GAHC010227692022

2024:GAU-AS:9559-DB

# THE GAUHATI HIGH COURT
## (HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

**Case No. : ITA/4/2024**

WILLIAMSON FINANCIAL SERVICES LIMITED ,
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 AND HAVING ITS REGISTERED OFFICE SITUATED AT EXPORT PROMOTION INDUSTRIAL PARK, PLOT NO. 1, AMINGAON NORTH GUWAHATI KAMRUP, ASSAM- 781031 AND IN THE INSTANT PROCEEDINGS, THE PETITIONER COMPANY IS REPRESENTED BY ITS DIRECTOR, ADITYA KHAITAN.

……***Appellant***

***-VERSUS-***

1.COMMISSIONER OF INCOME TAX,
GUWAHATI- 2, GUWAHATI, AAYAKAR BHAWAN,
CHRISTIAN BASTI, G.S. ROAD, GUWAHATI- 781005.

2:THE DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE- III, GUWAHATI, AAYAKAR BHAWAN,
CHRISTIAN BASTI, G.S. ROAD, GUWAHATI- 781005.

…… ***Respondents***

**Linked Case : ITA/2/2024**

WILLIAMSON FINANCIAL SERVICES LIMITED
A COMPANY INCORPORATED UNDER THE COMPANIES ACT
1956 AND HAVING ITS REGISTERED OFFICE SITUATED AT EXPORT PROMOTION INDUSTRIAL PARK, PLOT NO. 1, AMINGAON NORTH GUWAHATI KAMRUP, ASSAM- 781031 AND IN THE INSTANT PROCEEDINGS
THE PETITIONER COMPANY IS REPRESENTED BY ITS DIRECTOR,
ADITYA KHAITAN.

……***Appellant***

***-VERSUS-***

1.COMMISSIONER OF INCOME TAX,
GUWAHATI- 2, GUWAHATI, AAYAKAR BHAWAN,
CHRISTIAN BASTI, G.S. ROAD, GUWAHATI- 781005.

2:THE DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE- III, GUWAHATI, AAYAKAR BHAWAN,
CHRISTIAN BASTI, G.S. ROAD, GUWAHATI- 781005.

…… ***Respondents***

**Linked Case : ITA/6/2024**

WILLIAMSON FINANCIAL SERVICES LIMITED,A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 AND HAVING ITS REGISTERED OFFICE SITUATED AT EXPORT PROMOTION INDUSTRIAL PARK, PLOT NO. 1, AMINGAON NORTH GUWAHATI KAMRUP ASSAM- 781031 AND IN THE INSTANT PROCEEDINGS, THE PETITIONER COMPANY IS REPRESENTED BY ITS DIRECTOR, ADITYA KHAITAN.

……***Appellant***

***-VERSUS-***

1.COMMISSIONER OF INCOME TAX,
GUWAHATI- 2, GUWAHATI, AAYAKAR BHAWAN,
CHRISTIAN BASTI, G.S. ROAD, GUWAHATI- 781005.

2:THE DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE- III, GUWAHATI, AAYAKAR BHAWAN,
CHRISTIAN BASTI, G.S. ROAD, GUWAHATI- 781005.

…… ***Respondents***

**Linked Case : ITA/7/2024**

WILLIAMSON FINANCIAL SERVICES LIMITED,A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 AND HAVING ITS REGISTERED OFFICE SITUATED AT EXPORT PROMOTION INDUSTRIAL PARK, PLOT NO. 1, AMINGAON NORTH GUWAHATI KAMRUP ASSAM- 781031 AND IN THE INSTANT PROCEEDINGS, THE PETITIONER COMPANY IS REPRESENTED BY ITS DIRECTOR, ADITYA KHAITAN.

……***Appellant***

***-VERSUS-***

1.COMMISSIONER OF INCOME TAX,
GUWAHATI- 2, GUWAHATI, AAYAKAR BHAWAN,
CHRISTIAN BASTI, G.S. ROAD, GUWAHATI- 781005.

2:THE DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE- III, GUWAHATI, AAYAKAR BHAWAN
CHRISTIAN BASTI, G.S. ROAD, GUWAHATI- 781005.

…… ***Respondents***

**– BEFORE –**
**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI**
**HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

For the Appellant(s) : Mr. N.S. Saini, Advocate.
: Mr. Z. Islam, Advocates

For the respondent(s) : Mr. S. Chetia, Senior Standing Counsel,
Income Tax Department.

Date of Hearing : 17.09.2024

Date of Judgment : 24.09.2024

## JUDGMENT & ORDER (CAV)

*[Vijay Bishnoi, CJ]*

The present appeals have been preferred by the appellant, viz, Williamson Financial Services Limited, under Section 260A of the Income Tax Act, 1961 (hereinafter to be referred as "the Act of 1961") against the order dated 06.07.2022, passed by the Income Tax Appellate Tribunal (ITAT) Guwahati Bench, Guwahati [hereinafter to be referred as "the Tribunal"], in ITA Nos.159/Gau/2019 for the Assessment Year 2009-10; 154/Gau/2019 for the Assessment Year 2012-13; 155/Gau/2019 for the Assessment Year 2013-14 and 156/Gau/2019 for the Assessment Year 2014-15.

**2.** Since the facts and issues involved in all these appeals are identical, the said appeals were heard together and are being disposed of by this common

judgment and order.

**3.** For the purpose of the adjudication, the facts of ITA No.2/2024 are being taken into consideration.

The appellant, Williamson Financial Services Limited, is a Company (hereinafter to be referred as "the appellant Company"), incorporated under the Companies Act, 1956, engaged in the business of Lease Financing, Financial Advisory and Capital Market Operations, had filed its return of income for the Assessment Year 2013-14 on 26.09.2013 showing a loss of Rs.6,02,59,950/-. The case of the appellant Company was selected for scrutiny through CASS and a notice under Section 143(2) of the Act of 1961 was issued and thereafter, another notice under Section 142(1) of the Act of 1961 was issued asking the Assessee to file certain details and documents for the relevant period. The appellant Company, through its representative, had furnished the details before the Assessing Officer and the Assessing Officer, after considering the same, passed the Assessment Order on 04.02.2016.

The operative portion of the Assessment Order dated 04.02.2016 is reproduced hereunder:

> "*4.13 The assessee has made disallowances u/s 14A of Rs.22,548,284/- not by following any systematic or specific method of calculation but on the basis of disallowance made in assessment orders of earlier assessment years. In other words, the assessee has only made estimate disallowance u/s 14A. In doing the same, assessee has in principle accepted the fact that in its case, disallowance u/s 14A is required to be made. The assessee has however not vouched for the correctness of disallowance made suo moto as the same has been made on estimate basis. However, the method of disallowance u/s 14A has been provided in Rule 8D(1)(b)(ii) of the Income Tax Rules, 1962.*
>
> *4.14 As already discussed above, the assessee claims that the investments were made long back. Therefore, the assessee may argue that the sources were out of loans in the earlier years as on date such loans are not in evidence. This could hardly be an argument since the new loans have replaced the old loans which were utilized for such advances. In view of above, interest on*

*borrowed capital relevant to the investment in equity is to be disallowed u/s 14A. As already discussed, the assessee has not maintained separate books of accounts in respect of the activities involving income under the head dividends and also income from other activities. Therefore, the interest relatable to the funds invested in equity shares is determined in accordance with the method as provided under Rule 8D(1)(b)(ii) of the Income Tax Rule, 1961 as under:*

*Aggregate of the following:*

*(i) Rs.22,548,285/- (the amount of expenditure directly relation to income which does not form part of total income)*

*(ii) Rs.7,93,22,426/- (Expenditure by way of interest not attributable to particular income or receipt)*

*The proportionate amount to be calculated as follows:*

*(A X B)/C*

*Where, A= Rs.8,79,14,651/- (i.e. the amount of expenditure by way of interest other than the amount of interest directly relating to income which does not form part of total income)*

*B= Rs.86,78,80,470/- (being the average of Rs.89,45,35,477/- & Rs.84,12,25,463/-) (the average of value of investment, income from which does not or shall not form part of the total income as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year).*

*C= Rs.9,61,88,95,39/- (the average of * total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but including the decrease in revaluation of assets)*

- *As per Rule 8D(3), the 'total assets' means, total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but include the decease on revaluation of assets.*

*(iii)Rs.43,39,402/- (being one half percent of the average of the value of investment of Rs.86,78,80,470/-, income from which does not or shall not form part of total income, as appearing in the balance sheet of the assessee, on the first day and the last of the previous year.*

*Therefore, the interest relatable to the fund in shares, etc works out to Rs.10,62,10,110/- {i.e. the aggregate amount of (i)+(ii)+(iii) as determined above}. Since, assessee has already disallowed Rs.22,548,285/- as expenditure relating to exempt income in its computation already, the balance amount of Rs.8,36,61,825/- is hereby disallowed u/s 14A of the Income Tax Act, 1961. [Addition : Rs.8,36,61,825/-]*

*5. In view of above discussion, the total income of the assessee is computed as follows:*

***COMPUTATION OF TOTAL INCOME***

| | | |
|---|---|---|
| ***Income From Business*** | | |
| *Net Profit as per Profit and Loss Account* | | *(-)Rs.9,78,99,802/-* |
| *Add:* | | |
| *1) Depreciation debited to P/L A/c* | | *Rs.63,020/-* |
| *2) Expenditure u/s 14A* | | *Rs.22,548,285/-* |
| *3) Provision for diminution of Long Term Investment* | | *Rs.5,29,20,689/-* |
| *4) Provision for Standard Assets* | | *Rs.15,187* |
| | | *(-) Rs.2,23,52,621/-* |
| *Add: Disallowances as discussed above* | | |
| *1. Interest on Borrowed Funds disallowed u/s 14A [as discussed in Para 4 to Para 4.14 above* | | *Rs.8,36,61,825/-* |
| | | *Rs.6,13,09,204/-* |
| *Less:* | | |
| *1) Profit on Sale of Investment [Exempt u/s 10(38)]* | *Rs.4,45,662/* | |
| *2) Dividend [Exempt u/s 13(34]* | *Rs.3,70,80,750/-* | |
| *3) Depreciation as per IT Act and Rule* | *Rs.89,270/-* | |

| | | |
|---|---|---|
| *4) Liabilities Written Back* | *Rs.2,83,585/-* | |
| *5) Provision for diminution in value of current investment written back (already taxed in earlier year)* | *Rs.31,020/-* | *Rs.3,79,30,287/-* |
| ***Total Business Income*** | | *Rs.2,33,78,917/-* |
| ***Less: Set Off of B/F Loss to the extent of income*** *A.Y.2006-07* *(Rs.2,51,60,240/-)* | | *Rs.2,33,78,917/-* |
| ***Assessed Total Income*** | | ***Nil*** |

*6. Assessed as above u/s 143(3) of the Income Tax Act, 1961. Charge interest u/s 234A/234/B/234C of Income Tax Act, 1961 as applicable. Give due credit for pre-paid taxes as reflected in the AST (ITD System) after due verification. Issue Demand Notice u/s 156 and Challan and copy of Assessment Order to the assessee accordingly. Tax calculation as per System shown separately."*

Being aggrieved with the assessment order dated 04.02.2016, the appellant Company preferred an appeal before the Commissioner of Income Tax (Appeals), Guwahati [hereinafter to be referred as "CIT(A)"] under Section 250 of the Act of 1961 and the said appeal was partly allowed vide order dated 31.01.2019 affirming the action of invocation of provisions of Section 14A read with Rule 8D of the Income Tax Rules, 1962. However, the CIT(A) held that the disallowance under Section 14A of the Act of 1961 read with Rule 8D of Income Tax Rules, 1962 (hereinafter referred to be as "the Rules of 1962") cannot exceed the income claimed exempt.

The operative portion of the order passed by the CIT(A) dated 31.01.2019 is reproduced hereunder:

*"In view of the above discussion and also the above judgments, I hold that the Ld AO had correctly invoked the provisions of Section 14A of the IT Act, 1961 read with Rule 8D of the IT Rules, 1962 and, therefore, I, hereby confirm the invocation of the provisions of Section 14A of the IT Act, 1961 read with Rule 80D of the IT Rules, 1962. Having held that the provision of Section 14A of the IT Act, 1961 read with Rule 8D of the IT Rules, 1962 are applicable to the appellant, the only question which survives is as to whether the disallowance computed by the AO can exceed the aggregate of expenses claimed by the appellant or otherwise. I find that in the case of* ***Joint Investment Private Limited vs. Commissioner of Income Tax*** *[ITA No.117/2015 dated 25/02/2015], the* ***Hon'ble Delhi High Court*** *has averred as under:-*

> "***9. In the present case, the AO has not firstly disclosed why the appellant/assessee's claim for attributing `2,97,440/- as a disallowance under Section 14A had to be rejected. Taiksha says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assessee's claim or explanation. The second aspect is there appears to have been no scrutiny of the accounts by the AO-an aspect which is completely unnoticed by the CIT (A) and the ITAT. The third, and in the opinion of this court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is `48,90,000/-, the disallowance ultimately directed works out to nearly 110% of that sum, i.e. `52,56,197/-. By no stretch of imagination can Section 14A or Rule 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in Section 14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case***."

*It is pertinent to state here that the above judgment of the* ***Hon'ble Delhi High Court*** *was referred & relied upon by the Hon'ble Delhi High Court in the case of* ***Pr. CIT vs. Moderate Leasing and Capital Services Pvt. Ltd.*** *[ITA 102/2018 dated 31/01/2018]. In the case of* ***Moderate Leasing and Capital Services Pvt. Ltd.*** *[ITA No.102/2018 dated 31/01/2018], the Hon'ble High Court held/averred as follows:*

> "***The assesses have declared paltry sums as tax exempt income for A.Y. 2009-10. The AO added back substantial amounts-in one case to the tune of `9.9 crores under Section 14A on the basis that huge amounts of borrowings, had been converted into***

***equity holdings. <u>The CIT(A) and the ITAT granted relief- the latter by following the decision of this Court in Commissioner of Income Tax v. Joint Investment Pvt. Ltd 372 ITR 694. In Joint Investment Pvt. Ltd. (supra), it was held that the disallowance under section 14A should not exceed the exempt income itself. Having regard to these circumstances especially that the ITAT followed the judgment of this Court which had settled this point of law, no question of law arises.</u> The appeal is, therefore, dismissed."***

*As against the above judgment of the **<u>Hon'ble Delhi High Court</u>**, the SLP filed by the Revenue was dismissed by the **<u>Hon'ble Supreme Court of India</u>** in the case of **Pr. CIT vs. Moderate Leasing and Capital Services Pvt. Ltd** [Special Leave Petition (Civil) Diary No(s).38584/2018, dated 19/11/2018] and thereby the judgment of the **<u>Hon'ble Delhi High Court</u>** holding that the disallowance under Section 14A cannot exceed the exempt income has been **<u>affirmed</u>** by the **<u>Hon'ble Apex Court</u>**. I therefore direct the Ld AO to restrict the disallowance under Section 14A of the Income claimed exempt. Thus, the above grounds of appeal are answered as under:*

*a. That the AO was right in invocation of provisions of Section 14A read with Rule 8D and that he had rightly done so after recording a due satisfaction.*

*b. That the disallowance made suo-motto by the appellant was incorrect and was never substantiated by the appellant.*

*c. That the disallowance under Section 14A read with Rule 8D cannot **<u>exceed</u>** the income claimed exempt.*

*In view of the above discussion, the above grounds of appeal are partly allowed.*

***<u>Decision on Ground No.3</u>***

*During the course of appellate proceedings, no fresh/additional ground of appeal was raised and this ground of appeal is accordingly dismissed as not pressed.*

*9. In the result, the appeal is partly allowed. In the result, the appeal is decided as above.*

*10. This order has been passed under Section 250 read with Section 251 of the Income Tax Act, 1961.*

**4.** Similarly, in ITA No.4/2024, the Assessment Order dated 01.12.2011; in ITA No.6/2024, Assessment Order dated 13.03.2015 and in ITA No.7/2024, Assessment Order dated 29.12.2016 were issued by the Assessing Officer. The

appellant Company preferred separate appeals challenging the aforesaid Assessment orders under Section 250 of the Act of 1961 before the CIT(A) and the CIT(A) passed separate orders dated 31.01.2019 partly allowing the appeals preferred by the Appellant Company affirming the action of invocation of provisions of Section 14A read with Rule 8D of the Income Tax Rules, 1962. However, the CIT(A) held that the disallowance under Section 14A of the Act of 1961 read with Rule 8D of the Rules of 1962 cannot exceed the income claimed exempt.

**5.** Being aggrieved with the said finding of the CIT(A) dated 31.01.2019, the Revenue has preferred appeals, being ITA Nos.154 to 156/Gau/2019 for Assessment Years 2012-13 to 2014-15 and ITA No.159/Gau/2019 for the Assessment Year 2009-10 before the Tribunal and the Tribunal, vide order dated 06.07.2022, has accepted the said appeals and set aside the orders passed by the CIT(A) dated 31.01.2019 relating to different assessment years and affirmed the orders passed by the Assessing Officer.

**6.** Being aggrieved with the said findings of the Tribunal, the appellant Company has preferred the instant appeals.

**7.** This Court, vide order dated 09.02.2024, while admitting the appeals, has framed the following substantial questions of law:

> "*A. Whether in the facts and circumstances of the case, the order dated 06.07.2022 passed by the learned Income Tax Appellate Tribunal in holding that the insertion of the Explanation to Section 14A of the Income Tax Act of 1961 is clarificatory and thereby retrospective in nature is erroneous as well as perverse and thereby the same is erroneous in law.*
>
> *B. Whether the finding of the learned Tribunal to the effect that the insertion of the Explanation to Section 14A of the Income Tax Act, 1961 is clarificatory is contrary to the legislative intention as expressed in the Memorandum to the Finance Bill, 2022 whereby it was stated that the*

*amendment shall be applicable from 01.04.2022 and the Assessment year 2022-2023 onwards and thereby whether the said order passed by the learned Tribunal is erroneous in law."*

**8.** Learned counsel for the appellant Company has vehemently argued that the Tribunal has grossly erred in setting aside the orders dated 31.01.2019 passed by the CIT(A) while observing that the Explanation to Section 14A of the Act of 1961 inserted by Finance Act, 2022 being clarificatory in nature has retrospective effect. It is contended that the said finding recorded by the Tribunal is contrary to law because the Ministry of Finance, Union of India, has issued Memorandum Explaining the Provisions in the Finance Bill, 2022 and clarified that the amendment to Section 14A of Income Tax Act whereby explanation is inserted will take effect from 01.04.2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years. It is also contended that the various High Courts have held that the Explanation inserted under Section 14A is prospective in nature.

**9.** In support of his submission, the learned counsel for the appellant has placed reliance on the decisions of the Delhi High Court rendered in (i) ***Principal Commissioner of Income Tax Vs. Era Infrastructure (India) Ltd***, reported in ***[2022] 448 ITR 674 (Delhi***), ***ITA No.204/2022, judgment dated 20.07.2022*** [hereinafter to be referred as "***Pr.CIT Vs. Era Infrastructure (India) Ltd., Judgment dated 20.07.2022"***]; [ii) ***Pr. Commissioner of Income Tax (Central)-2 Vs. M/s Era Infrastructure India Ltd.***, [***ITA No.359/2024 & CM APPL. 39600/2024***, ***order dated 16.07.2024***] [hereinafter to be referred as "***Pr.CIT Vs. M/s Era Infrastructure India Ltd., order dated 16.07.2024***"]; (iii) ***Principal Commissioner of Income Tax Vs. Uniparts India Ltd.***, reported in ***[2024] 160 taxmann.com 92 (Delhi)***. He has also placed reliance on the decisions

rendered by the High Court of Calcutta in (i) ***Principal Commissioner of Income Tax, Central-1, Kolkata Vs. M/S Jas Toli Road Company Ltd***., [***ITAT/7/2024, I.A. No.GA/2/2024***, decided on 26.02.2024] and (ii) ***Principal Commissioner of Income-tax (Central) Vs. Avantha Realty Ltd.***, reported in ***[2024] 164 taxmann.com 376 (Calcutta)***.

**10.** Learned counsel for the appellant has further submitted that the Income Tax Department has accepted the proposition that the Explanation inserted to Section 14A through amendment is applicable prospectively before the Delhi High Court in ***Principal Commissioner of Income Tax Vs. Uniparts India Ltd.*** (supra) and therefore, now it is not open for the Revenue to change its stand in claiming that the Explanation inserted to Section 14A through the Finance Bill, 2022 is retrospective in nature.

Learned counsel for the appellant has, therefore, submitted that in view of the above decisions, the impugned order dated 06.07.2022 passed by the Tribunal is liable to be set aside.

**11.** Learned counsel for the appellant has further invited our attention to the fact that the Bench of the Tribunal which had passed the impugned order, later on, while relying on the decision of the Delhi High Court rendered in "***Pr.CIT Vs. Era Infrastructure (India) Ltd., Judgment dated 20.07.2022***" (supra) has passed an order on 09.11.2022 in ITA No.103/Kol/2021 and held that abiding by the principle of judicial hierarchy, the Hon'ble Delhi High Court being a higher Court, the Tribunal is obliged to follow the same. However, subsequently, the same Bench of the Tribunal, vide order dated 02.01.2023 passed MA Nos.2 to 4/GTY/2022 and MA No.5/GTY/2022, has dismissed the Miscellaneous Applications filed on behalf of the appellants while holding that the Delhi High Court is of a non-jurisdictional High Court and therefore, its

decision is not binding upon the Tribunal. It is submitted by the learned counsel for the appellant that though the same Bench of the Tribunal, on 09.11.2022 has held that the decision of the Delhi High Court is binding on it, however, on 02.01.2023, the same Bench of the Tribunal has declared that the judgment of Delhi High Court is not binding upon it. It is submitted that the said conduct of the members of the Tribunal is liable to be condemned.

Learned counsel for the appellant has, therefore, prayed that the present appeals may kindly be allowed and the impugned order passed by the Tribunal may kindly be set aside and substantial questions of law may be answered accordingly.

**12.** Learned counsel for the Revenue has frankly admitted that in view of the Memorandum Explaining the Provisions of the Finance Bill, 2022, issued by the Ministry of Finance, it is now settled that the Explanation inserted to Section 14A of the Act of 1961, is prospective in nature and cannot be made effective retrospectively.

**13.** Heard the learned counsel appearing for the parties and also perused the material placed on record.

The Explanation to Section 14A of the Income Tax Act, 1961 is inserted vide Finance Bill, 2022. The Ministry of Finance, Union of India, issued Memorandum Explaining the Provisions in the Finance Bill, 2022.

The relevant extract of the said Memorandum reads as under:

> "*Clarification in respect of disallowance under Section 14A in absence of any exempt income during an assessment year.*
>
> *Section 14A of the Act provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income that does not form part of the total income as per the provisions of the Act (exempt income).*

*2. Over the years, disputes have arisen in respect of the issue whether disallowance under section 14A of the Act can be made in cases where no exempt income has accrued, arisen or received by the assessee during an assessment year.*

*3. The CBDT issued Circular No.5 of 2014, dated 11/02/2014, clarifying that rule 8D read with Section 14A of the Act provides for disallowance of the expenditure even where tax payer in a particular year has not earned any exempt income. However, still some courts have taken a view that if there is no exempt income during a year, no disallowance under section 14A of the Act can be made for that year. Such an interpretation is not in line with the intention of the Legislature. To illustrate, if during a previous year, an assessee incurs an expense of Rs. 1 lakh to earn non-exempt income of Rs. 1.5 lakh and also incurs an expense of Rs. 20,000 to earn exempt income which may or may not have accrued/received during the year. By holding that provisions of section 14A of the Act does not apply in this year as the exempt income was not accrued/received during the year, it amounts to holding that Rs.20,000 would be allowed as deduction against non-exempt income of Rs.1.5 lakh even though this expense was not incurred wholly and exclusively for the purpose of earning non-exempt income. Such an interpretation defeats the legislative intent of both Section 14A as well as Section 37of the Act.*

*4. In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert 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 year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.*

*5. This amendment will take effect from 1st April, 2022.*

*6. It is also proposed to amend sub-section (1) of the said section, so as to include a non-obstante clause in respect of other provisions of the Income-tax act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.*

*7. This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years."*

**14.** Taking note of above, the Division Bench of Delhi High Court in "***Pr. CIT Vs. Era Infrastructure (India) Ltd., Judgment dated 20.07.2022***" (supra), considering the question whether the Explanation inserted to Section 14A of Act of 1961 is retrospective or prospective in nature, has held as under:

"*However a perusal of the Memorandum of the Finance Bill, 2022 ([2022]440 ITR (St.) 226) reveals that it explicitly stipulates that the amendment made to* Section 14A *will take effect from 1st April, 2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years. The relevant extract of Clauses 4, 5, 6 & 7 of the Memorandum of Finance Bill, 2022 are reproduced hereinbelow:*

> *"4. In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert 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 year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.*
>
> *5.* ***This amendment will take effect from 1st April, 2022.***
>
> *6. It is also proposed to amend sub-section (1) of the said section, so as to include a non-obstante clause in respect of other provisions of the Income-tax Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.*
>
> *7.* ***This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years****."*
>
> *(emphasis supplied)*

*Furthermore, the Supreme Court in* ***Sedco Forex International Drill.*** Inc. v. CIT*, (2005) 12 SCC 717 has held that a retrospective provision in a tax act which is "for the 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. The relevant extract of* the said judgment *is reproduced herein below (page 316 of 279 ITR)*

> "*The High Court did not refer to the 1999* ***Explanation*** *in upholding the inclusion of salary for the field break periods in the assessable income of the employees of the appellant. However, the respondents have urged the point before us.*
>
> *In our view the 1999* ***Explanation*** *could not apply to assessment years for the simple reason that it had not come into effect then. Prior to*

*introducing the 1999* ***Explanation****, the decision in* ***CIT v. S.G. Pgnatale*** *[(1980) 124 ITR 391 (Guj)] was followed in 1989 by a Division Bench of the Gauhati High Court in* ***CIT v. Goslino Mario*** *[(2000) 241 ITR 314 (Gau)] . It found that the 1983* ***Explanation*** *had been given effect from 1-4-1979 whereas the year in question in that case was 1976-77 and said (page 318) :*

*'……It is settled law that assessment has to be made with reference to the law which is in existence at the relevant time. The mere fact that the assessments in question had somehow remained pending on 1-4-1979, cannot be cogent reason to make the* ***Explanation*** *applicable to the cases of the present assessees. This fortuitous circumstance cannot take away the vested rights of the assessees at hand.'*

*The reasoning of the Gauhati High Court was expressly affirmed by this Court in* ***CIT v. Goslino Mario*** *[(2000) 10 SCC 165 : (2000) 241 ITR 312] . These decisions are thus authorities for the proposition that the 1983 Explanation expressly introduced with effect from a particular date would not effect the earlier assessment years.*

*In this state of the law, on 27-2-1999 the Finance Bill, 1999 substituted the* ***Explanation*** *to Section 9(1)(ii) (or what has been referred to by us as the 1999* ***Explanation).*** *Section 5 of the Bill expressly stated that with effect from 1-4-2000, the substituted* ***Explanation*** *would read:*

*'****Explanation****.--For the removal of doubts, it is hereby declared that the income of the nature referred to in this clause payable for--*

*(a) service rendered in India; and*

*(b) the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment,*

*shall be regarded as income earned in India."*

*The Finance Act, 1999 which followed the Bill incorporated the substituted Explanation to Section 9(1)(ii) without any change. The* ***Explanation*** *as introduced in 1983 was construed by the Kerala High Court in* ***CIT v. S.R. Patton*** *[(1992] 193 ITR 49 (Ker), while following the Gujarat High Court's decision in* ***CIT v. S.G. Pgnatale*** *[(1980) 124 ITR 391 (Guj)] to hold that the* ***Explanation*** *was not declaratory but widened the scope of Section 9(1)(ii).* ***It was further held that even if it were assumed to be clarificatory or that it removed whatever ambiguity there was in Section 9(1)(ii) of the Act, it did not operate in respect of periods which were prior to 1-4-1979. It***

***was held that since the Explanation came into force from 1-4-1979, it could not be relied on for any purpose for an anterior period***.

*In the appeal preferred from the decision by the Revenue before this Court, the Revenue did not question this reading of the* ***Explanation*** *by the Kerala High Court, but restricted itself to a question of fact viz. whether the Tribunal had correctly found that the salary of the assessee was paid by a foreign company. This Court dismissed the appeal holding that it was a question of fact. (****CIT v. S.R. Patton*** *[(1998) 8 SCC 608]. Given this legislative history of Section 9(1)(ii), we can only assume that it was deliberately introduced with effect from 1-4- 2000 and therefore intended to apply prospectively [See* ***CIT v. Patel Bros. & Co. Ltd.,*** *(1995) 4 SCC 485, 494. It was also understood as such by CBDT which issued Circular No. 779 dated 14-9-1999 containing Explanatory Notes on the provisions of the Finance Act, 1999 insofar as it related to direct taxes. It said in paras 5.2 and 5.3 :*

> *'5.2 The Act has expanded the existing* ***Explanation*** *which states that salary paid for services rendered in India shall be regarded as income earned in India, so as to specifically provide that any salary payable for the rest period or leave period which is both preceded and succeeded by service in India and forms part of the service contract of employment will also be regarded as income earned in India.*
>
> *5.3* ***This amendment will take effect from 1-4-2000, and will accordingly, apply in relation to Assessment Year 2000-2001 and subsequent years.****'*

*The departmental understanding of the effect of the 1999 Amendment even if it were assumed not to bind the respondents under Section 119 of the Act, nevertheless affords a reasonable construction of it, and there is no reason why we should not adopt it.*

*As was affirmed by this Court in* ***Goslino Mario*** *[(2000) 10 SCC 165 : (2000) 241 ITR 312] a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. (See also* ***Reliance Jute and Industries Ltd. v. CIT*** *[(1980) 1 SCC 139 : 1980 SCC (Tax) 67] .) An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section [See* ***Sonia Bhatia v. State of U.P.****, (1981) 2 SCC 585, 598 : AIR 1981 SC 1274, 1282 para 24] .* ***If it is in its nature clarificatory then the***

***Explanation must be read into the main provision with effect from the time that the main provision came into force*** *[See* ***Shyam Sunder v. Ram Kumar****, (2001) 8 SCC 24 (para 44);* ***Brij Mohan Das Laxman Das v. CIT****, (1997) 1 SCC 352, 354;* ***CIT v. Podar Cement (P) Ltd.****, (1997) 5 SCC 482, 506].* ***But if it changes the law it is not presumed to be retrospective, irrespective of the fact that the phrases used are "it is declared****" or "****for the removal of doubts****".***

*(emphasis supplied)*

*7. The aforesaid proposition of law has been reiterated by the Supreme Court in* ***M.M Aqua Technologies Ltd. V. Commissioner of Income Tax, Delhi-III****, [2021] SCC OnLine SC 575. The relevant portion of the said judgment is reproduced hereinbelow (page 597 OF 436 ITR):-*

*"Second, a retrospective provision in a tax act which is "for the 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. This was stated in* ***Sedco Forex International Drill. Inc. v. CIT****, (2005) 12 SCC 717 as follows (page 318 of 279 ITR):*

*'17. As was affirmed by this Court in* ***Goslino Mario*** *[(2000) 10 SCC 165] a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. (See also* ***Reliance Jute and Industries Ltd. v. CIT*** *[(1980) 1 SCC 139].) An* ***Explanation*** *to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section [See* ***Ku. Sonia Bhatia v. State of U.P.,*** *(1981) 2 SCC 585]. If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force [See* ***Shyam Sunder v. Ram Kumar****, (2001) 8 SCC 24;* ***Brij Mohan Das Laxman Das v. CIT****, (1997) 1 SCC 352;* ***CIT v. Podar Cement (P) Ltd.****, (1997) 5 SCC 482]. But if it changes the law it is not presumed to be retrospective, irrespective of the fact that the phrases used are "it is declared" or "for the removal of doubts".*

*18. There was and is no ambiguity in the main provision of Section 9(1)(ii). It includes salaries in the total income of an assessee if the assessee has earned it in India. The word "earned" had been judicially defined in* ***S.G. Pgnatale*** *[(1980) 124 ITR 391 (Guj)] by the High Court of Gujarat, in our view, correctly, to mean as income "arising or accruing in India". The amendment to the section by way of an Explanation in 1983 effected a change in the scope of that judicial definition so as to include*

*with effect from 1979, "income payable for service rendered in India".*

*19. When the **Explanation** seeks to give an artificial meaning to "earned in India" and brings about a change effectively in the existing law and in addition is stated to come into force with effect from a future date, there is no principle of interpretation which would justify reading the Explanation as operating retrospectively."*

*(emphasis supplied)*

*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."*

**15.** In ***Pr.CIT Vs. M/s Era Infrastructure India Ltd., order dated 16.07.2024*** (supra), the Delhi High Court, relying on the decision rendered in "***Pr.CIT Vs. Era Infrastructure (India) Ltd., Judgment dated 20.07.2022***" (supra), has dismissed the appeal preferred on behalf of the Revenue.

**16.** The High Court of Kolkata in ***M/S Jas Toll Road Company Ltd.*** (supra) has dismissed the appeal filed by the Revenue while relying on the decision of the Delhi High Court rendered in "***Pr.CIT Vs. Era Infrastructure (India) Ltd., Judgment dated 20.07.2022***" (supra) and held that the explanation inserted to Section 14A by Finance Act, 2022 will be applicable prospectively.

The operative portion of the decision rendered in ***M/s Jas Toll Road Company Ltd.*** (supra) is reproduced hereunder:

"*Upon careful consideration and going through the materials on record we find that the learned tribunal was fully justified in dismissing the appeal filed by the revenue affirming the order passed by the Commissioner of Income Tax [Appeals], Kolkata-20. The issue involved in the case is that whether disallowance under Section 14A of the Act can be made even if the assessee has not earned any exempt income, the issue is no longer res integra and there are several decisions to the effect that amendment made under Section 14A of the Act by Finance Act, 2022 will be applicable prospectively and disallowance should not exceed the exempt income earned by the assessee during the year.*

*The PCIT has also noted the decision of the Hon'ble Supreme Court in CIT vs. Chettinad Logistics Pvt. Ltd [2018] 95 taxmann.com 250 and PCIT-18 vs. Oil Industrices Development Board, SLP (Civil) Diary No.2755/2019.*

*Thus, we find no ground to interfere with the order passed by the learned tribunal.*

*Accordingly, the appeal is dismissed and the substantial questions of law are answered against the revenue*."

**17.** In ***Avantha Realty Ltd.*** (supra), the High Court of Calcutta, relying on the decision of Delhi High Court, rendered in "***Pr.CIT Vs. Era Infrastructure (India) Ltd., Judgment dated 20.07.2022***" (supra), has dismissed the appeal filed by the Revenue and held that the Explanation inserted to Section 14A by Finance Act, 2022 will be applicable prospectively.

The operative portion of the decision in ***Avantha Realty Ltd.*** (supra) reads as under:

"*Substantial questions Nos. D & E pertain to the deletion of the disallowance made under Section 14A of the Act. The learned Tribunal took note of the decision of the High Court of Delhi in Era Infrastructure (India) Ltd. (supra), which had taken note of the decision in the case of Cheminvest Ltd. (supra), wherein it was held that amendment by the Finance Act, 2022 of Section 14 A of the Act by inserting a non-obstante clause and explanation we take effect from 01.04.22 and cannot be presumed to have retrospective effect and, therefore, on facts the amendment cannot be applied to the assessment year under consideration. We find no error in such conclusion arrived at by the learned Tribunal.*

*Accordingly, substantial questions of law No.D & E are decided against the revenue."*

**18.** Later on, the Delhi High Court, in ***Uniparts India Ltd.*** (supra), has made a specific statement that so far as the applicability of Explanation inserted to Section 14A by Finance Bill, 2022 is concerned, it is settled that the same will apply prospectively.

**19.** The High Court of Madhya Pradesh has also followed the same view in

***Principal Commissioner of Income Tax (Central) Vs. Keti Construction Ltd.***, reported in ***[2024] 162 taxmann.com***.

**20.** In view of the Memorandum Explaining the Provisions in the Finance Bill, 2022 and various decisions rendered by the different High Courts, we also hold that the Explanation inserted to Section 14A vide Finance Act, 2022 is applicable prospectively.

In view of above discussions, the substantial questions of law framed in these appeals are answered as follows:

(i) the order passed by the Tribunal dated 06.07.2022, holding that insertion of Explanation to Section 14A of the Income Tax Act, 1961 is clarificatory and thereby retrospective in nature, is erroneous in law.

(ii) the findings of the Tribunal to the effect that the insertion of Explanation to Section 14A of the Income Tax Act, 1961 is clarificatory, is contrary to the legislative intention as expressed in Memorandum to the Finance Bill, 2022.

**21.** Consequently, we allow the present appeals. The impugned order dated 06.07.2022 passed by the Tribunal in ITA Nos.159/Gau/2019, 154/Gau/2019, 155/Gau/2019 and 156/Gau/2019 is set aside and the orders passed by the CIT(A) dated 31.01.2019 are affirmed.

**22.** We have also taken note of the fact that the Bench of the Tribunal, in earlier decision dated 09.11.2022 rendered in ITA No.103/Kol/2021, while relying on decision of Delhi High Court in "***Pr.CIT Vs. Era Infrastructure (India) Ltd., Judgment dated 20.07.2022***" (supra) has held that the Explanation inserted to Section 14A is applicable prospectively. However, the

same Bench, while deciding the Miscellaneous Applications (supra), preferred on behalf of the appellants subsequently has concluded that the decision of the Delhi High Court is not binding the Tribunal.

Having taken note of the above fact, while restraining ourselves from making harsh comments, we can only say that such a conduct of the members of an authority, which is discharging judicial functions, cannot be appreciated. Any authority discharging judicial functions is expected to maintain consistency in its views in respect of judicial matters because any unjust deviation may affect the credibility of such authority.

**JUDGE** **CHIEF JUSTICE**

**Comparing Assistant**