$~44

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

\+ ITA 44/2025

PCIT CENTRAL-3, NEW DELHI .....Appellant
Through: Mr. Abhishek Maratha, Sr. Standing Counsel with Mr. Apoorv Agarwal, Advocate.

versus

M/S CHESLIND TEXTILES PVT LTD .....Respondent
Through: Nemo.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

O R D E R

% **25.02.2025**

CM APPL. 11338/2025 (for condonation of delay in re-filing the appeal)

1. Having heard learned counsel representing the appellant and perused the averments made in the instant application, the prayer made therein is allowed and delay of 818 days in re-filing the appeal is hereby condoned.

2. The application stands disposed of.

ITA 44/2025

3. This is an appeal filed under Section 260A of the Income Tax Act, 1961 assailing the order dated 01.06.2022 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No.5929/Del/2019 for the Assessment Year (AY) 2012-13.

4. At the outset, Mr. Abhishek Maratha, learned senior standing counsel appearing for the appellant/Revenue brings attention of this Court to Para 2

of the appeal wherein questions of law have been framed by the appellant, which reads thus:-

> *(i) Whether on the facts and circumstances of the case Hon'ble ITAT is justified in deleting the disallowance u/s 14A of the I.T. Act?*
>
> *(ii) Whether for application of Section 14A of the Income Tax Act, 1961 the earning of exempt income is an essential legal requirement?*
>
> *(iii) Whether the term 'in relation to' as used in Section 14A of the Act contemplates a direct and proximate nexus between 'expenditure incurred' and earning of exempt income?*
>
> *(iv) Whether Hon'ble ITAT is legally justified in deleting disallowance u/s 14A of the Act because the assessee had not earned tax exempt income during the year, under considering the legislative intent of introduction of Section 14A by the Finance Act, 2001 and subsequent clarification issued by CBDT vide circular No. 5/2014 dated 10.02.2014?*
>
> *(v) Whether the Hon'ble ITAT is legally justified in deleting disallowance u/s 14A of the Act by not considering a legal principle that allowability/diallowability of expenditure under the Act is not conditional upon the earning of the income as held by Hon'ble Supreme Court in the case of CIT V s Rajendra Prasad Moody (1978) 115 ITR 519?*
>
> *(vi) Whether on the facts and circumstances of the case Hon'ble ITAT is justified in law in treating the TUF Subsidy received as Capital Receipt?*
>
> *(vii) Whether on the facts and circumstances of the case Hon'ble ITAT is justified in law in deleting the disallowance of Rs.2,41,93,337 being commission on export sale?*
>
> *(viii) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in dismissing the appeal filed by the Revenue against the order of Ld. CIT(A)-36, New Delhi ignoring explanation to proviso to section 14A(2), which states that the "provisions of section 14A 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."?*

5. So far as Question nos.(i) to (v) are concerned, Mr. Maratha fairly states that the issue is no more *res integra* and stands decided against the appellant/Revenue by the judgement passed by a co-ordinate bench of this

Court in ***Principal Commissioner of Income Tax (Central)-3 vs. Bhilwara Energy Ltd., ITA 409/2023*** decided on 28.07.2023. So far as Question no.(viii) is concerned, the same is a consequence of Question nos.(i) to (v), thus also covered by the said judgement. He thus prays that the appeal be admitted only in respect of the remaining question nos.(vi) and (vii).

6. After hearing Mr. Maratha, senior standing counsel representing the appellant, we admit the appeal limited to the following questions of law which reads as under:-

> *"A. Whether on the facts and circumstances of the case Hon'ble ITAT is justified in law in treating the TUF Subsidy received as Capital Receipt?*
>
> *B. Whether on the facts and circumstances of the case Hon'ble ITAT is justified in law in deleting the disallowance of Rs.2,41,93,337/- being commission on export sale ?*

7. Issue notice to the respondent by all permissible modes, returnable on 26.05.2025.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

FEBRUARY 25, 2025/*rl*