



\$~8 & 9

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

% ***Judgment delivered on: 07.08.2024***

+ **ITA 362/2024**

**PRINCIPAL COMMISSIONER OF INCOME TAX
CENTRAL-3 NEW DELHI**Appellant

Through: Mr. Abhishek Maratha, Sr. SC
alongwith Mr. Parth Semiwal,
Mr. Apoorv Agarwal, Jr. SCs.
with Ms. Nupur Sharma, Mr.
Manav Goyal, Mr. Gaurav
Singh, Ms. Muskaan and Mr.
Bhanukaran Singh Jodha, Advs.

versus

ALCHEMIST LTDRespondent

Through: None.

9

+ **ITA 384/2024**

**PR. COMMISSIONER OF INCOME
TAX (CENTRAL)-2**Appellant

Through: Mr. Sanjay Kumar, SSC with
Ms. Esha, Adv.

versus

UNO MINDA LTDRespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J. (Oral)

CM APPL. 40581-82/2024 in ITA 362/2024

1. Bearing in mind the disclosures made, the delay in filing and

ITA 362/2024 & 384/2024

Page 1 of 30



refiling the appeal is condoned.

2. The applications shall stand disposed of.

ITA 362/2024 & 384/2024

3. These two appeals although assailing separate judgments rendered by the **Income Tax Appellate Tribunal**¹ were heard together since both questioned the view expressed by the Tribunal that a disallowance under Section 14A of the **Income Tax Act, 1961**² would be liable to be restricted to the extent of exempt income earned during the year.

4. As would be evident from a reading of the judgment handed down by the Tribunal, it has while upholding the view taken by the **Commissioner of Income Tax, (Appeals)**³ followed the principles which had been enunciated by this Court in **Principal Commissioner of Income-Tax vs. Caraf Builders and Constructions PVT. Ltd**⁴.

5. In *Caraf Builders*, the Court upon a due appreciation of the scheme underlying Section 14A had held that the disallowance of expenditure under the aforementioned provision would not only be restricted to the exempt income earned during that year, any disallowance even if computed in accordance with Rule 8D of the **Income Tax Rules, 1962**⁵ cannot exceed the exempt income earned in that year. The aforesaid position emerges from a reading of Paras 25 and 26 of the report and which are extracted hereinbelow:-

“25. Total exempt income earned by the respondent-assessee in this year was Rs. 19 lakhs. In these circumstances, we are not

¹ ITAT

² Act

³ CIT(A)

⁴ 2018 SCC Online Del 12876

⁵ Rules



required to consider the case of the Revenue that the disallowance should be enhanced from Rs. 75.89 crores to Rs. 144.52 crores. Upper disallowance as held in Principal CIT v. McDonalds India Pvt. Ltd. I.T.A. No. 725 of 2018 decided on October 22, 2018 cannot exceed the exempt income of that year. This decision follows the ratio and judgment of the Supreme Court in the case of Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC) and the earlier judgments of the Delhi High Court in Cheminvest Ltd. v. CIT [2015] 378 ITR 33 (Delhi) and CIT v. Holcim India Pvt. Ltd. [2014] 272 CTR (Delhi) 282. Relevant portion of the judgment in McDonalds India Pvt. Ltd. (supra) reads:

8. The decision in the case of Maxopp Investment Ltd. (supra) is significant and does answer the question in issue. This decision does not support the Revenue as the Assessing Officer in the case of Maxopp Investment Ltd. (supra) had himself restricted the disallowance to the extent of exempt income. After referring to Walford Share and Stock Brokers P. Ltd. (supra) it was held—

'Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income.'

XXXX

XXXX

XXXX

10. The decision of the Delhi High Court in Holcim India Pvt. Ltd. (supra) had referred to the issue whether disallowance of expenditure under section 14A of the Act would be made even when no exempt income in the form of dividend was earned in the year, and it was observed:

XXXX

XXXX

XXXX

'14. On the issue whether the respondent-assessee could have earned dividend income and even if no dividend income was earned, yet section 14A can be invoked and disallowance of expenditure can be made, there are three decisions of the different High Courts directly on the issue and against the appellant-Revenue. No contrary decision of a High Court has been shown to us. The Punjab and



Haryana High Court in CIT v. Lakhani Marketing Incl. ITA No. 970 of 2008, decided on April 2, 2014 — (2015) 4 ITR-OL 246 (P&H) made reference to two earlier decisions of the same court in CIT v. Hero Cycles Limited (2010) 323 ITR 518 (P&H) and CIT v. Winsome Textile Industries Limited (2009) 319 ITR 204 (P&H) to hold that section 14A cannot be invoked when no exempt income was earned. The second decision is of the Gujarat High Court in CIT v. Corrttech Energy (P.) Ltd. (2014) 223 Taxman 130 (Guj) ; (2015) 372 ITR 97 (Guj). The third decision is of the Allahabad High Court in Income Tax Appeal No. 88 of 2014, CIT v. Shivam Motors (P.) Ltd. decided on May 5, 2014. In the said decision it has been held:

“As regards the second question, section 14A of the Act provides that for the purposes of computing the total income under the Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. Hence, what section 14A provides is that if there is any income which does not form part of the income under the Act, the expenditure which is incurred for earning the income is not an allowable deduction. For the year in question, the finding of fact is that the assessee had not earned any tax free income. Hence, in the absence of any tax free income, the corresponding expenditure could not be worked out for disallowance. The view of the Commissioner of Income-tax (Appeals), which has been affirmed by the Tribunal, hence does not give rise to any substantial question of law. Hence, the deletion of the disallowance of Rs. 2,03,752 made by the Assessing Officer was in order.”

15. Income exempt under section 10 in a particular assessment year, may not have been exempt earlier and can become taxable in future years. Further, whether income earned in a subsequent year would or would not be taxable, may depend upon the nature of transaction entered into in the subsequent assessment year. For example, long-term capital gain on sale of shares is presently not taxable where security transaction tax has been paid, but a private sale of shares in an off market transaction attracts capital gains tax. It is an undisputed position that the respondent-assessee is an investment company and had invested by purchasing a substantial number of shares and thereby securing right to



management. Possibility of sale of shares by private placement etc. cannot be ruled out and is not an improbability. Dividend may or may not be declared. Dividend is declared by the company and strictly in legal sense, a shareholder has no control and cannot insist on payment of dividend. When declared, it is subjected to dividend distribution tax.'

XXXX

XXXX

XXXX

16. The decision in Holcim India Pvt. Ltd. (supra) was followed and elaborated in Cheminvest Ltd. (supra)."

26. There is another error made by the Assessing Officer in computing the disallowance under clause (ii) of rule 8D (2) with reference to the formula prescribed. Numerical B in clause (ii) refers to average value of the investment, income from which does not form part or shall not form part of the total income. The Assessing Officer for numerical B in clause (ii) had taken the total value of the investment and not the investment that had yielded exempt income. The Delhi High Court in ITA No. 615 of 2014, ACB India Ltd. v. Asst. CIT decided on March 24, 2015 — (2015) 374 ITR 108 (Delhi), has held that only average value of the entire investment that does not form part of the total income is the factor which could be covered by the numerical B for computing disallowance under clause (ii) of rule 8D(2) of the Rules."

6. Both Mr. Kumar and Mr. Maratha, learned counsels who appeared in support of these appeals have essentially questioned the apportionment of expenditure incurred on a purported reading of Section 14A to submit that irrespective of whether any exempt income is earned or not in a particular fiscal year, there can be no bifurcation of expenditure and that the Tribunal has clearly erred in taking the view which stands embodied in its orders impugned before us in these appeals.

7. According to Mr. Kumar, the incurring of expenditure is liable to be viewed as being totally disconnected or at least its recognition not being dependent upon the actual earning of a return on investment or any exempt income accruing in that year. According to learned



counsel, the bifurcation of expenditure is thus wholly unwarranted.

8. While and undoubtedly *Caraf Builders* binds this Court having been rendered by a Coordinate Bench, since elaborate submissions were addressed by learned counsels on the question which stands raised, we had proceeded to hear the appeals on merit.

9. In order to appreciate the challenge which stands raised, it would, however, be apposite to notice the following salient facts at the outset. Section 14A came to be introduced in the statute book by virtue of **Finance Act, 2001**⁶ with retrospective effect from 01 April 1962. The Legislature thus thought it fit to accord retrospectivity to the said provision and thus it would be deemed to have existed from the time when the Act itself came to be originally promulgated.

10. It would be pertinent to briefly advert to the following parts of the Memorandum seeking to explain the various provisions of the Finance Bill 2001 and insofar as it spoke of Section 14A and the relevant extracts whereof are reproduced hereinbelow:-

“Objective behind the Insertion of section 14A:-

The object behind the Insertion of section 14A in the said Act is apparent from the Memorandum explaining the provisions of the Finance Bill, 2001 which is to the following effect (see [2001] 248 ITR (St.) 162, 195):-

“Certain Incomes are not includible while computing the total income as these are exempt under various provisions of the Act. There have been cases where deductions have been claimed in respect of such exempt income. This in effect means that the tax incentive given by way of exemptions to certain categories of Income is being used to reduce also the tax payable on the non-exempt income by debiting the expenses incurred to earn the exempt income against taxable income. This is against the basic principles of taxation whereby only the net income, i.e., gross income minus the

⁶ The 2001 Act



expenditure, is taxed. On the same analogy, the exemption is also in respect of the net income. Expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income.”

It is proposed to insert a new section 14A so as to clarify the Intention of the Legislature since the inception of the Income-tax Act, 1961 that no deduction shall be made in respect of any expenditure incurred by the assessee in relation to income which does not form part of the total income under the Income-tax Act. The proposed amendment will take effect retrospectively from April 1, 1962 and will accordingly, apply in relation to the assessment year 1962-63 and subsequent assessment years.”

11. As the provision originally existed, it provided that no deduction would be allowed in respect of expenditure incurred by the assessee in relation to any income which does not form part of total income under the Act. By virtue of Finance Act 2006, sub-sections (2) and (3) came to be added to the principal provision. The last amendment came to be introduced by virtue of **Finance Act, 2022**⁷ and which saw the addition of an Explanation to Section 14A.

12. The provision as it exists presently is reproduced hereinbelow:-

“[14A. Expenditure incurred in relation to income not includible in total income.—[(1)] For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.]

[(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in

⁷ 2022 Act



relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:]

[Provided that nothing contained in this section shall empower the Assessing Officer either to reassess undersection 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee undersection 154, for any assessment year beginning on or before the 1st day of April, 2001.]”

[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.]

13. On a plain textual reading of Section 14A, we find that the provision mandates that no deduction would be allowed in respect of expenditure that may be incurred for the purposes of earning income which would ultimately not form part of total income under the Act. The expenditure which is thus identified is that which may have been expended for the purposes of earning income which is otherwise not liable to be included in total income and is thus viewed as exempt.

14. The expenditure which is spoken of is thus in respect of income which is specified in Section 10 and which stands placed in Chapter III of the Act. Section 14A, on the other hand, is placed in Chapter IV and which contains various provisions relating to computation of total income. Both sub-sections (1) and (2) of Section 14A, use the expression “*income which does not form part of the total income*” in conjunction with the expenditure that may be incurred by an assessee in relation thereto. The two expressions noted above are coupled together by the phrase “*in relation to*”.



15. The Section thus clearly appears to suggest that expenditure which is relatable to income which would ultimately not form part of total income or be exempt cannot be claimed as a deduction. The mischief which Section 14A sought to address stands eloquently spelt out in the Memorandum which had explained the provisions of the 2001 Act while noting that assesseees were claiming deductions in respect of expenditure incurred in relation to exempt income. It was noted that as a result of the above, assesseees were being able to derive a double benefit and thus not only deriving income which was otherwise claimed as exempt from taxation, but additionally claiming deductions with respect to the expenditure incurred in relation thereto. It was thus noted that the tax incentive made available by way of exemption of certain categories of income was being used to reduce the tax payable even on non-exempt income. It was to overcome the aforesaid lacuna that Section 14A came to be introduced.

16. One of the earliest decisions of the Supreme Court which lucidly explained the objectives underlying Section 14A was the one rendered in **Commissioner of Income Tax vs. Walfort Share and Stock Brokers Private Ltd.**⁸ In *Walfort*, the Supreme Court explained the scheme of Section 14A in the following terms:-

“28. In this batch of cases, we are required to decide three distinct points which are as follows:

(i) Whether "return of investment" or "cost recovery" would fall within the expression "expenditure incurred" in section 14A?

(ii) Impact of section 94(7) with effect from 1 -4-2002 on the impugned transactions.

⁸2010 SCC Online SC 671



(iii) Reconciliation of section 14A with section 94(7) of the Act.

32. The insertion of section 14A with retrospective effect is the serious attempt on the part of the Parliament not to allow deduction in respect of any expenditure incurred by the assessee in relation to income, which does not form part of the total income under the Act against the taxable income (see Circular No. 14 of 2001, dated 22-11-2001). In other words, section 14A clarifies that expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income. In many cases the nature of expenses incurred by the assessee may be relatable partly to the exempt income and partly to the taxable income. In the absence of section 14A, the expenditure incurred in respect of exempt income was being claimed against taxable income. The mandate of section 14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail the tax incentive by way of exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income. The basic reason for insertion of section 14A is that certain incomes are not includible while computing total income as these are exempt under certain provisions of the Act. In the past, there have been cases in which deduction has been sought in respect of such incomes which in effect would mean that tax incentives to certain incomes was being used to reduce the tax payable on the non-exempt income by debiting the expenses, incurred to earn the exempt income, against taxable income. The basic principle of taxation is to tax the net income, i.e., gross income minus the expenditure. On the same analogy the exemption is also in respect of net income. Expenses allowed can only be in respect of earning of taxable income. This is the purport of section 14A. In section 14A, the first phrase is "for the purposes of computing the total income under this Chapter" which makes it clear that various heads of income as prescribed under Chapter IV would fall within section 14A. The next phrase is, "in relation to income which does not form part of total income under the Act". It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of section 14A. Further, section 14 specifies five heads of income which are chargeable to tax. In order to be chargeable, an income has to be brought under one of the five heads. Sections 15 to 59 lay down the rules for computing income for the purpose of chargeability to tax under those heads. Sections 15 to 59 quantify the total income chargeable to tax. The permissible deductions enumerated in sections 15 to 59 are now to be allowed only with reference to income which is brought under one of the above heads and is chargeable to tax. If an income like



dividend income is not a part of the total income, the expenditure/deduction though of the nature specified in sections 15 to 59 but related to the income not forming part of total income could not be allowed against other income includible in the total income for the purpose of chargeability to tax. The theory of apportionment of expenditures between taxable and non-taxable has, in principle, been now widened under section 14A. Reading section 14 in juxtaposition with sections 15 to 59, it is clear that the words "expenditure incurred" in section 14A refers to expenditure on rent, taxes, salaries, interest, etc. in respect of which allowances are provided for (see sections 30 to 37). Every pay-out is not entitled to allowances for deduction. These allowances are admissible to qualified deductions. These deductions are for debits in the real sense. A pay-back does not constitute an "expenditure incurred" in terms of section 14A. Even applying the principles of accountancy, a pay-back in the strict sense does not constitute an "expenditure" as it does not impact the Profit and Loss Account. Pay-back or return of investment will impact the balance-sheet whereas return on investment will impact the Profit and Loss Account. Cost of acquisition of an asset impacts the balance sheet. Return of investment brings down the cost. It will not increase the expenditure. Hence, expenditure, return on investment, return of investment and cost of acquisition are distinct concepts. Therefore, one needs to read the words "expenditure incurred" in section 14A in the context of the scheme of the Act and, if so read, it is clear that it disallows certain expenditures incurred to earn exempt income from being deducted from other income which is includible in the "total income" for the purpose of chargeability to tax. As stated above, the scheme of sections 30 to 37 is that profits and gains must be computed subject to certain allowances for deductions/expenditure. The charge is not on gross receipts, it is on profits and gains. Profits have to be computed after deducting losses and expenses incurred for business. A deduction for expenditure or loss which is not within the prohibition must be allowed if it is on the facts of the case a proper Debit Item to be charged against the incomings of the business in ascertaining the true profits. A return of investment or a pay-back is not such a Debit Item as explained above, hence, it is not "expenditure incurred" in terms of section 14A. Expenditure is a pay-out. It relates to disbursement. A pay-back is not an expenditure in the scheme of section 14A. For attracting section 14A, there has to be a proximate cause for disallowance, which is its relationship with the tax exempt income. Pay-back or return of investment is not such proximate cause, hence, section 14A is not applicable in the present case. Thus, in the absence of such proximate cause for disallowance, section 14A cannot be invoked. In our view, return of investment cannot be construed to mean "expenditure" and if it



is construed to mean "expenditure" in the sense of physical spending still the expenditure was not such as could be claimed as an "allowance" against the profits of the relevant accounting year under sections 30 to 37 of the Act and, therefore, section 14A cannot be invoked. Hence, the two asset theory is not applicable in this case as there is no expenditure incurred in terms of section 14A."

17. As is manifest from the aforequoted passage, the Supreme Court enunciated the objective of Section 14A being that expenses incurred can only be allowed to the extent that they relate to the earning of taxable income. The introduction of Section 14A was further explained as being driven by the legislative intent of attending to situations where expenditure incurred in earning exempt income was also being claimed against income which was otherwise exigible to tax. The Supreme Court explained that Section 14A was driven by the aim of the Legislature to curb the practice of claiming deduction of expenses incurred even in relation to exempt income.

18. Section 14A and its ambit again arose for the consideration of this Court in **Maxopp Investment Limited vs. Commissioner of Income Tax**⁹. The Court noticed the position which prevailed prior to the introduction of Section 14A and the mischief that it sought to address in the following words:-

"12. Prior to the introduction of section 14A in the said Act, the position in law was as laid down by the Supreme Court in CIT v. Maharashtra Sugar Mills Ltd. (1971) 82 ITR 452 (SC) and Rajasthan State Warehousing Corporation v. CIT (2000) 242 ITR 450 (SC). In Maharashtra Sugar Mills Ltd. (1971) 82 ITR 452 (SC), the assessee's business comprised of two parts, namely, (1) cultivation of sugarcane, and (2) the manufacture of sugar. The Revenue had contended that as the income from the cultivation of sugarcane, being the result of an agricultural operation, was not exigible to tax, therefore, any expenditure incurred in respect of

⁹ 2011 SCC OnLine Del 4855



that activity was not deductible. The Supreme Court repelled this contention in the following manner (page 454):

"This contention proceeds on the basis that only expenditure incurred in respect of a business activity giving rise to income, profit or gains taxable under the Act can be given deduction to and not otherwise. We see no basis for this contention. To find out whether the deduction claimed is permissible under the Act or not, all that we have to do is to examine the relevant provisions of the Act. Equitable considerations are wholly out of place in construing the provisions of a taxing statute. We have to take the provisions of the statute as they stand. If the allowance claimed is permissible under the Act then the same has to be deducted from the gross profit. If it is not permissible under the Act, it has to be rejected. As mentioned earlier, it is not disputed that the cultivation of sugarcane and the manufacture of sugar constituted one single and indivisible business. Section 10(2) says that profits under section 10(1) in respect of a business should be computed after deducting the allowances mentioned therein. One of the allowances allowed is that mentioned in section 10(2)(xv) which says that any expenditure laid out or expended wholly and exclusively for the purpose of such business shall be deducted as an allowance. The mandate of section 10(2)(xv) is plain and unambiguous. Undoubtedly, the allowance claimed in this case was laid out or expended for the purpose of the business carried on by the assessee. The fact that the income arising from a part of that business is not exigible to tax under the Act is not a relevant circumstance." (emphasis supplied)

13. In Rajasthan State Warehousing Corporation (2000) 242 ITR 450 (SC), the Supreme Court after, inter alia, considering its earlier decisions in CIT v. Indian Bank Ltd. (1965) 56 ITR 77 (SC) and Maharashtra Sugar Mills Ltd. (1971) 82 ITR 452 (SC) laid down the following principles (455 of 242 ITR):

"(i) if income of an assessee is derived from various heads of income, he is entitled to claim deduction permissible under the respective head whether or not computation under each head results in taxable income;

(ii) if income of an assessee arises under any of the heads of income but from different items, e.g., different house properties or different securities, etc., and income from one or more items alone is taxable whereas income from the other item is exempt under the Act, the entire permissible



expenditure in earning the income from that head is deductible ; and

(iii) in computing 'profits and gains of business or profession' when an assessee is carrying on business in various ventures and some among them yield taxable income and the others do not, the question of allowability of the expenditure under section 37 of the Act will depend on:

(a) fulfilment of requirements of that provision noted above ; and

(b) on the facts whether all the ventures carried on by him constituted one indivisible business or not ; if they do, the entire expenditure will be a permissible deduction but if they do not, the principle of apportionment of the expenditure will apply because there will be no nexus between the expenditure attributable to the venture not forming an integral part of the business and the expenditure sought to be deducted as the business expenditure of the assessee."

14. Thus, prior to the introduction of section 14A in the said Act, the law was that when an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of the said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. However, where the business was divisible, the principle of apportionment of the expenditure was applicable and the expenditure apportioned to the "exempt" income or income not exigible to tax, was not allowable as a deduction.

XXXX

XXXX

XXXX

24. We do not agree with the submission of the learned counsel appearing on behalf of the assesseees that a narrow meaning ought to be ascribed to the expression "in relation to" appearing in section 14A of the said Act. The context does not suggest that a narrow meaning ought to be given to the said expression. It is pertinent to note that the provision was inserted by virtue of the Finance Act, 2001, with retrospective effect from April 1, 1962. In other words, it was the intention of Parliament that it should appear in the statute book, from its inception, that expenditure incurred in connection with income which does not form part of total income ought not to be allowed as a deduction. The factum of making the said provision retrospective makes it clear that Parliament wanted that it should be understood by all that from the very beginning, such



expenditure was not allowable as a deduction. Of course, by introducing the proviso it made it clear that there was no intention to reopen the finalised assessments prior to the assessment year beginning on April 1, 2001. Furthermore, as observed by the Supreme Court in Walfort (2010) 326 ITR 1 (SC), the basic principle of taxation is to tax the net income, i.e., gross income minus the expenditure and on the same analogy the exemption is also in respect of net income. In other words, where the gross income would not form part of total income, its associated or related expenditure would also not be permitted to be debited against other taxable income.

25. We are of the view that the expression "in relation to", appearing in section 14A of the said Act, cannot be ascribed a narrow or constricted meaning. If we were to accept the submission made on behalf of the assessee then sub-section (1) would have to be read as follows:

"For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee with the main object of earning income which does not form part of the total income under this Act."

26. That is certainly not the purport of the said provision. The expression "in relation to" does not have any embedded object. It simply means "in connection with" or "pertaining to". If the expenditure in question has a relation or connection with or pertains to exempt income, it cannot be allowed as a deduction even if it otherwise qualifies under the other provisions of the said Act. In Walfort (2010) 326 ITR 1 (SC), the Supreme Court made it very clear that the permissible deductions enumerated in sections 15 to 59 are now to be allowed only with reference to income which is brought under one of the heads of income and is chargeable to tax. The Supreme Court further clarified that if an income like dividend income is not part of the total income, the expenditure/deduction related to such income, though of the nature specified in sections 15 to 59, cannot be allowed against other income which is includible in the total income for the purpose of chargeability to tax."

19. The conflicting views expressed by different High Courts in the context of Section 14A ultimately fell for the examination of the Supreme Court in **Maxopp Investment Limited vs. Commissioner**



of Income Tax¹⁰. Sikri J., speaking for the Bench, while examining Section 14A made the following pertinent introductory remarks:-

“3. Though, it is clear from the plain language of the aforesaid provision that no deduction is to be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act, the effect whereof is that if certain income is earned which is not to be included while computing total income, any expenditure incurred to earn that income is also not allowed as a deduction. It is well known that tax is leviable on the net income. Net income is arrived at after deducting the expenditures incurred in earning that income. Therefore, from the gross income, expenditure incurred to earn that income is allowed as a deduction and thereafter tax is levied on the net income. The purpose behind Section 14-A of the Act, by not permitting deduction of the expenditure incurred in relation to income, which does not form part of total income, is to ensure that the assessee does not get double benefit. Once a particular income itself is not to be included in the total income and is exempted from tax, there is no reasonable basis for giving benefit of deduction of the expenditure incurred in earning such an income. For example, income in the form of dividend earned on shares held in a company is not taxable. If a person takes interest-bearing loan from the bank and invests that loan in shares/stocks, dividend earned therefrom is not taxable. Normally, interest paid on the loan would be expenditure incurred for earning dividend income. Such an interest would not be allowed as deduction as it is an expenditure incurred in relation to dividend income which itself is spared from the tax net. There is no quarrel up to this extent.

4. However, in these appeals, the question has arisen under varied circumstances where the shares/stocks were purchased of a company for the purpose of gaining control over the said company or as “stock-in-trade”. However, incidentally income was also generated in the form of dividends as well. On this basis, the assessees contend that the dominant intention for purchasing the share was not to earn dividends income but control of the business in the company in which shares were invested or for the purpose of trading in the shares as a business activity, etc. In this backdrop, the issue is as to whether the expenditure incurred can be treated as expenditure “in relation to income” i.e. dividend income which does not form part of the total income. To put it differently, is the dominant or main object would be a relevant consideration in determining as to whether expenditure incurred is “in relation to”

¹⁰ (2018) 15 SCC 523; (2018) 402 ITR 640



the dividend income. In most of the appeals, including in Civil Appeals Nos. 104-109 of 2015, aforesaid is the scenario. Though, in some other cases, there may be a little difference in the fact situation. However, all these cases pertain to dividend income, whether it was for the purpose of investment in order to retain controlling interest in a company or in a group of companies or the dominant purpose was to have it as stock-in-trade.”

20. While noticing the view expressed by our Court on the subject, the learned Judge observed:-

“14. Sub-section (2) of section 14A deals with the proportionality as it empowers the Assessing Officer to extricate that amount of expenditure which is Incurred in relation to such Income which does not form part of the total income under the Act. However, this is to be done "In accordance with such method as may be prescribed". This prescription is provided by the delegated legislation, in the form of rule 8D of the Income-tax Rules, 1962 (for short "Rules") which rule was inserted with effect from March 24, 2008 vide the Income-tax (Fifth Amendment) Rules, 2008*.....

XXXX

XXXX

XXXX

20. The High Court then undertook the exercise of analysing the provisions of section 14A of the Act and, in the process, examined the contours and scope of the expressions "in relation to" and "expenditure incurred" occurring therein. The High Court pointed out that the contention of the assessee, in this behalf, was that the word "incurred" must be taken literally in the sense that the expenditure must have actually taken place. Moreover, the expenditure must also have taken place in relation to income which does not form part of total income. Further, the expression "in relation to" implies that there must be a direct and proximate connection with the subject matter. In other words, only that actual expenditure which is made directly and for the object of earning exempt income (in the present appeals dividend income) could be disallowed under section 14A of the Act. If the dominant and main objective of spending was not the earning of "exempt" income then, the expenditure could not be disallowed under section 14A of the Act provided it was otherwise allowable under sections 15 to 59 of the said Act.

21. The High Court, however, did not agree with the aforesaid propositions advanced by the learned counsel for the assessee which according to it was mired by several difficulties. Distinguishing the case law cited by the assessee where the expression "in relation to" was interpreted by this court, as not



applicable in the present context, the High Court, instead, referred to the judgment in the case of Doypack Systems Pvt. Ltd. v. Union of India* wherein this court has held that expressions "pertaining to", "in relation to" and "arising out of" used in the deeming provisions, are used in an expansive sense. It also referred to the judgment of this court in CIT v. Walfort Share and Stock Brokers P. Ltd.** wherein this court has held that the basic principle of taxation is to tax the net income, i.e., gross Income minus the expenditure and on the same analogy the exemption is also in respect of net income. In other words, where the gross income would not form part of total income, its associated or related expenditure would also not be permitted to be debited against other taxable income.

22. Likewise, explaining the meaning of "expenditure incurred", the High Court agreed that this expression would mean incurring of actual expenditure and not to some imagined expenditure. At the same time, observed the High Court, the "actual" expenditure that is in contemplation under section 14A(1) of the said Act is the "actual" expenditure in relation to or in connection with or pertaining to exempt income. The corollary to this is that if no expenditure is incurred in relation to the exempt income, no disallowance can be made under section 14A of the said Act. On the basis of the aforesaid discussion, the High Court answered the question formulated by it in the affirmative.

21. After considering the contrarian view which had been expressed by the Punjab and Haryana High Court, the Supreme Court in *Maxopp* held as follows:-

“41. In the first instance, it needs to be recognised that as per section 14A(1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee "in relation to income which does not form part of the total Income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total Income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as Incurred In respect of other Income which is to be treated as part of the total income.

42. There is no quarrel in assigning this meaning to section 14A of the Act. In fact, all the High Courts, whether it is the Delhi High



Court on the one hand or the Punjab and Haryana High Court on the other hand, have agreed in providing this interpretation to section 14A of the Act. The entire dispute is as to what interpretation is to be given to the words "in relation to" in the given scenario, viz., where the dividend income on the shares is earned, though the dominant purpose for subscribing in those shares of the investee-company was not to earn dividend. We have two scenarios in these sets of appeals. In one group of cases the main purpose for investing in shares was to gain control over the investee-company. Other cases are those where the shares of investee-company were held by the assesseees as stock-in-trade (i.e. as a business activity) and not as investment to earn dividends. In this context, it is to be examined as to whether the expenditure was incurred, in respective scenarios, in relation to the dividend income or not.

43. Having clarified the aforesaid position, the first and foremost issue that falls for consideration is as to whether the dominant purpose test, which is pressed into service by the assesseees would apply while interpreting section 14A of the Act or we have to go by the theory of apportionment. We are of the opinion that the dominant purpose for which the investment into shares is made by an assessee may not be relevant. No doubt, the assessee like Maxopp Investment Limited may have made the investment in order to gain control of the investee-company. However, that does not appear to be a relevant factor in determining the issue at hand. The fact remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind section 14A of the Act in mind, the said provision has to be interpreted, particularly, the words "in relation to the income" that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in section 14A of the Act. This is so held in Walfort. Share and Stock Brokers P. Ltd., relevant passage whereof is already reproduced above, for the sake of continuity of discussion, we would like to quote the following few lines therefrom: (SCC p.151, paras 34 & 36)

“34.The next phrase is, 'in relation to income which does not form part of total income under the Act'. It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of section 14A . . .



36. The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14A.”

44. The Delhi High Court, therefore, correctly observed that prior to introduction of section 14A of the Act, the law was that when an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of the said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. The principle of apportionment was made available only where the business was divisible. It is to find a cure to the aforesaid problem that the Legislature has not only inserted section 14A by the Finance (Amendment) Act, 2001 but also made It retrospective, i.e., 1962 when the Income-tax Act itself came into force. The aforesaid intent was expressed loudly and clearly in the Memorandum Explaining the Provisions of the Finance Bill, 2001. We, thus, agree with the view taken by the Delhi High Court, and are not inclined to accept the opinion of the Punjab and Haryana High Court which went by dominant purpose theory. The aforesaid reasoning would be applicable in cases where shares are held as investment in the investee-company, may be for the purpose of having controlling interest therein. On that reasoning, appeals of Maxopp Investment Limited as well as similar cases where shares were purchased by the assesseees to have controlling interest in the investee-companies have to fail and are, therefore, dismissed.”

22. As would be evident from the aforesaid conclusions rendered in *Maxopp*, it was found that Section 14A is clearly concerned with an identification and attribution of expenditure with reference to exempt income which otherwise would not form part of total income. It was thus explained that where the income of an assessee has both taxable and non-taxable elements, it would be the principle of apportionment of expenditure relating to non-taxable income which would have to be identified. The view expressed by this High Court was ultimately affirmed.

23. It is the aforementioned fundamental precepts underlying Section 14A as propounded by the Supreme Court in the decisions noticed



hereinabove which find resonance in *Caraf Builders*. The said decision correctly identifies the fundamental principle being of ensuring that expenditure incurred in the course of earning exempt income is not set off against income which is otherwise taxable. It is this basic tenet which constrains one to bifurcate and apportion the expenditure which may be claimed by an assessee. Right from *Walfort*, all judgments rendered in the context of Section 14A and noticed hereinabove, have consistently spoken of apportionment of expenditure and the imperatives of an enquiry to identify whether the expenditure which is claimed is not in relation to exempt income. The expenditure which can be legitimately claimed by an assessee as deductible can only be that which has been expended to earn taxable income. The assessee is not permitted to avail of a dual benefit of firstly claiming the income as being exempt and thereafter seeking to set off the expenditure incurred in connection therewith against income which is taxable. This if countenanced would clearly lead to the taxable income and which is exigible to the levy of tax under the Act being further reduced.

24. Once the requirement of bifurcation and apportionment of expenditure is found to have been accorded a judicial imprimatur by the Supreme Court in *Maxopp* and the various decisions noticed hereinabove, there would exist no justification or leeway to even consider the contentions which were advanced by Mr. Kumar and Mr. Maratha. As we read Section 14A, it becomes apparent expenditure is liable to be excluded from consideration only if the assessee is found to have earned exempt income and the expenditure pertains to that income. Absent any income which is exempt or claimed as such in the



relevant year, the statutory exclusion would not apply. The existence of exempt income is thus a *sin qua non* for the invocation of Section 14A. It is pertinent to note that the Act is not concerned with notional or illusory income. Thus, unless there be non-taxable income which arises or accrues, the expenditure would not suffer disqualification under Section 14A.

25. We are conscious of the Explanation which has come to be inserted in Section 14A and which now seeks to assert that the provision would apply irrespective of whether exempt income had arisen, accrued or had been received in the previous year. However, the extent to which the said statutory amendment would apply to the assessment years in questions is an issue which we propose to dwell upon in the subsequent parts of this decision.

26. Our view on the imperatives of apportionment and the identification of expenditure with reference to exempt income is further fortified not only from a plain reading of Section 14A(2) which alludes to income which does not form part of total income, but also Rule 8D and which is the machinery provision for determination of the amount of expenditure incurred in relation to exempt income.

27. Rule 8D again speaks of expenditure incurred in relation to exempt income. This becomes evident from a reading of that provision which is reproduced hereinbelow:-

"8D. (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with—

- (a) the correctness of the claim of expenditure made by the assessee; or
- (b) the claim made by the assessee that no expenditure has been incurred,

in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the



amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

[(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:—

- (i) the amount of expenditure directly relating to income which does not form part of total income; and
- (ii) an amount equal to one per cent of the annual average of the monthly average of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income :

Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.]

(3) [***]"

28. As is evident from a reading of the aforesaid Rule, the determination of expenditure is indelibly linked to income which does not form part of total income and the expenditure being directly relatable to such income.

29. While concluding, we also deem it appropriate to deal with a contention which was advanced by Mr. Maratha and proceeded on the basis of the Explanation appended to Section 14A.

30. It must at the outset be noted that the aforesaid Explanation came to be inserted by virtue of the 2022 Act with effect from 01 April 2022. It was, however, sought to be contended by learned counsels for the appellants that since the aforementioned statutory amendment is explanatory, aimed at removing doubts and specifically asserted to be clarificatory, it would clearly apply to the present appeals. Based on the aforesaid premise, it was argued that the Explanation thus clearly provides for expenditure being taken into account irrespective of whether exempt income had accrued, arisen or been received. It was thus suggested that the Explanation fundamentally alters the position which otherwise prevailed prior to



the amendment and being clarificatory would apply even to past assessment years including those with which we are concerned in these two appeals.

31. However, we find that the extent to which the said Explanation could apply and whether it could even be considered to be a clarificatory provision is one which stands answered against the appellants in light of the judgment of the Court rendered in **Principal Commissioner of Income Tax vs. Era infrastructure (India) Ltd**¹¹.

32. While negating an identical submission, the Division Bench of our Court had held as follows:-

“4. Learned counsel for the petitioner also submits that in view of the amendment made by the Finance Act, 2022 to section 14A of the Act by inserting a non obstante clause and an explanation after the proviso, a change in law has been brought about and consequently, the judgments relied upon by the authorities below including IL&FS Energy Development Co. Ltd. {supra} are no longer good law. The amendment to Section 14A of the Act is reproduced hereinbelow: —

“Amendment of section 14A- In section 14A of the Income-tax Act, —

(a) in sub-section (I), for the words "For the purposes of, the words "Notwithstanding anything to the contrary contained in this Act, for the purposes of shall be substituted;

(b) after the proviso, the following Explanation shall be inserted, namely: —

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

¹¹ [2022] SCC Online Del 2157: (2022) 327 CTR 489



in relation to such income not forming part of the total income.”

5. However, a perusal of the Memorandum of the Finance Bill, 2022 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)

6. Furthermore, the Supreme Court in Sedco Forex International Drill Inc. v. CIT [2005] 149 Taxman 352/279JTR 310 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 hereinbelow:

'9. 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.



10. 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 I FR 314 (Gauhati)]. 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: (ITR p. 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 has {sic} somehow remained pending on 1-4-1979, cannot be cogent reason to make the Explanation applicable to the cases of the present assesseees. This fortuitous circumstance cannot take away the vested rights of the assesseees at hand.’

11. 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.

12. 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.’

13. 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 *S.G. Pgnataie* [(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.

14. 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. SR Patton [(1998) 8 SCC 608]}

15. Given this legislative history of Section 9(1)(77), 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 (para 18) : (1995) 215 ITR 165]. 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.’

16. 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.

17. 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 UP.*, (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. CIT* [2021] 129 taxmann.com 145/282 Taxman 281/436 ITR 582. The relevant portion of the said judgment is reproduced hereinbelow (page 597 of 436 ITR):

"22. 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 *Sonia Bhatia v. State of UP.*, (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(l)(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 SG. 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."

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.

33. As is manifest from the above, the Court in *Era Infrastructure* had clearly held that the mere usage of the expressions "*for the removal of doubts*", "*clarified*" or titling a provision as an explanation would not be determinative of whether it is to apply retrospectively. It was thus held that where it be found that the amendment fundamentally alters the statutory position which prevailed, it clearly ceases to be explanatory or one which is aimed at removing an ambiguity. However, any debate that could have possibly ensued in the aforesaid context stands laid to rest by virtue of the Memorandum explaining the provisions of the Finance Bill, 2022 and which unequivocally declares that "*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". We thus find ourselves unable to discern any justifiable reason to take a view contrary to what was expressed in *Era Infrastructure*.*

34. Accordingly, and for all the aforesaid reasons, we uphold the view taken by the Tribunal and dismiss the instant appeals.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 07, 2024/*neha*