**

Advance India Projects Limited,
AIPL Business Club, Fifth Floor,
Golf Course Extension Road, Sector 62,
Gurgaon – 122 001 (Haryana).

vs.

Pr.CIT,
Central Delhi 1,
Delhi.

(PAN : AACCA9859J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Agarwal, Sr. Advocate
Shri Shailesh Gupta, Advocate
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 24.09.2024
Date of Order : 26.11.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

1. This appeal is filed by the assessee against the order of ld. Pr. Commissioner of Income-tax (PCIT), Delhi-1 (hereinafter referred to 'Ld. PCIT) dated 28.03.2024 for Assessment Year 2018-19.
2. The brief facts of the case are, the assessee had filed its return of income for assessment year 2018–19 on 30.11.2018 declaring total income of Rs.14,85,19,440/–. The assessment was completed under section 143(3) r.w.s 143(3A) and 143(3B) on 09.04.2021 at an income of Rs.14,85,39,600/–.

Subsequently, ld. PCIT, Delhi-1 examined the assessment records and observed that the assessee has invested in non-current investments and had not made any disallowance u/s 14A of the Act even though the assessee had made substantial investments in shares for the purpose of earning dividend and other income which are exempt and not chargeable to tax. Although, the assessee has not declared any exempt income/dividend during the year under consideration, however the investment made has the potential to earn exempt income in the future. Accordingly he issued notice to the assessee asking them to explain why the disallowance under Rule 8D of the Income-tax Rules, 1962 (for short 'the Rules) cannot invoke in the case of the assessee. In reply, the assessee submitted a detailed submissions vide letter dated 07.03.2024, the content of the letter is reproduced by the ld. PCIT at pages 5 to 7 of the impugned order.

3. After considering the detailed submissions of the assessee, he find it not tenable in light of the facts on record and he relied on the decision of Cheminvest Ltd versus ITO (ITAT, SB – Del) 121 ITD 318 and Pradeep Kar case 319 ITR 416, in which it was held that the expenditure in relation to exempt income is to be disallowed under section 14A of the Act even when no exempt income is earned during the year. Further, he observed that the investments do have potential to earn income which is tax-free. Accordingly he directed the assessing officer to disallow 1% of the average value of investment, to the extent of Rs.83,11,376/–.
4. Aggrieved, the assessee preferred an appeal before us raising following grounds of appeal :-

“1 That having regard to the facts and circumstances of the case and in law, the assessment order passed by ld AO u/s 143(3) is neither erroneous nor prejudicial to the interest of revenue and Ld. Pr. CIT erred in invoking the provisions of section 263 and also erred in directing the ld AO to pass the order 263/143(3)/143(3A)/143(3B) and disallow the sum of Rs.83,11,376/- u/s 14A of the Income Tax Act without properly appreciating the facts.

1.1 The Ld. Pr. CIT has erred both on facts and in law in ignoring the fact that the issue raised by him in notice U/S 263 was before the ld AO and as such the jurisdiction on this issue u/s 263 cannot be assumed.

1.2 The order passed by Pr. CIT under section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in the case of no/lack of enquiry and the proceeding under Section 263 cannot be used for substituting opinion of the ld A.O. by that of the ld Pr. CIT.”

5. At the time of hearing, ld. AR for the assessee submitted that as per the record, the assessee has not earned any exempt income during the year. Ld. PCIT, while examining the record of assessment, noticed that the assessee has investments in shares and other securities by relying on the decision of special bench of ITAT in the case of Cheminvest Ltd (supra). He submitted that the above said decision was overruled by Hon'ble Delhi High Court. Therefore, relying of above decision is not proper and justified. He prayed that the order passed by ld. PCIT deserves to be set-aside and prayed accordingly.

6. On the other hand, learned DR for the Revenue relied on the findings of ld. PCIT.
7. Considered the rival submissions and material placed on record. We observed that the assessee has not declared any exempt income during the year even though it has made several investments as recorded in its balance sheet. As far as disallowance of section 14A is concerned, it is settled law, as per which no disallowance can be made wherein no exempt income is declared by the assessee during the year. It is fact on record that assessee has not earned any exempt income during the year and ld. PCIT has invoked the provisions of section 14A with the observation that investments do have potential to earn exempt income in the future and it has hidden and embedded expenses in making such investments which are exempt from tax. Therefore, the decision relied by him also overruled by Hon'ble Delhi High Court. Accordingly we are inclined to set aside the order passed under section 263 of the Act and ld. PCIT has not brought on record any mistake apparent on record or the action of the assessing officer is against the law.
8. In the result, appeal filed by the assessee is allowed.

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