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

% *Date of Decision : 28.11.2024*

+ **W.P.(C) 5170/2023 and CM APPL. 20190/2023**

RELIGARE ENTERPRISES LTD (AS SUCCESSOR IN INTEREST
OF RELIGARE SECURITIES LTD)Petitioner

Through: Mr Rohit Jain with Mr Aniket D.
Agarwal and Mr Abhisek Singhvi,
Advocates.

versus

NATIONAL FACELESS ASSESSMENT CENTRE & ANR.

.....Respondents

Through: Mr Sunil Agarwal with Mr Shivansh
B. Pandya, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 29.03.2023 (hereafter the impugned order) passed by respondent no.1 (National Faceless Assessment Centre) – hereafter *NFAC* under Sections 143(3)/254/144B of the Income Tax Act, 1961 (hereafter *the Act*). It is the petitioner's contention that the impugned order has been passed without any jurisdiction.

2. The petitioner (hereafter *the Assessee*) had filed a revised income tax return for assessment year 2013-14 [AY 2013-14] on 31.03.2015 declaring an income of Rs.2,70,87,75,810/-. The same included income from dividends amounting to Rs.4,14,800/-, which was exempt from charge of tax



at the material time. The Assessee had not claimed any deduction in respect of expenses amounting to ₹1,83,55,525/- under Section 14A of the Act – expenditure relatable to any exempt income.

3. The Assessee's return was picked up for scrutiny and the Assessing Officer (hereafter *AO*) made an addition of ₹1,93,79,583/- to the Assessee's declared income by disallowing further amount under Section 14A of the Act. Thus, the aggregate amount of expenses disallowed under Section 14A amounted to ₹3,77,35,108/-. In addition to increasing the disallowance under Section 14A of the Act, the *AO* also disallowed expenses charged against fines and penalties amounting to ₹35,18,803/-.

4. The said assessment order was subject matter of challenge

5. The Assessee appealed the said assessment order by filing an appeal before the Commissioner of Income Tax (Appeals) [hereafter *CIT(A)*]. The learned *CIT(A)* partly allowed the Assessee's appeal in terms of an order dated 28.07.2017 and deleted the additional disallowance of ₹1,93,79,589/- made by the *AO* under Section 14A of the Act. Consequently, the inadmissible expenses, in terms of Section 14A of the Act, were confined to the amounts as declared by the Assessee – ₹1,83,55,525/-.

6. The Assessee as well as the Revenue appealed the order dated 28.07.2017 passed by the learned *CIT(A)* before the Income Tax Appellate Tribunal (hereafter *ITAT*) being *ITA Nos.6330/Del/2017* and *6434/Del/2017*. The Assessee also raised an additional ground and claimed allowance in respect of expenditure of ₹1,83,55,525/-, which it had not done under its revised return. According to the Assessee, it had accounted for an excess disallowance under Section 14A of the Act.

7. The learned *ITAT* disposed of the said appeal by an order dated



25.02.2021. In terms of the said order, the learned ITAT remanded the issues pertaining to fines and penalties and disallowance under Section 14A of the Act to the AO for consideration afresh with a direction that the disallowance under Section 14A of the Act was required to be worked, considering by limiting the value of investments to the value of the instruments yielding exempt income.

8. Thereafter, the Assessee filed an application being MA No.159/Del/2021 in ITA 6330/Del/2017 in the disposed of appeal praying that certain findings be modified and to direct the AO to restrict the disallowance to the extent of the exempt income. The said application was allowed by an order dated 01.04.2022 and the learned ITAT modified the findings in paragraph 11.1 of its order dated 25.02.2021 and directed the AO to restrict the disallowance to the extent of exempt income. Thus, the maximum disallowance that could be made in terms of the order passed by the learned ITAT was ₹4,14,800/-.

9. Pursuant to the said directions, the Jurisdictional Assessing Officer (hereafter *JAO*) (respondent no.2) passed an order dated 04.02.2023 to give effect to the directions issued by the learned ITAT. In terms of the said order the disallowance under Section 14A of the Act was confined to ₹4,14,800/- being a quantum of the income exempt from payment of tax, however, no specific findings were issued in respect of fines and penalties.

10. Insofar as the issue of disallowance under Section 14A of the Act is concerned, the said issue stood concluded by the said order. As noted above, the AO did not issue any specific findings regarding the fines and penalties amounting to ₹35,18,803/-. However, the Assessee has not filed any appeal against the said decision.



11. Notwithstanding that an order dated 04.02.2023 had been passed by the JAO, NFAC proceeded to pass another order. Although, the JAO had passed an order to give effect to the order dated 25.02.2021 and order dated 25.02.2021 as modified by the order dated 01.04.2022 by the learned ITAT, the NFAC issued an intimation dated 15.02.2023 informing the Assessee that the assessment would be completed in accordance with the procedure under Section 144B of the Act.

12. The Assessee filed its objections for continuing any proceedings pursuant to the order passed by the learned ITAT as the JAO had already passed an order dated 04.02.2023 to give effect to the orders passed by the learned ITAT. However, the NFAC passed impugned order in respect of the two issues that were remanded by the learned ITAT being disallowance under Section 14A of the Act and disallowance of fines and penalties.

13. The NFAC passed an order dated 29.03.2023 once again reiterating the disallowance of ₹3,60,51,977/- made under Section 14A of the Act, which included an additional disallowance of ₹1,93,79,583/- (which was made by the AO in terms of the assessment order dated 28.03.2016). Although, the NFAC noticed the order dated 01.04.2022 passed by the learned ITAT confining the disallowance under Section 14A of the Act to ₹4,14,800/-, the said directions were completely disregarded. It is also material to note that the NFAC also expressly stated that its order would supersede the order of the JAO dated 04.02.2023.

14. It is relevant to note that despite several opportunities, the Revenue has failed and neglected to file its counter-affidavit. Consequently, on 02.05.2024, this court passed an order granting a final opportunity to the Revenue to file its counter-affidavit within a period of three weeks from the



said date and also put the Revenue to notice that failing the filing of any counter-affidavit the matter would proceed *ex parte*, on the basis of the record existed on the said date. The Revenue failed to avail the last opportunity as well. Notwithstanding the same, this court by an order dated 28.08.2024 granted liberty to the learned counsel for the Revenue to file a brief note of submissions, if so advised. However, no such note has been filed either. The facts as narrated above are thus accepted as untraversed. Mr Sunil Agarwal, learned counsel for the Revenue, also states that there is no dispute as to the facts as noted above.

15. The order dated 04.02.2023 passed by the JAO clearly sets out that it is an order to give effect to the order passed by the learned ITAT. We consider it apposite to set out the said order in its entirety.

“Order u/s 254/250/143(3) of the Income Tax Act, 1961

Consequent upon the order of the Income Tax Appellate Tribunal, Delhi IN ITA No. 6434/Del/2017 and ITA No. 6330/Del/2017 and subsequent MA No. 159/Del/2021 (In ITA No. 6330/Del/2017) Income is recomputed as under:-

S.No.	Particulars	
	Total income as per Return of Income of	Rs.2,70,87,75,810/-
	Income as per order u/s 250, Dated-28.07.2017	Rs.2,71,22,94,613/-
Less:	Relief allowed by ITAT:-	
i	Disallowance U/S 14A restricted to Rs.4,14,800/- in place of disallowance made amounting to Rs.1,83,55,525/- i.e. relief of Rs.1,79,40,725/-	Rs.(-)1,79,40,725/-
ii	Disallowance of	Rs.0/-



	fine/penalties being allowed:	
	Total income	Rs.2,69,43,53,887/-
	Income after appeal effect rounded of	Rs.2,69,43,53,890/-

2. Thus, after appeal effect income of the assessee M/s Religare Securities Ltd. (now merged with Religare Enterprises Ltd.) for AY **2013-14** is recomputed at Rs.2,69,43,53,890/- under the normal provisions of the Act. Credit for TDS, advance tax and regular taxes paid is given after verification. Interest u/s 234A, B, C & D is being charged, as applicable, of the IT Act, 1961.”

16. In view of the above, there is no doubt that the proceedings pursuant to the directions issued by the learned ITAT stood concluded by the aforementioned order dated 04.02.2023. Clearly, there is no provision under the Act for continuing assessment proceedings after an assessment order is passed. Concluded assessments cannot be opened except by recourse to specific provisions in this regard including Section 147 of the Act. The initiation of further proceedings by the NFAC pursuant to the orders passed by the learned ITAT, is clearly without jurisdiction.

17. In view of the above, the impugned order is set aside. The petition is allowed in the aforesaid terms.

18. Pending application also stands disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 28, 2024 / tr

[Click here to check corrigendum, if any](#)