

Amendment in Sec. 14A “Retrospective or Prospective”

Recently, ITAT Gauhati in "**ACIT vs. William Financial Services Ltd**" held amendment in Sec.14A was applicable Retrospectively, while ITAT Mumbai in "**ACIT vs. Bajaj Capital Ventures Pvt. Ltd**" held it was applicable Prospectively i.e. from AY 2022-23 onwards.

Amendment in Sec. 14A

In section 14A of the Income-tax Act, -

(a) in sub-section (1), 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 in relation to such income not forming part of the total income.]”

Memorandum of Finance Bill, 2022

The Memorandum explicitly stipulates that the amendment in Section 14A will take effect from 1st April, 22 and will apply in relation to the A.Y 2022-23 and subsequent assessment years. The relevant extract of Clauses 5 & 7 are reproduced hereinbelow:

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

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.” **Unquote**

Conclusion

The Hon. 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. This proposition of law has been reiterated by the Supreme Court in **M.M Aqua Technologies Ltd. V. CIT 2021 SCC Online SC 575**

That relying on the aforesaid judgments of Hon. Apex Court, Hon. Delhi HC in its recent order in **PCIT vs. M/s. ERA Infrastructure (INDIA) LTD ITA NO.204/2022** order dated 20/07/2022. held that Amendment Brought in by the Finance Act 2022 in Sec.14A is applicable **Prospectively** w.e.f AY 2022-23. The order is a very reasoned one and may be of great help when issue of retrospective applicability is raised by the revenue.

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