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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 251/2024
PRUDENT AGRI COMMODITIES INDIA PVT LTD

..... Appellant

Through: Mr.Rohit Jain and Mr.Aditya
Vohra, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX SPECIAL
RANGE 7 NEW DELHI

..... Respondent

Through: Mr.Aseem Chawla, Sr.SC with
Ms.Pratishtha Chaudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV

ORDER

01.05.2024

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1. Having heard Mr. Jain and Mr. Chawla, learned counsels appearing for respective sides, we find that the appeal would merit further consideration.

2. One of the principal questions which appears to have arisen was with respect to the applicability of Section 14A of the Income Tax Act, 1961 ["**Act**"] in respect of foreign exchange fluctuation loss. The Commissioner of Income Tax (Appeals) ["**CIT(A)**"] had categorically found that the same would fall beyond the scope of Section 14A of the Act since it clearly could not be viewed as expenditure.

3. The Income Tax Appellate Tribunal ["**ITAT**"], however, while passing the impugned order has observed as follows:-

"17. Considering the facts of the case in totality we are of the considered view that there is a direct nexus between the foreign advance and the purchase of mutual fund units, therefore, disallowance u/s. 14A cannot be ruled out. However, since the exempt income is Rs.5067645/-, therefore, the disallowance u/s.14A



cannot exceed the exempt income as held by Hon'ble Jurisdictional High Court of Delhi in the case of Caraf Builders and Construction 414 ITR 122. The AO is directed to restrict the disallowance to the extent of exempt income of the revenue.

4. The aspect of whether it could constitute expenditure and was of criticality clearly appears to have been missed. The matter requires consideration.

5. We accordingly admit the instant appeal under the following questions of law:-

A. Whether on facts and circumstances of the case, the ITAT erred in law in sustaining the disallowance to the extent of exempt income of INR 50,67,645 under Section 14A of the Act, by holding that foreign exchange loss suffered by the Appellant on repatriation of foreign advance had 'direct nexus' with earning of exempt income?

B. Whether on facts and circumstances of the case, the ITAT erred in law in not appreciating that 'loss' is conceptually different from 'expenditure' and only the latter and not the former, is covered within the scope of Section 14A of the Act?

6. Let the matter be called again on 20.08.2024.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 01, 2024/MJ