

आयकर अपीलीय अधिकरण, “आई” खंडपीठ मुंबई

INCOME TAX APPELLATE TRIBUNAL MUMBAI BENCHES “T” MUMBAI

सर्वश्री विजयपाल राव, न्यायिक सदस्य एवं राजेन्द्र, लेखा सदस्य के समक्ष

Before S.Sh.Vijay Pal Rao, Judicial Member and Rajendra, Accountant Member

आयकर अपील सं./ITA No. 877/Mum/2013 निर्धारण वर्ष /Assessment Year 2009-10

ACIT 11(2) 479, Aayakar Bhavan, M K Road, Mumbai-20	V/s.	Iqbal M Chagala, Palloni Mansion 3 rd floor, New Cuffe Parade, Colaba, Mumbai-400005 PAN:AABPC2830K
---	------	---

(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से/ Revenue by

: Ms.Garima Singh

निर्धारिती ओर से / Assessee by

: Shri P J Pardiwala

सुनवाई की तारीख/ Date of Hearing

:23/07/2014

घोषणा की तारीख / Date of Pronouncement

:30/07/2014

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

Per Rajendra, AM लेखा सदस्य राजेन्द्र के अनुसार:

Challenging the order dt.19.11.2012 of the CIT(A)-3, Mumbai, Assessing officer (AO) has raised following Grounds of Appeal:

“1. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) was justified in deleting the addition of Rs. 16,35,869/- made u/s. 14A rw Rule 8D even despite the AO stating that part of expenses on account of salary, telephone etc have been related to activities for earning exempt income.

2. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) was justified in ignoring the provisions of Section 14A (3) wherein section 14A can be invoked even in cases where an assessee claims that no expenditure had been incurred in relation to exempt income.

3. The appellant prays that the order of the CIT (Appeals) on the above grounds be set aside and that of the Assessing Officer be restored.

4. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”

2. Assessee, an individual, filed his return of income on 29.09.2009 declaring total income of Rs.

10,79,84,860/-. The AO finalised the assessment u/s.143(3) of the Act, on 27.12.2011, determining his total income at Rs.12,62,03,170/-.

During the assessment proceeding the AO noted that the assessee had earned exempt income, that the audit report did not show disallowance of any expenses relating to exempt income. So, the

assessee was asked to explain as to why the provisions of section 14A should not be applied. After considering the submissions of the assessee, the AO held that looking into the fact that part of the expenses on account of salary, telephone and other administrative expenses must have been related to the activities for earning exempt income. Accordingly, invoking the provisions of section 14A read with Rule 8D, he made disallowance of Rs. 16,35,869/-, being 0.5% of average investment of Rs. 32,71,73,884/- .

3. Against the order of the AO assessee preferred an appeal before the First Appeal Authority (FAA). Before him it was submitted that the investment transaction undertaken by the assessee were managed by the investment advisors, that the assessee had made payment on account of portfolio management services (PMS) amounting to Rs. 1,91,231/- to Reliance PMS, Rs. 12,157/- to Barclays Bank and Rs. 3,61,028/- to HSBC PMS, that those expenses had been debited to the capital account of the assessee, that demat expenses and security transaction tax amounting to Rs. 2,19,856/- was also debited to the capital account of the assessee, that the expenses related to salary, telephone and other administrative expenses were incurred by him for his professional income, that disallowance made by the AO was without any basis and without establishing any nexus.

After considering the submissions of the assessee and the assessment order he held that the provisions of section 14A (1) read with section 14A (2) provided that for the purpose of total income computed under that chapter, no deduction would be allowed in respect of expenditure incurred by the assessee in relation to income which did not form part of total income under that Chapter, that the AO would determine the amount of expenditure incurred in relation to exempt income if he was not satisfied with the correctness of the claim of the assessee, that the perusal of Profit and Loss Account of the assessee showed that the assessee had not made any claim of

expenditure incurred in relation to exempt income, therefore, the provisions of section 14 A (1) r.w.s.14A(2) of the Act were not attracted,that the assessee had also not claimed even Demat and PMS account expenditure in the Profit and Loss Account and had debited the same to personnel account,that there was no proximate cause for disallowance in relationship with exempt income.He relied upon the cases of Walfort Shares & Stock Brokers Pvt. Ltd.(326 ITR 1)and Godrej & Boyce Manufacturing Co. Ltd (328 ITR 81).He deleted the disallowance of Rs.16,35,869/- made by the AO.

4.Before us,Departmental Representative(DR)stated that provisions of Rule 8D of the Rules were applicable for the year under consideration,that the assessee had earned exempt income. Authtorised Representative(AR)argued that all the investment transaction undertaken by the assessee were managed by investment advisors,that during the year he had paid Portfolio Management Charges,amounting to Rs.5.64 lakhs,to the investment advisor and the same was debited in his Capital Account,that the Demat Expenses and Security Transaction Tax amounting to Rs 2,19,856/-was also debited in Capital Account of assessee,that salary, telephone & other administrative expense were incurred by the assessee in the course of his professional activity,that he had paid salary of Rs.8,02,836/-,telephone charges of Rs.1.91 lakhs and had incurred establishment expenditure of Rs.3.06 lakhs,that the disallowance made u/s.14A exceeded the amount debited to the Income & Expenditure Account.He relied upon the matter of S P Bharucha(ITA/3889/Mum/2011-AY.2008-09,dtd.25.07.2012)

5.We have heard the rival submission and perused the material before us.We find from the audit report that the expenses in respect of exempt income was shown at Rs. Nil,that the assessee had debited direct expenses on account of dematerialisation and STT in the capital account and in the profit and loss account,that AO had presumed that the assessee had must have incurred some

expenditure under the heads salary, telephone and other administrative charges for earning the exempt income. It is further found that the total expenditure claimed by the assessee for the year is about 13 lakhs and the AO had made a disallowance of about Rs.16 lakhs. He has just adopted the formula of estimating expenditure on the basis of investments. But, the justification for calculating the disallowance is missing. The assessee had not claimed any expenditure in its P & L account, so, it the onus was on the AO to prove that out of the expenditure incurred under various heads were related to earning of exempt income. Not only this he had to give the basis of such calculation. In any manner disallowance of Rs.16.35 lakhs, as against the total expenditure of Rs.13 lakhs (app.) claimed by the assessee in P & L account, is not justified. Provisions of Rule 8D cannot and should not be applied in a mechanical way. Facts of the case have to be analysed before invoking them. We are of the opinion that the AO had not deliberated upon the facts of the case before making the disallowance, whereas the FAA has decided the issue on merits. Therefore, confirming his order, we decided the effective ground of appeal against the AO.

As a result, appeal filed by the AO stands dismissed.

फलतः निर्धारित अधिकारी द्वारा दाखिल की गई अपील अस्वीकृत की जाती है.

Order pronounced in the open court on 30th July, 2014.

आदेश की घोषणा खुले न्यायालय में दिनांक 30 जुलाई, 2014 को की गई।

Sd/-

Sd/-

(विजयपाल राव / VIJAY PAL RAO)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य/JUDICIAL MEMBER

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Date 30th July, 2014

SK

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. Assessee /अपीलार्थी
2. Respondent /प्रत्यर्थी
3. The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4. The concerned CIT /संबद्ध आयकर आयुक्त
5. DR "I" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि आई खंडपीठ, आ.अ.न्याया.मुंबई
6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**
उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai**