$~**S-17**

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 293/2022**

PR. COMMISSIONER OF INCOME TAX-7, DELHI ..... Appellant

Through: Mr.Puneet Rai, Sr.Standing Counsel with Ms.Adeeba Mujahid, Jr.Standing Counsel and Mr.Nikhil Jain, Advocate.

versus

TELECOMMUNICATIONS CONSULTANTS INDIA LIMITED ..... Respondent

Through: Mr.Rahul Yadav, Advocate.

% Date of Decision: 31st August, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present Income Tax Appeal has been filed challenging the Order dated 16th July, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.3609/Del/2017 for the Assessment Year 2011-12.

2. Learned counsel for the Appellant states that the ITAT has erred in deleting the addition of Rs.3,96,75,870/- made under Section 14A of the Income Tax Act, 1961 ('the Act') ignoring the fact that there is direct and proximate nexus between exempted income, which the investment shall generate and the expenditure directly or indirectly involved in earning the said income.

3. Learned counsel for the petitioner also submits that in view of the amendment made by the Finance Act, 2022 to Section 14A of the Act by

inserting a non-obstante clause and an explanation after the proviso, a change in law has been brought about.

4. He further states that the ITAT has erred in restricting the addition of Rs.8,17,696/- to Rs.2,87,351/- resulting in deletion of Rs.5,30,345/- made on account of prior period expenses ignoring the fact that the prior period expenses had to be debited in the profit and loss account of the relevant year.

5. A perusal of the paperbook reveals that the authorities below have given concurrent finding of fact that the assessee did not earn any exempt income during the year under consideration. Consequently, the present case is covered by the judgment of this Court in ***Cheminvest Ltd. vs. CIT***, ***[2015] 61 Taxmann.com 118 (Delhi),*** wherein this Court has held that the expression '***does not form part of the total income'*** in Section 14A of the Act that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

6. Furthermore, this Court in ***Pr.Commissioner of Income Tax (Central)-2 Vs. M/s Era Infrastructure (India) Ltd.*** in ***ITA 2014/2022*** vide judgment and order dated 20th July, 2022 has dealt with the issue of amendment made by the Finance Act, 2022 to Section 14A of the Act. The relevant portion of the said judgment is reproduced hereinbelow:

> *"8. Consequently, this Court is of the view that the amendment of Section 14A, which is "for removal of doubts" cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood."*

7. This Court also finds that ITAT and CIT(A) have given concurrent finding of fact on the issue relating to prior period expenses. The relevant portion of the impugned order is reproduced hereinbelow:

> "*We have heard rival submission of the parties of the issue in dispute. The Ld.CIT(A) has allowed relief in respect of expenses of store and spares amounting to Rs.1,55,855/- and expenses in respect of the contract of Rs.3,74,490/- holding that same were crystallised in the year under consideration. The assessee has demonstrated that liability has been crystallised in the year under consideration and therefore, the Learned CIT(A) is justified in deleting the disallowance. Further, we find that identical issue of prior period Expenses on contract has been allowed in favour of the assessee by the Tribunal (supra) in assessment year 2005-06*"

8. In fact the ITAT in the impugned order relying upon the order of the Coordinate Bench in assessee's own case for the assessment year 2005-06 restricted addition to Rs.2,87,251/- made on account of prior period expenses.

9. Though the appellant in the appeal memo has not mentioned the status of the appeal in assessee's own case for the assessment year 2005-06, yet during the course of hearing, learned counsel for the appellant-revenue admitted that no appeal had been filed against the said order.

10. Consequently, this Court is of the view that no substantial question of law arises for consideration in the present appeal. Accordingly, the present appeal is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 31, 2022/TS