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

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Date of Decision : 14.07.2025

+ **ITA 227/2025**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

.....Appellant

Through: Mr Sanjay Kumar, SSC, Ms Monica Benjamin and Ms Easha Kadian, JSCs.

versus

HINDUSTAN POWER PROJECTS PVT. LTD.

.....Respondent

Through: Mr Sanchit Jolly, Sr Advocate with Mr. Mansha Anand, Mr. Sohum Dua, Mr. Abhyudaya Shankar Bajpai, Ms. Manvi Mogha, Advocates

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

CM APPL. 40793/2025

1. For the reasons stated in the application, the delay in filing the captioned appeal stands condoned.

2. The application is disposed of.

ITA 227/2025

3. The Revenue has filed the present appeal under Section 260A of the



Income Tax Act, 1961 [**the Act**], *inter alia*, impugning an order dated 31.12.2024 [**impugned order**] passed by the learned Income Tax Appellate Tribunal [**ITAT**]. The impugned order is a common order passed by the ITAT in two appeals being ITA No.2747/Del/2024 and ITA No.2748/Del/2024 in respect of Assessment Year [**AY**] 2018-19 and AY 2019-20 captioned as *Hindustan Power Projects Pvt. Ltd. v. Pr.CIT-4*.

4. The present appeal is confined to the impugned order in so far as it relates to the Assessee's had appeal being ITA No.2747/Del/2024 in respect of AY 2018-19. The Assessee preferred the said appeal against the order dated 31.03.2024 passed by the Principal Commissioner of Income Tax, Delhi - 4 [**PCIT**] under Section 263 of the Act whereby the PCIT had held that the order passed by the Assessing Officer [**AO**] under Section 153A of the Act in respect of AY 2018-19 is erroneous as it is prejudicial to the interest of the Revenue.

5. The AO had accepted the Assessee's contention that there would be no disallowance under Section 14A of the Act for the reason that the Assessee did not have any exempt income during the AY 2018-19 in as much as, the AO did not make any disallowance under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 [**the Rules**]. It is the Assessee's case that no expenditure could be disallowed under Section 14A of the Act as the Assessee did not have any exempt income during the relevant AY 2018-19 and, therefore, no part of the expenditure could be attributed to the exempt income.

6. It is also the Assessee's contention that all investments were made



from surplus funds and, therefore, in any event, there would be no occasion of disallowing any expenditure in respect of any exempt income that such an investment could possibly have yielded. Notwithstanding the said submission, the learned PCIT found that the disallowance under Section 14A of the Act was required to be made.

7. The ITAT noted that there were decisions of various High Courts supporting the view as expressed by the Assessee. It also noted that this Court in the case of *Pr. Commissioner of Income Tax-04 v. IL & FS Energy Development Company Limited : Neutral Citation : 2017:DHC: 4465-DB* and *Pr. Commissioner of Income Tax (Central)-2 v. M/s Era Infrastructure (India) Limited : Neutral Citation : 2022:DHC: 2690-DB* has also accepted the view and those decisions were ignored.

8. The paragraph 5 of the impugned order which encapsulates the ITAT's decision in this regard is set out below:

“5. Heard rival submissions, perused the orders of the authorities below. On perusal of the balance sheet of the assessee which is placed at pages 72 and the schedule of other income which is placed at page 91 of the Paper Book suggests that the assessee had not received any dividend/exempt income. We also observed that in course of assessment proceedings the Assessing Officer issued a questionnaire along with notice u/s 142 of the Act which is placed at pages 128 & 129 requiring the assessee to submit the details of deductions claimed under chapter VIA and section 10 of the Act. The assessee also furnished its reply stating that the assessee has not claimed any deduction under chapter VI and also u/s 10 of the



Act. On perusal of the order passed by the Ld. PCIT it is observed that according to Ld. PCIT disallowance u/s 14A of the Act to be made even when no exempt income is earned during the relevant year. He placed reliance on various decisions which are cited at page 19 of his order. Perusal decision of page 19 of the Ld. PCIT order it is observed that various decisions have been cited are all non jurisdictional High Court decisions and the binding decision of the jurisdictional High Court in the case of PCIT Vs. IL & FS Energy Development Company Ltd. (supra) and PCIT Vs. Era Infrastructure (I) Ltd. (supra) were ignored. In these two cases the jurisdictional High Court had clearly held that where the assessee had not earned any exempt income in the relevant assessment year there could be no disallowance in terms of section 14A read with Rule 8D the decision rendered by jurisdictional High Court in the case of PCIT Vs. IL & FS Energy Development Company Ltd. (supra) was in August 16, 2017 which decision was rendered much prior to the completion of assessment by the Assessing Officer on 27.09.2021 u/s 153A for the AY 2018-19. Therefore, in our considered view since the assessee had not earned any exempt income there cannot be any disallowance u/s 14A and we hold that the assessment orders passed by the Assessing Officer u/s 153A for the assessment years 2018-19 and 2019-20 are not erroneous and prejudicial to the interest of the Revenue as the twin conditions are not satisfied for invoking the provision of section 263 of the Act. In the circumstances, we quash the orders passed by the Ld. PCIT u/s 263 of the Act for the assessment years 2018-19 and 2019-20.”

9. It is not disputed that the decisions of this Court in the case of **Pr.**



Commissioner of Income Tax-04 v. IL & FS Energy Development Company Limited (supra) and *Pr. Commissioner of Income Tax (Central)-2 v. M/s Era Infrastructure (India) Limited* (supra) support the view of the Assessee. Clearly, in this view, the assessment order cannot be held as erroneous and prejudicial to the interest of the Revenue. In any event, the view in this regard would be a plausible view and does not warrant any interference under Section 263 of the Act.

10. In view of the above, we do not find any infirmity with the impugned order. No substantial question of law arises for consideration of this Court. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

JULY 14, 2025

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