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

\+ ITA 515/2025

PR. COMMISSIONER OF INCOME TAX , DELHI-7

.....Appellant

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kumar, Mr. Rishabh Nangia and Mr. Gibran, Advs.

versus

M/S V C SOLUTIONS PVT. LTD.

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

O R D E R

% 13.10.2025

CM APPL. 64263/2025

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

CM APPL. 64264/2025 (Condonation of delay of 136 days in filing), CM APPL. 64265/2025 (Condonation of delay of 431 days in re-filing)

3. For the reasons stated in the applications, the delay of 136 days in filing and 431 days in re-filing the appeal is condoned.

4. The applications are disposed of.

ITA 515/2025

5. This appeal lays a challenge to the order passed by the ITAT dated 30.08.2023 in appeal filed by the appellant/revenue and also the cross-objection filed by the respondent/assessee, relating to Assessment Year

(AY) 2014-15. The proposed substantial questions of law are primarily listed in paragraph 3 of the appeal, which we reproduce as under:-

> *"3. From the impugned order the following substantial question of law arises which need to be framed and determined by this Hon'ble Court: -*
>
> *A. Whether on the facts and in the circumstances of the case and in law the Hon' ble ITAT is justified in deleting the addition of Rs. 52,57,829/- made on account of interest on loans & advances ignoring the fact that the assessee is paying interest on loan whereas on other hand, the assessee is diverting his money for loans and advances to other?*
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> *B. Whether on the facts and in the circumstances of the case, Hon'ble ITAT is justified in deleting the addition of Rs. 26,13,97,349/- made on account of write-off of share application money amounting to Rs. 26,13,97,349/-?*
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> *C. Whether on the facts and in the circumstances of the case, the Hon'ble is justified in allowing the disallowance of Rs. 42,85,983/- which was made by the assessee u/s 14A r.w. Rule 8D of Income Tax Rules, 1962 without appreciating that the CBDT Circular No. 5/2024 dated 11.02.2014 clearly states that disallowances u/s 14A shall be made even in cases where no exempt income was earned during the year by the assessee and the same has been clarified in Finance Bill, 2022 by way of an Explanation to Section 14A of the Act to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this Section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous years relevant to the assessment year and the expenditure has been incurred in the previous year in relation to such exempt income not forming part of total income?"*

6. Mr. Puneet Rai, learned Senior Standing Counsel on behalf of the appellant submits that, in the facts and circumstances of the case, the ITAT

was not justified in deleting the addition of Rs. 52,57,829/- made on account of interest on loans & advances. It has ignored the fact that the assessee is paying interest on loan, whereas on the other hand, the assessee is diverting his money for loans and advances to others. We find that at page 54 of the paper-book, the Commissioner of Income Tax (Appeals) has, while concluding in favour of the respondent/assessee, has stated as under:-

> *C. Ground No. 3:Disallowance of Rs. 52,57,829/- on account of proportionate interest*
> *In para 2 of the assessment order, the AO has mentioned that the assesse company has debited "interest on unsecured loan" of Rs. 1,52,05,890/- on the loans and advances received of Rs.91,06,12,956/- and the assesse company has given interest free loan and advances amounting to Rs. 31,48,67,909/-. Therefore, the Ld. AO made the addition of Rs. 52,57,829/ by applying following proportionate method:*
> *Rs. 1,52,05,890/- x Rs. 31.48.67.909/-*
> *(Rs. 78,57,99,784/- + RS. 12,48,13,172/-)*
> *However, after considering the submissions made by the Ld. AR and audited accounts of the appellant it is found that total unsecured loans as per schedule 2.4 to the balance sheet are Rs. 78,57,99,784/- only. Amount of Rs. 12,48,13,172/- pertains to the trade payable as indicated in schedule 2.6 and this does not represent unsecured loan. In addition, details of interest filed by the Ld. AR clearly indicating that total interest of Rs. 1,52,05,890/- was paid to two parties only, i.e., interest of Rs. 1,27,50,000/- was paid to M/s Saburi Infotech P. Ltd. and Rs. 24,55,890/- was paid to M/s Surya Roshni P. Ltd.Therefore, out of total unsecured loan of Rs. 78,57,99,784/-, interest bearing loans are only to the extent of Rs. 17,87,78,388/- (17,08,20,964 from Saburi Infotech Private Limited and Rs. 79,57,424/- from Surya Roshni Limited). Therefore, interest free*

unsecured loans available to the assesse are Rs. 60,70,21,396/- (78,57,99,784 - 17,87,78,388). Hence, total interest free funds available with the assessee are Rs. 109,90,64,231/- being Rs. 14, 00,000/- as share capital, Rs. 45,06,42,835/- as free reserves, Rs. 4,00,00,000 /- as share application money and Rs. 60,70,21,396/- as unsecured loans. Hence, interest free funds of Rs. 109,90,64,231/- far exceeded the interest free advances of Rs. 31,48,67,909/-. It is also a fact on record that under similar circumstances, no disallowance was made on account of interest during AY 2012-13 and 2013-14inspite of the fact that the assessments were completed u/s 143(3). Therefore, question of any disallowance on account of interest does not arise. 10.3 The Ld. AR has also relied on the following case laws:

> Munjal Sales Corporation vs. CIT, 2008-TIQL-26-SC-IT

> CIT vs. MahavirConcast Ltd., 2015-TIOL-700-HC-DEL

> CIT vs. AMA Associates, 2015-TIOL-2514-HC-AHM

> CIT vs. Rakesh Gupta, 2015-TIOL-1586-HC-P&H

> G S Developres & Contractors Pvt Ltd Vs DCIT 2010-TIQL-493-ITAT-DEL

> CIT vs. Reliance Utilities & Power Ltd., 2009-TIOL-27-HC-MUM

I have gone through all these case laws, where it has been held so- when the assessee is in possession of sufficient interest-free funds, and it lends money, in the absence of other material, there is a presumption that such interest-free funds would be invested or advanced as interest-free loans or advances. It was further held that when the total interest free advances do not exceed the total interest free funds available with the assessee, no interest is disallowable on account of utilization of funds for non-business purpose. It is also held that if the interest free funds available with the assessee in the form of share capital, reserve and surplus including

profits of the year are much in excess of interest free advances given by the assessee, it has to be presumed that such advances were paid out of interest free funds available with the assessee and no disallowance of interest is justified. It was also emphasized that it cannot be held that the share capital etc were utilized for the purpose of fixed asset etc in the earlier years. In the case of the appellant also interest free funds being Rs. 109,90,64,231/- are much in excess of interest free advances being Rs. 31,48,67,909/-. Therefore, no disallowance can be made on account of interest. Hence, the addition of Rs. 52,57,829/- is deleted.

7. Even the finding of the ITAT in this regard can be seen from paragraphs 6 & 7, which read as under:-

"6. During the year under consideration, the assessee company has received loan & advances of Rs. 91,06,12,956/- and paid an interest of Rs.1,52,05,890/- . The AO held that the assessee has given loans & advances to other related parties but not charged interest while the entire interest has been debited in the P&L account. The AO found that the assessee has given interest free loans to the tune of Rs.31,48,67,900/-. Placing reliance on the judgment of CIT Vs. Orissa Cements Ltd. 258 ITR 365 (Del.) and CIT Vs . Abhishek Industries 156 Taxman 257, the AO disallowed the proportionate, interest of Rs .52,57,829/- taking into consideration, the interest free loan given by the assessee. The gist of the decisions relied upon by the AO is as under:

"1. CIT vs. Orissa Cements Ltd. - DELHI HC [2002] 258 ITR 365 (Delhi).

"the part of the capital borrowed by the assessee and advanced by it to its subsidiaries free of interest was not, borrowed for purposes of its own business and the interest on such borrowing was not an admissible deduction under section 36(i)(iii)."

2. CIT vs. Abhishek Industries Ltd. [2006] 156 Taxman 257 (Punjab & Haryana

"As far as the issue of establishment of nexus of the funds borrowed vis-a-vis the funds diver ted towards sister concern on interest free basis is concerned, in our view, the stand of the assessee that the onus of proving the nexus of funds available with the assessee with the funds advanced to the sister concerns without interest is on the Revenue is not correct. Section 36(1) (iii) of the Act provides for deduct ions of interest on the loans raised for business purposes. Once the assessee claims any such deduct ion in the books of account, the onus will be on the assessee to satisfy the Assessing Officer that whatever loans were raised by the assessee, the same were used for business purposes. If in the process of examination of genuineness of such a deduction, it transpires that the assessee had advanced certain funds to sister concerns or any other person without any interest, there would be very heavy onus on the assessee to be discharged before the Assessing Officer to the effect that in spite of pending term loans and working capital loans on which the assessee is incurring liability to pay interest, still there was justification to advance loans to sister concerns for non - business purposes without any interest and, accordingly, the assessee should be allowed deduction of interest being paid on the loans raised by it to the extent. In our view, even, the plea, of nexus of loans raised the Assessee with the funds advanced to the sister concerns on Interest free basis, maybe it is pleaded to be out of sale proceeds or share capital or different account cannot be accepted."

The Id . CIT(A) deleted the addition on the grounds that the assessee had sufficient interest free funds in their possession to provide interest free loans. It is an undisputed fact that the availability of interest free funds were to the tune of Rs.109,90,64,200/. Hence, the assessee had interest free funds at their disposal to

> *provide interest free loans. Hence, placing reliance on the judgment of Hon'ble Jurisdictional High Court in the case of CIT Vs. Mahavir Ccnoast Ltd., 2015-TIOL-700-HC-Del, CIT Vs. Rakesh Gupta, 2015-TIOL-1586-HC-P&H and of the judgment of Hon'ble Supreme Court in the case of Munjal Sales Corporation Vs. CIT, 2008-TIOL-26-SC-IT, we decline to interfere with the order of the ld. CIT(A). In the result, appeal of the revenue of this ground is dismissed."*

8. The above show, it is an undisputed fact that the respondent/assessee had interest free funds at its disposal to provide interest free loans, which is also in conformity with the findings of the CIT (Appeals). This position has not been seriously contested by Mr. Rai. If that be so, no substantial question of law as proposed at 'A' of the appeal arises for consideration.

9. Similarly, insofar as proposed substantial question of law 'C' is concerned, this question has primarily arisen because of the cross-objection filed by the respondent/assessee. According to Mr. Rai, assessee had made *suo moto* disallowance in its ITR. He states that, it is at the stage of CIT (Appeals), such a plea was raised, which was rejected by the CIT (Appeals).

10. In this regard, we find that the ITAT has in paragraph Nos. 11, 12, 13, 14 & 15, held as under:-

> *"11. Relevant facts for ad judication of the issue are that the assessee has disallowed Rs. 42 ,85,983/- u/s 14A read with rule 8D at the time of filing of its income tax return for the AY 2014- 15 whereas it is clear from the profit & loss account , the assessee has not derived any tax exempt income . The assessee claimed that the disallowance has been inadvertently made by the assessee and pleaded before the ld. CIT(A) for right back of the disallowances. The ld. CIT(A) declined the*

grounds of the assessee holding that the assessee themselves have disallowed voluntarily and no relie f can be claimed subsequently.

12. Aggrieved, the assessee filed Cross Objection before us.

13. Before us, it was argued that the Ld. CIT(A) also did not correct the mistake of the assessee of wrongly offering the income to tax on the ground that once the appellant admitted the disallowance voluntarily in the income tax return itself, no relief can be allowed. It was argued that it is judicially accepted proposition that where the assessee inadvertently disallowed an amount u/s 14A, the revenue is obliged to assess the correct income. There is no dispute that the assessee has not earned exempt income during the year. The ld. AR relied on the judgment of Co-ordinate Bench of ITAT Chandigarh in the case M/s Anand Concast Ltd Vs DCIT; 2018-TIOL-461-ITAT-CHD wherein it was held that when assessee is able to show that the suo moto disallowance u/s 14A made by it was mistaken, then he has a legal right to reconcile from its return in accordance with law and claim correct figure. The ld. AR further relied on the judgment in the case of Smt. Aishwarya K. Rai vs. DCIT , 2009-TIOL-175-ITAT-MUM wherein it was held as under:

"Officers of the Department must not take advantage of ignorance of an assessee as to his rights - IT AT: Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him . This attitude would, in the long run, benefit the department for it would inspire confidence in him that he may be sure of getting a square deal from the departments.

26. It has been clarified at point No. (3) in Circular No.14(XI-35) dated 11.04.1955 by way of administrative instructions for guidance of Income Tax officers on matters pertaining to assessment.

(3) Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before xxxx that some re fund or relief is due to him . This attitude would , in the long run benefit the department for it would inspire confidence in him that he may be sure of getting- a square deal from the departments. Although, therefore, the responsibility for claiming re funds and reliefs rests with the assessee on whom it is imposed by law, officers should.

(a) draw their attention , to any re funds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other:

(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming re funds and reliefs."

14. The ld. DR argued that the amendment made by the Finance Act, 2022 of Section 14A clearly denotes that the disallowance do not depend upon earning of exempt income and hence in view of the change in the provisions of the Ac t, the grounds of the assessee cannot be allowed. We find that the Hon'ble Jurisdictional High Court in the case of PCIT vs. M/s. ERA Infrastructure (India) Ltd. in ITA No.204/2022 and CM APPL .31445/2022 judgment and order dated 20th July, 2022 had the occasion to examine the law on applicability of Section 14A having regard to the newly inserted Explanation to Section 14A as codified by Finance Act, 2022. The Hon'ble High Court held that the aforesaid Explanation cannot be presumed to be

> *retrospective in operation. As a corollary, the law prevailing prior to the insertion of Explanation would continue to apply and shall not be guided by the Explanation being prospective. Hence, the arguments of the ld. DR cannot be acceded to.*
>
> *15. As the old adage says that "give to king what is king's and to God what is God's" i.e. what belongs to national exchequer belongs to national exchequer to and what belongs to the citizen belongs to the citizen. The assessee cannot be disadvantaged by offering the amount to tax which was not taxable. To make it unambiguous, since the assessee has no exempt income, we hold that no disallowance is called for. The appeal of the assessee on this ground is allowed."*

11. Mr. Rai does not contest the applicability of the judgment of this Court in the case of ***PCIT v. Era Infrastructure (India) Ltd. in ITA No. 204/2022*** decided on 20.07.2022. In the relevant para of the judgment this Court has held that :-

> *"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."*

12. The amendment to Section 14 A which has come in terms of the Finance Act, 2022 shall have no bearing insofar as the assessment year 2014-15 is concerned, as the same cannot have retrospective effect. If that be so, the substantial question of law at 'C' does not arise for consideration in this appeal.

13. We only issue notice on the proposed question of law at 'B', which we reproduce as under:-

> *"B. Whether on the facts and in the circumstances of*

the case, Hon'ble ITAT is justified in deleting the addition of Rs. 26,13,97,349/- made on account of write-off of share application money amounting to Rs. 26,13,97,349/-?"

14. Let service be effected upon the respondent through all permissible modes, returnable on 30.04.2026.

V. KAMESWAR RAO, J

VINOD KUMAR, J

OCTOBER 13, 2025
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