IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SH. BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER

I.T.A. No. 371/Ind/2024
Assessment Year: 2018-19

Infobeans Technologies Ltd., 1st and 2nd Floor, Crystal IT Park, Indore, (M. P.), 452001 [PAN: AACCI5864K] **(Appellant)**	Vs.	The Principal Commissioner of Income Tax, Indore-1, Indore, M.P. **(Respondent)**

Appellant by	:	S/Sh.SN Agrawal & Ritesh Jain, ARs
Respondent by	:	Sh. Ram Kumar Yadav,CIT-DR
Date of Hearing	:	30.01.2025
Date of Pronouncement	:	29.04.2025

ORDER

Per Udayan Dasgupta, J.M.:

This appeal is filed by the assessee against the order of the ld. PCIT-1, Indore passed u/s 263 of the Income Tax Act,1961 *(henceforth the Act)* dated 27.03.2024 which has emanated from the order of the Assessing Officer, NEAC, Delhi passed u/s 143(3) dated15.04.2021.

2. The grounds of appeal taken by the assessee in Form 36 are as follows:

1. *That on the facts and in the circumstances of the case and in law, the Ld Pr. CIT erred in setting-aside the order as passed by the assessing officer under section 143(3) r.w.s 143(3A) and 143(3B) of the Income-tax Act, 1961 by invoking the provisions of section 263 of the Act even when the order as passed by the assessing officer was neither erroneous nor prejudicial to the interests of the revenue.*

2. *That on the facts and in the circumstances of the case and in law, the Ld Pr. CIT erred in setting-aside the order as passed by the assessing officer by invoking the provisions of section 263 of the Income-tax Act, 1961 for re-examining the issue of disallowance of expenses under section 14A of the Act even when the said issue was outside the purview of reasons for which the case of the appellant was selected for scrutiny for Assessment Year 2018-19 and therefore, the assessing officer has rightly passed assessment order under section 143(3) r.w.s 143(3A) and 143(3B) of the Act after examining the issues for which the case of the appellant was selected for scrutiny.*

3. *That on the facts and in the circumstances of the case and in law, the Ld Pr. CIT erred in setting aside the order as passed by the assessing officer by invoking the provisions of section 263 of the Income-tax Act. 1961 even when the assessment order was passed by the assessing officer under section 143(3) rus 143(31) and 143(3B) of the Act after conducting necessary enquiries and after due application of mind.*

4. *That on the facts and in the circumstances of the case and in law, the Ld Pr. CIT erred in setting aside the order as passed by the assessing officer by invoking the provisions of section 263 of the Income-tax Act, 1961 for re-examining the issue of disallowance of expenses under section 14A of the Act even when the assessing officer after considering the tax audit report filed by the appellant during the course of assessment proceedings wherein the Auditor has duly stated that disallowance under section 14A of the Act was Nil and after proper examination of records & after*

due application of mind has taken one of the plausible view and has not made any disallowance under section 14A of the Act

5. That on the facts and in the circumstances of the case and in law, the Ld Pr. CIT erred issuing show-cause notice dated 14-02-2024 under section 263 of the Act for setting aside the order as passed by the assessing officer for re-examining the issue of disallowance of expenses under section 14A of the Act during the course of pendency of rectification proceedings under section 154/155 of the Act in respect of the said assessment order.

6. That on the facts and in the circumstances of the case and in law, the Ld Pr. CIT erred in setting-aside the order as passed by the assessing officer by invoking the provisions of section 263 of the Income-tax Act, 1961 for re-examining, the issue of disallowance of expenses under section 14A of the Act even when the assessing officer after proper examination of records and due application of mind has not recorded satisfaction under section 14A(2) of the Act and therefore, no disallowance under section 14A of the Act can be made to the total income of the appellant.

7. That on the facts and in the circumstances of the case and in law, the Ld Pr. CIT erred in setting aside the order as passed by the assessing officer by invoking the provisions of section 263 of the Income-tax Act. 1961 for re-examining the issue of disallowance of expenses under section 14A of the Act even when the appellant has not incurred any expenditure for earning exempt income and therefore, no disallowance under section 14A of the Act can be made to the total income of the appellant.

8. The appellant reserves the right to add, alter and modify the grounds of appeal as taken by it.

3. All the grounds of appeal taken by the assessee relates to only one single issue objecting to the assumption of jurisdiction by the Ld. PCIT u/s 263 of the Act, 61, whereby the assessment has been set aside, back to the files of the Assessing Officer

for re-examining the issue in respect of applicability of disallowance under section 14A of the Act.

4. The facts emerging from the records are that that the assessee is engaged in software development and has filed its return u/s 139(1) of the Act declaring a total income of Rs.5,86,75,750/- which was selected for scrutiny and statutory notices issued u/s 143(2)and u/s 142(1) of the Act , has been duly complied with, by the assessee and subsequently assessment completed u/s 143(3) of the Act accepting the returned income, without any variation and without much discussion in the assessment order.

5. The three basic issues for which the case was selected for scrutiny where as follows:

> *"i. Claim of Any Other Amount Allowable as Deduction in Schedule BP*
>
> *ii. Exemption for Undertakings in FTZ/SEZ (Section 10A, 10AA)*
>
> *iii. Disallowance u/s 40A(7) (Gratuity provision)."*

6. On perusal of assessment records, it was observed by the Ld PCIT that the assessee had *exempt income* during the year ,amounting to Rs.9,43,733/- (*being dividend income u/s 10(43)* ,but there are no disallowance made by the assessee in its

computation of income u/s 14A, relating to expenditure incurred for earning the exempted income.

7. Thereafter, the ld. PCIT assumed jurisdiction u/s 263 of the Act, vide notice dated 14th February, 2024, on the issue of proposed disallowance u/s 14A, relating to the exempt income. In course of proceedings, written submissions were filed by the assessee and the ld. PCIT considering all submissions has disposed of the case by setting aside the matter back to the files of the AO with the following observation:

> *"12. In view of the detailed discussion made in above paras and considering the facts of the case, I am of the considered opinion that the assessment order dated 15/04/2021 for A.Y. 2018-19 is erroneous in so far as it is also prejudicial to the interest of revenue on account of passing of the assessment order without making required inquiries and verification, which should have been made. Accordingly, I am satisfied that provisions of section 263 of Income Tax Act 1961 are required to be invoked. Therefore, the assessment for A.Y. 2018-19 framed on 15/04/2021 is hereby set-aside to the file of AO to re-examine the issue and to make de-novo assessment, indicated in the preceding discussion, u/s 263 and passing an order as per the law after making necessary verification, inquiries and investigations. It would be not out of place to mention that the AO shall re-examine only the issue which has been indicated for further investigation in the preceding discussion, after according due opportunities of being heard to the assessee."*

Holding the order to be erroneous so far as it is prejudicial to the interest of the revenue, the relevant observations of the ld. PCIT was that the assessee company has earned tax free dividend *(exempted income of Rs.9,43,733/- u/s 10(34))*and has made investment in equities during the year , which are reflected under noncurrent

investment in balance sheet but has not declared the related expenditure incurred for earning the exempted income and has not disallowed any expenses u/s 14A in this computation of income.

8. It was further observed that, in course of scrutiny proceedings the AO, has not raised any specific query regarding the applicability of section 14A of the Act *vis a vis* the exempted income disclosed in the computation, leading to the conclusion that the assessment has been passed without any application of mind, without conducting necessary inquiries and verifications which was supposed to have been made.

9. It was further observed by the ld. Commissioner, that in course of proceedings u/s 263, the assessee, ***sou-moto*** has furnished a fresh computation along with workings of disallowance u/s 14A which works out to *Rs.1,34,052/-*, which points to the fact that the order passed by the AO is erroneous so far as it is prejudicial to the interest of the revenue and there has been a tacit admission on the part of the assessee itself indicating loss of legitimate taxes.

10. The ld. CIT has further relied on the decision of jurisdictional High Court in the case of *Deepak Kumar Garg (299 ITR 435 M. P. High Court)* to submit that in the instant case, the AO has not done any inquiry, regarding the applicability of section 14A ,in spite of exempted income being reflected in the computation and has accepted the same without proper inquiry causing loss of substantial taxable income.

11. Therefore, he arrived at a conclusion that the Assessing Officer has not done any inquiry regarding the above issue which should have been done during assessment proceedings because it is incumbent on the part of the AO investigate the facts required to be examined and verified to complete the assessment and in the instant case, the AO has completed assessment without making necessary inquiries and investigations which are required to arrive at a correct taxable income. As such, the order passed by the AO was hit by explanation-2 to section 263.

12. On this issue, in support of his observations, the ld. PCIT relied on various judicial precedents *(some of which are referred below for ready reference):*

> ***"(i) Mahaver Trader (220 ITR167 MP High Court)*** *while setting aside the order of ITAT held that ITO had not examined the issue of allowability of deduction us 80HH and 80J in the light of conditions laid down for grant of relief under said sections. Further, it was observed by the Hon'ble court that the Tribunal instead of approaching the matter in the proper perspective had on their own started making enquiries and found that order passed by A.O. was correct which was not warranted at all. The operative part of decision is reproduced here under:-*
>
> *"The finding recorded by the Tribunal appears to be not correct because all the materials which ought to have been utilized by the Income-tax Officer were not there and it is not understandable that how the Tribunal have on their own, assessed the situation. Therefore, we are of the opinion that the view taken by the Tribunal is not correct and we answer the aforesaid question in favour of the Revenue and against the assessee. The Income-tax Officer may examine the matter afresh in the light of the decision of the Commissioner of Income-tax without taking notice of any adverse observations, if any, made by the Commissioner of Income-tax.*

(ii) Daniel Merchants (P.) Ltd, v. ITO (SLP No. 23976 of 2017, dated 29-11-2017), *it has been held by the Hon'ble Apex Court that:*

"In all these cases, we find that the Commissioner of Income-tax had passed an order under section 263 of the Income-tax Act, 1961 with the observations that the Assessing Officer did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income-tax had, after setting aside the order of the Assessing Officer, simply directed the Assessing Officer to carry thorough and detailed inquiry. It is this order which is upheld by the High Court. We see no reason to interfere with the order of the High Court. The Special Leave Petitions are dismissed."

(iii) Nagal Garment Industries (P.) Ltd, v. CIT [2020] 113 taxmann.com 4 (M.P.), *the Hon'ble High Court has upheld the findings of the Tribunal:*

"8. The Income-tax Appellate Tribunal, by relying on the decision of the Supreme Court rendered in the case of Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83/109 Taxman 66, the order passed by the Supreme Court in the case of Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 and CIT v. Amitabh Bachchan [2016] 69 taxmann.com 170/240 Taxman 221/384 ITR 200 (SC) relevant extracts of which have been quoted by the Income-tax Appellate Tribunal in paragraphs 4 2 and 4.3 of its order, has arrived at a conclusion that as the Assessing Officer has passed the order of assessment without making a proper enquiry and without applying his mind to the return and the documents filed by the assessee, as such the order is erroneous as well as prejudicial to the interest of revenue. The Tribunal has also recorded a finding of fact, on the basis of the record available, that in the instant case, though the Assessee has submitted records before the Assessing Officer, he has simply accepted the claim of the assessee without examining the same and therefore, the present case is one where the impugned order of assessment is erroneous as well as prejudicial to the interest of revenue on account of lack of enquiry and application of mind to the facts of the case by the Assessing Officer."

(iv) Jagdish Kumar Gulati [2004] 139 TAXMAN 369 (ALL.)

When an assessment is done under section 143(3), it is expected that the Assessing Officer will make a detailed enquiry to find out the correct income of the assessee and not to take the facts placed by the assessee on their face value. No proper enquiry appeared to have been made by the Assessing Officer in the instant case. It is well settled that if the Assessing Officer fails to make a proper enquiry this is erroneous and prejudicial to the interest of the revenue. [Para 13]

(v) Daga Entrade (P.) Ltd.'s case ((2010) 327 ITR 467):

The Hon'ble Guwahati High Court held that if the order of the assessing officer was passed ignoring relevant material, causing prejudice to the interest of the revenue, suo-moto revisional jurisdiction could be exercised by the commissioner."

***(vi) Toyota Motor Corporation [2008]* 174 Taxman 395 (Delhi) Affirmed in [2008] 173 Taxman 458 (SC)**

The reasoning *given by the* Tribunal could *not be* accepted simply because *the Assessing* Officer himself *did not say any* such thing *in his order. There is no* doubt *that the* proceedings before *the Assessing* Officer are quasi-judicial proceedings and a decision *taken by him in this* regard must be *supported by reasons. Otherwise, every order, such as the one passed by the Assessing Officer, could result in a theoretical possibility that it may be revised by the Commissioner under section 263. Such a situation is clearly impermissible. [Para 9]*

It is also necessary for the parties to know the reasons that have weighed with the adjudicating authority in coming to a conclusion. The order passed by the Assessing Officer should be a self-contained order giving the relevant facts and reasons for coming to the conclusion based on those facts and law. [Para 10]

It was found that the order passed by the Assessing Officer was cryptic, to say the least, and it could not be sustained. The Tribunal could not substitute its own reasoning to justify the

order passed by the Assessing Officer when the Assessing Officer himself did not give any reason in the order passed by him. [Para 11]

Therefore, the matter was to be remanded to the file of the Assessing Officer to decide the issue afresh in terms of the order passed by the Commissioner under section 263. [Para 12]

13. Referring to all the above particulars the Ld. PCIT, set aside the matter to the AO for re- examining only the issue relating to expenditure incurred for earning exempted income after causing necessary verification, inquiries and investigations, and pass orders as per procedure of law.

14. Before the tribunal the ld. AR of the assessee filed a paper book consisting of notices issued u/s 142(1) calling for particulars on various issues, and corresponding replies submitted by the assessee explaining the queries , along with copies of TAR and financial statements, and copies of ledger account of dividend received *(from various funds L &T , Kotak Equity, Aditya Birla, etc)* amounting to Rs. 9,43,983/- and copies of ledger account of relevant mutual fund investments (*including consolidated MF statements)*.

15. The Ld. AR submits that the assessment order has been passed after conducting necessary inquiries and after due application of mind and the said order is neither erroneous nor prejudicial to the interest of the revenue. He submitted that in the instant case, the Commissioner has initiated the revisionary proceedings for the

purpose of re-verification of the issue of disallowance u/s 14A and the said issues were duly examined by the ld. AO in the course of assessment proceedings. He further submits that one of the reasons for which the case was selected for scrutiny was verification of "*claim of any other amount allowable as deduction in Schedule BP"* and the AO has verified all the documents and the amount liable as deduction in *Schedule BP*, he has not found any valid reason for making any disallowance u/s 14A and he was satisfied that no expenditure debited was related to income which did not form part of the total income.

16. He further submitted that the financial statement and audited accounts were filed in course of assessment proceedings and auditor has *reported Nil disallowance u/s 14A* of the Act in his tax audit report and referring to the notice issued u/s 142(1) where details of current investment and other income were asked by the AO and furnished by the assessee, he argued that the AO on examination of abovementioned documents has not recorded any satisfaction u/s 14A(2) of the Act and in absence of any such satisfaction the provisions of section 14A cannot be invoked. He further submitted that the AO has possibly ,adopted a permissible view in law ,in as much he arrived at a conclusion on the basis of the auditor's report that in the instant case the disallowance u/s 14A will be NIL and in such cases the twin conditions for assumption of jurisdiction under section 263 are not satisfied.

17. He further submitted that the above facts clearly establish that the ld. Commissioner has travelled beyond jurisdiction vested upon him u/s 263 and has stepped into shoes of the Assessing Officer in order to redo the assessment and in the instant case, there is no scope left for any further verification as envisaged in section 263, since, the AO has already carried out detail examination in respect of the case selected.

18. Thereafter, the Ld AR relied on some judicial precedent, in support of his contention to argue , that the AO is not required to give details reasoning in respect of each and every item of deduction and the question whether there has been an application of mind before allowing expenditure has to be examined from the record of the case, and in the instance case, the assessee has filed all details before the AO which the AO has accepted, there is no expenditure attributable to the exempted income during the relevant assessment year and relied upon (*CIT, Bangalore v. Chemsworth (P) Ltd. reported in [2021] 119 taxmann.com 358 (Karnataka).* He further submitted that when the facts as emerging out of the scrutiny proceedings are apparently in order and no further inquiry is warranted in his bonafide opinion he need not conduct any further inquiry just it is lawful to make inquiry in these matters.

19. The ld. AR further relying on the judgment of the Hon'ble Apex Court in the case of *Malabar Industrial Co. Ltd. v. CIT reported in [2000] 243 ITR 83 (SC)*to

point out that the provisions of section 263 cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted and incorrect assumption of facts or an incorrect application of law will satisfy the requirement of this section and in the instant case, the same is absent. He further submitted that the provisions of section 263(2) cannot be interpreted in a manner which would make inquiry unending so that no assessment order could attain finality. It is to be seen during the course of assessment proceedings, whether the AO has examined the issue, whether he has applied his mind and whether he has reached a legally possible conclusion. In the instant case all the three ingredients has been satisfied and as such the order cannot be subjected to revisionary jurisdiction.

20. In support of his contention the Ld AR submitted *plethora of judgments* some of which are referred to as under:

> ***"12.1] The Hon'ble ITAT Ahmedabad Bench in the case of Torrent Pharmaceuticals Ltd v. DCIT*** *reported in [TS-8453-ITAT-2018(Ahmedabad)-O has held that:*
>
> *"9.1 The aim and object of introduction of aforesaid Explanation by Finance Act, 2015 was explained in CBDT Circular No 19 53. Revision of order that is erroneous in so far as it is prejudicial to the interests of revenue.*
>
> *53.1 The provisions contained in sub-section (1) of section 263 of the Income tax Act, before amendment by the Act, provided that if the Principal Commissioner or Commissioner considers that any order passed by the Assessing Officer is erroneous in so far as it is*

prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making an enquiry pass an order modifying the assessment made by the Assessing Officer or cancelling the assessment and directing fresh assessment.

53.2 The interpretation of expression "erroneous in so far as it is prejudicial to the interests of the revenue" has been a contentious one. In order to provide clarity on the issue, section 263 of the Income-tax Act has been amended to provide that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner. (a) the order is passed without making inquiries or verification which, should have been made; (b) the order is passed allowing any relief without inquiring into the claim; (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or (d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

1.12.2] ***The Hon'ble ITAT Mumbai Bench in the case of Narayan Tatu Rane v. ITO*** *reported inTS-5393-ITAT-2016[Mumbai)-O has held that:*

"19. The law interpreted by the High Courts makes it clear that the Ld Pr. CIT, before holding an order to be erroneous, should have conducted necessary enquiries or verification in order to show that the finding given by the assessing officer is erroneous, the Ld Pr. CIT should have shown that the view taken by the 40 is unsustainable in law, in the instant case, the Ld Pr. CIT has foiled to do so and has simply expressed the view that the assessing officer should have conducted enquiry in a particular manner as desired by him. Such a course of action of the Lad P. CIT is not in accordance with the mandate of the provisions of sec. 263 of the Act. The Ld Pr. CIT has taken support of the newly inserted Explanation 2(a) to sec. 263 of the Act. Even though there is a doubt as to whether the said explanation, which was inserted by Finance Act 2015 wef. 1.4.2015, would be applicable to the year under consideration, yet we are of the view that the said Explanation cannot be said to have over ridden the law interpreted by Hon'ble Delhi High Court, referred above, If that be the case, then the Ld Pr. CIT can find fault with each and every assessment order,

without conducting any enquiry or verification in order to establish that the assessment order is not sustainable in law and order for revision. He can also force the AO to conduct the enquiries in the manner preferred by Ld Pr. CIT, thus prejudicing the independent application of mind of the AO. Definitely, that could not be the intention of the legislature in inserting Explanation 2 to sec. 263 of the Act, since it would lead to unending litigations and there would not be any point of finality in the legal proceedings. The Hon'ble Supreme Court has held in the case of Parashuram Pottery Works Co. Ltd Vs. ITO (1977)[106 ITR 1) that there must be a point of finality in all legal proceedings and the stale issues should not be re activitated beyond a particular stage and the lapse of time must induce repose in and set at rest judicial and quasi judicial controversies as it must in other spheres of human activity.

20. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinizing the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case, Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorize or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquries or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant."

1.12.5] The Hon'ble ITAT Delhi Bench in the case of Pushp Steel and Mining Private Ltd v. PCIT *reported in TS-7875-ITAT-2021 (Delhi)-O has held that:*

16. As far as the invocation of Explanation 2 to Section 263 by PCIT in the present case is concerned, we are of the view that only in a very gross case of inadequacy in inquiry or where inquiry is per se mandated on the basis of record available before the AO and such inquiry was not conducted, the revisional power so conferred can be exercised to invalidate the action of AO. In view of the aforesaid facts, we are of the view that in the present case, Ld. PCIT was not justified in invoking the provisions of Section 263 of the Act to set aside the assessment order passed by AO u/s 143(3) of the Act. We therefore set aside the order of PCIT. Thus the ground of the assessee are allowed."

21. Another aspect of the matter argued upon by the Ld. AR drawing reference to a rectification notice u/s 154/155 of the Act, issued on 20/03/2023, by the AO for rectification of an error apparent from record in relation to section 14A in the computation of income, which subsequently was objected to by the assessee, on the ground that it is outside the scope and purview of rectification u/s 155. The Ld AR argued that the said action is proof that the Ld PCIT assumed jurisdiction u/s 263 subsequently on borrowed satisfaction from the AO concerned ,which is not permissible under the Act 61, and some of the judgments relied upon for support are as under:

(i) Hon’ble Calcutta High Court in the case of PCIT vs Reeta lakhmani(2022) 145 taxmann.com 590 (Calcutta),

(ii) PCIT vs Sinhotia Metals and Minerals Pvt Ltd [IA No GA / 1/2019)

(iii) ITAT / Jodhpur , Dharmendra Bansal vs CIT [2014]48taxmann.com53(Jaipur)

(iv) ITAT / Mumbai : A K Shivpuri v CIT – 22 Mumbai [ITA 631/Mum/2014]

22. Thereafter, the Ld AR referred to the decision of the Hon'ble Apex court in the case of " *Godrej and Boyce Mfg Co Ltd vs DCIT (2017) 394 ITR 449(SC)* , to submit that in the instant case before us , the recording of satisfaction by the AO as per requirement of section 14A(2) is missing or absent , and as such the action of the Ld PCIT in directing the AO to make disallowance u/s 14A was legally unsustainable in absence of any such recording by the AO which is a precondition imposed by section 14(2A) , prior to working out disallowance as per Rule 8D of the Rules 62 .

23. The Ld AR rested his arguments with a prayer that considering the entire factual aspect of the matter, the direction of the Ld PCIT issued to the AO to make disallowance u/s 14A deserves to be annulled.

24. The Ld DR relied on the order of the Ld PCIT and placed reliance on the judicial reference of various decisions contained therein and relied heavily on the judgment of the Hon'ble Apex court in the case of *Toyota Motor Corporation (supra)* to argue that the order passed by the AO is very cryptic without containing any reasons and it is not a self contained order and does not give any relevant facts and reasons for coming to the conclusion based on such facts and it not possible for the

parties to know the reasons that have weighed with the adjudication authority in coming to a conclusion. He further submitted that it is not clear from the notices and replies contained in the paper book , whether the AO has at all examined the applicability of section 14A and applied his mind to the said aspect because there is no specific mention of the same anywhere neither in any notice issued nor in any reply of the assesseeeven though financials and TAR and computation of income are on record , but application of mind of the AO to the materials before him is absent , more so on the specific issue of section 14A is totally missing and since the application of mind itself is not there , there cannot be any probability of recording of satisfaction , because satisfaction can only be recorded for invoking section 14A , in cases where there is application of mind to the documents on record. In this case the very application of mind to the computation on record by the AO is totally missing, recording of satisfaction u/s 14A(2) ,is the second stage , which can be arrived at only after examination of the accounting part and unfortunately the AO has never travelled beyond the first stage , and has completed the assessment vide a cryptic non speaking order without reasons. He prays for upholding of the order of the Ld. PCIT.

25. We have heard the rival submission, and considered the materials on record placed in the paper book. We are of the opinion that the order of the AO is cryptic and non speaking without any reason , and we also note that the specific issue of applicability of provisions of section 14A *vis a vis* the computation of income

contained in the return furnished disclosing exempted income , has never been questioned in any notices issued u/s 142(1) of the Act , and there are no specific replies to that aspect of the matter contained in any submissions filed by the assessee in course of assessment proceedings. Had it been so, than the question of filing a ***soumoto*** working of computation of disallowance u/s 14A of the Act, in course of proceedings u/s 263, amounting to Rs. 1,34,052/-, would not have arisen because for all practical purpose the said working would have been a part of the computation in the return of income itself. Regarding the question of recording of satisfaction u/s 14A(2) of the Act, this recording is only possible , when the AO looks into the financial statements *vis a vis* books of accounts and makes proper analysis ,regarding the expenditure incurred for earning the exempted income ,and thereafter, recording his satisfaction regarding incorrectness of the claim ,he needs to proceed to the formula as laid out in Rule 8D.

26. Regarding the issue of assumption of jurisdiction on borrowed satisfaction *vis a vis* notice u/s 155, as alleged by the assessee, we find that that it was proposed rectification initiated by the A.O. and it has not proceeded any further after the assessee pointed out to the A.O. that it is beyond the scope of rectification. It does not establish that the ld. PCIT has acted at the instance of the A.O. We hold PCIT has assumed jurisdiction himself.

27. In the instant case before us there is exempted income for the year and there is investment made by the assessee during the year to earn exempted income and there is nothing on record to arrive at a conclusion that the AO has analyzed the financials *vis a vis* section 14A, in its proper perspective and nothing to conclude that he has had a proper look at the computation of the return containing exempted income , which clearly establishes non application of mind to the materials on record.

28. As such respectfully following the law laid down by the Hon'ble Apex court in the case of *Toyota Motor Corpn. (supra) and in the case of Daniel Merchants Pvt Ltd (supra) and also on the jurisdictional High court in the case of Deepak Kumar Garg (supra)* we hold that no enquiry has been conducted by the AO relating to applicability of section 14A because there has been total non application of mind of the AO to that specific aspect of the matter and the Ld PCIT was legally justified in remanding the matter for reexamination on this particular issue.

29. In the result, the appeal filed by the assessee is dismissed being devoid of merits.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 29.04.2025

Sd/-	**Sd/-**
(Bhagirath Mal Biyani)	**(Udayan Dasgupta)**
Accountant Member	**Judicial Member**

GP/Sr.PS
Copy of the order forwarded to:
(1)The Appellant:
(2) The Respondent:
(3) The CIT concerned
(4) The Sr. DR, I.T.A.T

True Copy

By Order

		Date	Initial	
1.	Draft dictated on	24.04.2025		Sr.PS/PS
2.	Draft placed before author	25.04.2025		Sr.PS/PS
3.	Draft proposed & placed before the Second Member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr. P.S./P.S.			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8.	Date on which file goes to the Head Clerk			
9.	Date on which file goes to the AR			
10.	Date of dispatch of Order			