

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT, AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 2452/DEL/2024 [A.Y. 2018-19]

M/s Isha Properties Pvt Ltd  
2, Diplomatic Enclave,  
Sardar Patel Marg  
New Delhi

Vs.

The Pr. CI.T.  
Central  
Delhi

PAN - AABCI 1862 L

(Applicant)

(Respondent)

Assessee By : Shri Rakesh Joshi, CA

Department By : Shri Dayainder Singh Sidhu, CIT-DR

Date of Hearing : 28.11.2024

Date of Pronouncement : 28.11.2024

**ORDER**

**PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. PCIT, Faridabad dated 21.03.2024 framed u/s 263 of the Income-  
tax Act, 1961 [the Act, for short] pertaining to A.Y. 2018-19.

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

*"1. On the fact and circumstances of the case as well as in Law, the Learned Principal Commissioner of Income Tax (PCIT) has erred in initiating proceedings U/s.263 of the Income Tax Act, 1961 (the Act) vide show- cause notice dated 05.02.2024 and passing an order U/s 263 of the Act, without considering facts & Circumstances of the case.*

*2. On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in passing Revision Order u/s.263 of the Income Tax Act, 1961 for the assessment order u/s.143(3) of the Income Tax Act, 1961 passed by the Learned Assessing Officer after making adequate enquiries and application of mind, without considering the facts and circumstances of the case.*

*3. On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in considering the order passed u/s.143(3) of the Income Tax Act, 1961 by the Learned Assessing officer as erroneous and prejudicial to the interest of the revenue, without Considering circumstances of the case.*

*4 On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in giving direction to the Learned Assessing Officer to enhance the income of the appellant by Rs. 14,76,036/ on account of alleged disallowance of expenses*

*u/s.14A of the Act, without considering the facts and circumstances of the case and provision of law.*

*5. The appellant craves leave to add, amend, alter or delete the said ground of appeal. Total tax effect."*

4. The representatives of both the sides were heard at length, the case records carefully perused and we have duly considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules.

5. Briefly stated, the facts of the case are that the assessee filed its return of income for the year under consideration u/s 139(1) of the Income-tax Act, 1961 [the Act, for short] on 20.10.2018 declaring total income of Rs. 2,57,70,840/- pursuant to which, scrutiny assessment u/s 143(3) of Act was completed on 25.06.2021 at the returned income.

6. The ld. PCIT invoked section 263 of the Act to revise the order of the Assessing Officer noting that as per explanation to section 14A, the Assessing Officer was required to disallow expense as per Rule 8D. The ld. PCIT held that there is an under-assessment of income to the extent of Rs. 14,76,036/- on account of non-disallowance of expenses

u/s 14A of Act. Accordingly, vide show cause notice dated 05.02.2024, the assessee was asked to explain as to why proceedings u/s 263 of the Act should not be initiated for failure to disallow expenses u/s 14A of Act.

10. The assessee filed reply dated 23.02.2024 which reads as under:

"In this regard, we seek to bring your attention to the questionnaire shared by Ld. AO in the scrutiny assessment proceedings. The Query No. 2 is extracted as under

"Query 2. Please specify applicability of Sec. 14A of the IT Act, 1961 in your case. If yes, please submit computation of disallowances under Sec. 14A r.w. Rule BD.

Reply: In this regard, it may please be noted that during the year under consideration the assessee company has not earned any exempt income as may be verified from profit & loss account of the assessee company. Hence, there is no applicability of section 14A of IT Act, 1961 in case of the Assessee Company."

It is submitted that, since there is categorical query and response to this effect which was addressed during the assessment proceedings, your goodself cannot once again reopen this issue under revision proceedings.

**Notwithstanding the same, Assessee would like to humbly submit the following for your goodself's favorable consideration.....: "**

11. Not satisfied with the explanation of the assessee, the PCIT was of the firm belief that provisions of section 14A r.w.r 8D squarely apply and invoking the provisions of section 14A r.w.r 8D, directed the Assessing Officer to compute the disallowance at Rs. 14,76,036/-.

12. The aggrieved assessee is now in appeal before us.

13. Before us, the ld. counsel for the assessee stated that during the year under consideration, the assessee has not received any exempt income and, therefore, no disallowance is to be made u/s 14A of the Act. The ld AR argued that there is no dividend or any exempt income earned by the assessee during the year. The ld DR further argued that amendment to section as explanation was brought in w.e.f 01.04.2022.

14. Per contra, the ld DR relied on the order of the PCIT.

15. We have heard the rival submissions and have carefully perused the orders of the authorities below and the relevant material on record. Having heard the rival submissions, we find that the factual

matrix of the instant case shows that there is no dispute that during the year the assessee did not earn any exempt income from tax. Since there is no exempt income earned by the assessee during the year, there cannot be any disallowance u/s 14A r.w.r 8D. We find that the PCIT has invoked the provisions of section 263 on account of the decision of Delhi High Court in the case of *Era Infrastructure India Ltd.* The PCIT himself records as follows:

**"In this regard, the assessee has placed reliance upon decision of Hon'ble Delhi High Court in the case of Principal Commissioner of Income Tax (Central) vs Era Infrastructure (India) Ltd (2022) 141 taxmann.com 289(Delhi) has held that upto and including A.Y 2021-22, no disallowance could be made u/s 14A if no exempt income was earned by an assessee after considering insertion of Explanation to section 14A vide Finance Act, 2022. I have considered this decision. In Para 10 of this judgement, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the SLP filed in the case of IL & FS Energy Development Co. Ltd. In view of SLP being admitted in Supreme Court on this issue, it was incumbent upon the assessing officer to make the requisite disallowance u/s 14A of I.T. Act."**

16. Considering the fact that the Delhi High Court has held the explanation to section 14A to be applicable from AY 2022-23, no addition u/s 14A can be made where the assessee has not earned any exempt income. We therefore hold the PCIT invocation of section 263 was invalid. Accordingly, the Ground raised by the assessee is allowed.

17. In the result, the appeal of the assessee in ITA No. 2452/DEL/2024 is allowed.

The order is pronounced in the open court on 28.11.2024.

Sd/-

[MAHAVIR SINGH]  
VICE PRESIDENT

Sd/-

[NAVEEN CHANDRA]  
ACCOUNTANT MEMBER

Dated: 28<sup>th</sup> NOVEMBER, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	