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

+ **ITA 380/2022**

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL
CIRCLE

..... Appellant

Through: Mr.Zoheb Hossain, Sr.Standing
Counsel with Mr.Vipul Agrawal and
Mr.Parth Semwal, Jr.Standing
Counsel.

versus

M/S DELHI INTERNATIONAL AIRPORT PVT. LTD .

..... Respondent

Through: None.

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Date of Decision: 06th October, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

CM APPL.43156/2022

1. Keeping in view the averments in the application, the delay in re-filing the appeal is condoned.
2. Accordingly, the application stands disposed of.

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3. Present Income Tax Appeal has been filed challenging the Impugned Order dated 31st January, 2018 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 3707/Del/2013 & ITA No.4203/Del/2013 for the Assessment Year 2010-11.



4. Learned Counsel for the Appellant states that the ITAT has erred in not disallowing the interest expenses amounting to Rs.10,07,34,000/-, being expenditure incurred in relation to exempt income, under the provisions of Section 14A of the Income Tax Act, 1961 ('the Act'). He submits that ITAT has erred in holding that earning of exempt income during the year under consideration is a *sin qua non* for application of Section 14A of the Act.

5. He states that the term 'in relation to' as used in Section 14A of the Act contemplates direct and/or proximate nexus between 'expenditure incurred' and 'earning of exempt income'.

6. He further states that the ITAT has erred in deleting the disallowance under Section 14A of the Act without considering the legislative intent of Section 14A of the Act which has been further clarified by CBDT Circular No.5/2014 dated 11th February, 2014.

7. A perusal of the paper book 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. The relevant extract of the ITAT order is reproduced hereinbelow:-

“76.The facts qua the disallowance are that the assessee submitted before the Assessing Officer that no dividend income was earned by the assessee during the relevant year, thus no disallowance was called for but the Assessing Officer rejected the contention of the assessee and invoking section 14A of the Act read with Rule 8D of Income-tax Rules, 1962 (in short ‘the Rules’) made disallowance of Rs.10,07,34,000/-.

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81. Before us, there is no dispute on the fact that no dividend income was earned by the assessee during the relevant year and therefore respectfully following the finding of the Hon’ble Delhi High Court, we hold that no disallowance is required to made in



terms of section 14A of the Act in the case of the assessee as no exempt income is received or receivable during the relevant year. Accordingly, we allow the ground No.1 of the appeal of the assessee and dismiss the ground No. 5 of the appeal of the Revenue.

82. The ground No. 2 of the appeal of the assessee is regarding adding the amount of disallowance made under section 14A of the Act to the cost of the mutual fund units. This ground has been raised without prejudice to the ground No. 1 of the appeal of the assessee. Since the ground No. 1 has already been allowed in favour of the assessee, the ground No. 2 is rendered infructuous and accordingly dismissed.”

8. In the opinion of this Court, the present case is covered by the Division Bench judgment 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 means 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.

9. Furthermore, this Court in ***Pr. Commissioner of Income Tax (Central)-2 Vs. M/s Era Infrastructure (India) Ltd.*** in ***ITA No.204/2022*** 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.”

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

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 6, 2022
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