

IN THE INCOME TAX APPELLATE TRIBUNAL “K(SMC)” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM
AND MS. KAVITHA RAJAGOPAL, JM**

ITA No. 4253/Mum/2024
(Assessment Year:2021-22)

Incred Holdings Limited Unit No. 1203, 12 th Floor, B Wing, The Capital, Plot No. C-70, G Block, BKC, Mumbai-400 051	Vs.	Assessment Unit Delhi
PAN/GIR No.AAECK 1977 B		
(Assessee)	:	(Respondent)

Assessee by	:	Shri Nimesh Jain
Respondent by	:	Shri Tushar Mohite

Date of Hearing	:	16.10.2024
Date of Pronouncement	:	27.11.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short),National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2021-22.

2. The assessee has raised the following grounds of appeal:

1. *That on the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ['Ld. CIT(A)'] was not justified in confirming addition of a sum of INR 215,773 under section 14A of the Income-tax Act, 1961 ('the Act') read with Rule 8D(2)(ii) of the Income-tax Rules, 1962 ('the Rules') without appreciating the fact that during the year, the Appellant has neither earned any exempt income nor incurred any expenditure in relation to earning any exempt income.*

2. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not justified in not appreciating the fact that the amendment to Section 14A of the Act, which was*

introduced by the Finance Act, 2022 is prospective in nature and applicable for the AY commencing on or after 1 April 2022.

The above grounds of appeal are all independent and without prejudice to one another. The Appellant craves leave to supplement, rescind, amend, add and or otherwise alter/modify any or all the grounds of the appeal stated hereinabove, either before or at the time of hearing of this appeal

The Appellant prays that the Ld. CIT(A) be directed to grant relief in respect of the Grounds stated here-in-above. The Appellant craves leave to submit such facts / documents/ evidences in the course of hearing as may be necessary.

3. Brief facts of the case are that the assessee company was incorporated as a private limited company under the Companies Act, 1956 and had filed its return of income on 15.03.2022, declaring Nil income. The return of income was processed u/s. 143(1) of the Act and the assessee's case was selected for scrutiny under CASS and notices u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee. The learned Assessing Officer ('ld. A.O.' for short) had passed the assessment order u/s. 143(3) r.w.s. 144B of the Act on 20.12.2022, declaring total income at Rs.21,71,769/- after making addition/disallowance u/s. 14A of the Act and on account of ESOP expenses.
4. The assessee was in appeal before the first appellate authority, challenging the assessment order.
5. The ld. CIT(A) vide order dated 28.06.2024, partly upheld the order of the ld. A.O. and confirmed the disallowance made u/s. 14A of the Act.
6. The assessee is in appeal before us, challenging the impugned order of the ld. CIT(A).
7. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that the assessee has not earned any exempt income and has also not incurred any expenditure as there was no such exempt income for the year under consideration. The ld. AR further contended that the amendment to Section 14A of the Act

introduced by Finance Act, 2022 is prospective in nature and the same is applicable only to the subsequent years. The Id. AR relied on the following decisions in support of his contentions:

- a. Maxopp Investment Ltd. vs. CIT, New Delhi [2018] 91 taxmann.com 154 (SC)
 - b. PCIT-6, New Delhi vs. McDonalds India Pvt. Ltd. (ITA No. 5094/Del./2012) (Delhi HC)
 - c. CIT vs. Chettinad Logistics Private Limited [2018] 95 taxmann.com 250 (Madras HC and SC)
 - d. PCIT vs. Kohinoor Project (P.) Ltd. [2020] 121 taxmann.com 177 (Bombay HC)
 - e. ACIT vs. Direct Media Distribution Ventures (P.) Ltd. [2023] 148 taxmann.com 35 (Mumbai Tribunal).
8. The learned Departmental Representative ('Id.DR' for short) on the other hand controverted the said fact and relied on circular no. 5/2014 which emphasizes that disallowance u/s. 14A of the Act is warranted even when no exempt income has been earned during the year under consideration. The Id. DR relied on the order of the lower authorities.
9. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the disallowance made by the Id. A.O. and upheld by the Id. CIT(A) u/s. 14A r.w.r. 8D(2)(ii) amounting to Rs. 2,15,773/-. It is also observed that the assessee has not earned any exempt income during the impugned year and it is now a settled preposition of law that disallowance u/s. 14A cannot be made when the assessee has not earned any exempt income during the year

under consideration. It is also pertinent to point out that the amendment brought about in Section 14A introduced vide Finance Act, 2022 w.e.f. 01.04.2022 is prospective in nature which provides that disallowance u/s. 14A is to be made even when the assessee has not earned any exempt income and the same has been reiterated by the decision of the Hon'ble Delhi High Court in the case of *PCIT vs. Era Infrastructure (India) Ltd. [2022] 141 taxmann.com 289 (Delhi HC)* which has been followed in various other subsequent decisions.

10. On the above factual matrix of the case, we are of the considered view that the impugned addition made by the Id. AO and upheld by the Id. CIT(A) ought to be deleted. The grounds raised by the assessee are hereby allowed.
11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 27.11.2024

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated: 27.11.2024
Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai