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

% *Date of Decision : 16.10.2024*

\+ **ITA 527/2024 & CM APPL. 60995/2024, CM APPL. 60996/2024**

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -1 .....Appellant

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann, JSC, Mr. Abhishek Anand and Mr. Pranjal Singh, Advocates

versus

SAHARA INDIA FINANCIAL CORPORATION LTD...Respondent

Through: Mr. Aditya Vohra and Mr. Shashvat Dhamija, Advocates

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (*ORAL*)

1. The Revenue has filed the present appeal impugning an order dated 02.01.2024 passed by the learned Income Tax Appellate Tribunal (hereafter *the ITAT*) in ITA No. 7805/DEL/2019 captioned ***The A.C.I.T. v. M/s Sahara India Financial Corporation Ltd.***, in respect of assessment year (AY) 2016-17. The said appeal was, in turn, preferred by the Revenue assailing an order dated 12.07.2019 passed by the Commissioner of Income Tax (Appeals)- 23 [hereafter *the CIT(A)*].

2. The assessee had filed its return of income for the AY 2016-17, on

15.11.2017 declaring a loss of ₹15,36,80,671/-. The return was subsequently revised on 28.03.2018 declaring a loss of ₹10,61,62,881/- . The return was picked up for scrutiny and the Assessing Officer (hereafter *the AO*) had assessed the assessee's total income at ₹92,07,100/-. This was on account of various additions including an addition of ₹6,13,17,433/- on account of disallowance of expenditure under Section 14A of the Income Tax Act, 1961 (hereafter *the Act*). The AO had disallowed a part of the expenditure proportionate to the average investments made by the assessee on the assumption that the investments were made for yielding income that was not chargeable to tax.

3. It is the assessee's case that there could be no disallowance of expenditure for the reason that no part of its income was treated as exempt from the charge of income tax; therefore, disallowance of expenditure incurred for earning exempt income (as posited under Section 14A of the Act) did not arise.

4. The assessee preferred an appeal before the CIT(A) and the addition of ₹6,13,17,433/- on account of disallowance of expenditure under Section 14A of the Act was deleted on the ground that the assessee did not have any income which was exempt from tax.

5. The Revenue preferred the appeal before the ITAT, which was rejected as the ITAT concurred with the decision of the CIT(A).

6. In the aforesaid context, the Revenue has projected the following questions for consideration of this Court:

"2.1 Whether Ld. ITAT is correct in law and on facts?

2.2 Whether under the facts and circumstances of the case, the Ld. ITAT is right in deleting the addition of Rs.6,13,17,433/- on account of disallowance under section 14A of the Act, ignoring the fact that Act is very clear & unambiguous in the issue of disallowance under section 14A even if no exempt income is earned by the Assessee?

2.3 Whether on the facts and circumstances of the case, the order passed by Ld. ITAT is perverse in law as well as on facts in respect of the items referred to in the question hereinabove?"

7. Clearly, there could be no disallowance of any expenditure under Section 14A of the Act if the assessee's income for the relevant assessment year did not include any income that was exempt from the limited tax. This issue is covered by the decision of this Court in ***Cheminvest Limited v. Commissioner of Income Tax : 2015 378 ITR 33 (Delhi)*** as well as the recent decision in ***Principal Commissioner of Income Tax, Central-3, New Delhi v. Alchemist Ltd.: Neutral Citation 2024:DHC:6439-DB.***

8. The learned counsel appearing for Revenue has also drawn the attention of this Court to the explanation to Section 14A of the Act, which was inserted by virtue of the Finance Act, 2022. The said explanation is set out below:

> "Explanation.—For the removal of doubts, it is hereby clarified 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 the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income."

9. Concededly, the said explanation is applicable prospectively and thus, would be inapplicable to the assessment year in question (AY 2016-17). It is relevant to note that this Court had in ***Principal Commissioner of Income – tax v. Era Infrastucture (India) Ltd.: (2022) 448 ITR 674 (Delhi)*** held that the explanation would be applicable only prospectively and would have no retrospective operation.

10. In the given facts of this case, where the assessee does not have any exempt income in the relevant assessment year, there is no allegation that any expenditure has been incurred on account of exempt income that would accrue or arise in future years. Thus, even if we accept – which we do not – that the explanation to Section 14A of the Act as introduced by the Finance Act, 2022 was applicable retrospectively, the same would have no application in the given facts.

11. In view of the above, we do not find that any substantial question of law arises for our consideration.

12. The appeal is, accordingly, dismissed. Pending applications, if any, stand disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 16, 2024/ns

Click here to check corrigendum, if any