

आयकर अपीलीय अधिकरण, "डी" न्यायपीठ, मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE S/SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER

AND AMARJIT SINGH, JUDICIAL MEMBER

आयकर अपील सं/ I.T.A. No.4187/M/11  
(निर्धारण वर्ष / Assessment Year: 2008-09)

Shri Devesh Agarwal C/o. M/s. Ravi & Dev, Chartered Accountants, 377-B, First Floor, Jagannath Shankar Seth Marg, Chira Bazar, Mumbai - 400002	<b>बनाम/</b> Vs.	Assistant Commissioner of Income Tax, Central Circle 32 Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEKPA7464G		

आयकर अपील सं/ I.T.A. No.4188/M/11  
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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEJPA0731P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Devendra A. Mehta
Department by:	Shri Sanjeev Kashyap (CIT- DR)

सुनवाई की तारीख / Date of Hearing: 19.10.2015  
घोषणा की तारीख /Date of Pronouncement: 16.12.2015

आदेश / ORDER

**PER AMARJIT SINGH, JM:**

This is an appeal against the order of learned Commissioner of Income Tax (Appeals)-41, Mumbai [hereinafter referred to as the “learned CIT(A)”] dated 28.03.2011 relevant to the A.Y. 2008-09. Since the matter of controversy in both the appeals are similar in nature therefore, can be conveniently adjudicated together.

2. The assessee has taken the following grounds of appeal:

1. *The learned Commissioner of Income-tax (Appeals) erred in confirming the disallowance of Rs.90,149/- u/s.14A of the Income-tax Act, 1961 by the assessing officer on the basis judgement of the honourable Bombay High Court in the case of Godrej & Boyce Manufacturing Company Ltd. vs. D.C.I.T. (328 ITR 81) without considering the crucial fact that no expenditure whatsoever was incurred by the assessee and claimed as a deduction while computing his Total Income.*

2. *The learned Commissioner of Income-tax (Appeals) erred in confirming the addition of Rs.1,00,00,000/- made by the assessing officer u/s.69B of the Income-tax Act, 1961 in respect of the income which was declared by the assessee during search in his statement u/s.132(4).*

**ISSUE NO. 1:**

3. We have heard the arguments advanced by the learned representative of the parties and have gone through the case files carefully. The contention of the assessee is that the assessee neither incurred any expenditure nor claimed deduction in respect of earning exempted income of Rs.4,50,744/- while computing his total income therefore no disallowance was warranted u/s. 14A of the Income Tax Act, 1961( in short “the Act”) and also place reliance upon the law settled in following judgments:-

**(a) C.I.T. vs. Hero Cycles Ltd. [2010 189 Taxman 50 Punj. & Har.]**

*Disallowance under section 14A requires finding of incurring of expenditure. Where it is found that for earning exempted income no expenditure has been incurred, disallowance under section 14A cannot stand. In the instant case, finding on that aspect against the revenue was not shown to be perverse. Consequently, disallowance was not permissible.*

**(b) C.I.T. vs. Metalman Auto(P.)Ltd. [[2011] 11 taxmann.com 51 (Punj.& Har.)]**

*No disallowance u/s.14A can be made on presumptive basis as the disallowance under section 14A requires a finding of incurrance of expenditure for earning the exempt income. In case no expenditure has been incurred, the disallowance under section 14A is not justified. In other words, there cannot be a presumption that certain expenditure is bound to be incurred for earning the exempt income.*

**(c) C.I.T vs. Glenmark Pharmaceutical Ltd.[30 taxmann.com 167 (Born)]**

*Disallowance under section 14A cannot stand where no expenditure was incurred for earning the exempt income as the investments were made from its own funds and not borrowed funds. Also, the revenue has not been able to show how the finding of fact arrived at by the Tribunal that no expenses were incurred to earn the dividend income is either arbitrary or perverse.*

**(d) C.I.T vs. Reliance Industries Ltd. [8 taxmann.com 218 (Born)]**

*No disallowance under section 14A is called for when there is no fact of having incurred any expenditure for the purpose of earning the dividend income.*

**(e) Modern Info Technology Pvt. Ltd. vs. I.T.O. [ITA No.4294/Delhi/2012]**

*No disallowance under section 14A is called for when the assessee has not incurred and claimed any expenditure for earning the exempt income.*

**(f) Justice Sam P. Bharucha vs.Addl. C.I.T.[(2012) 25 taxmann.com381(Mum)]**

*The expenditure incurred in relation to the income which does not form part of total income has to be disallowed. However, it should be proximate relationship between the expenditure and the income, which does not form part of total income. Once such proximity relationships exist, the disallowance is to be effected. In case the assessee had claimed that no expenditure has been incurred for earning the exempt income, it was for the assessing officer to determine as to whether the assessee had incurred any expenditure in relation to income which did not form part of total income and if so to quantify the extent of disallowance. Thus, in order to disallow the expenditure under section 14A, there must be a live nexus between the expenditure incurred and the income not forming part of total income. No notional expenditure can be apportioned for the purpose of earning exempt income unless there is an actual expenditure in relation to earning the income not forming part of total income. if the expenditure is incurred with a view to earn taxable income and there is apparent dominant and immediate connection between the expenditure incurred and taxable income, then no*

*disallowance can be made under section 14A merely because some tax exempt income is received by the assessee.*

**(g) M/s.Govind Agarwal (HUF) vs. A.C.I.T. [I.T.A. No.217/Mum/2011 dt.17.06.2013]**

*We find that the direct expense in the form of Demat charges and STT on shares and also bank charges are debited in the capital account. The assessee has not claimed any of these direct expenses. A perusal of the capital account and the balance sheet exhibited at pages 14 & 15 of the Paper book show that the assessee has not claimed any expenses therefore, we do not find any reason for making any disallowance u/s. 14A r.w. Rule 8D of the Act. However, to meet the ends of justice, we direct the AO to restrict the disallowance to 5% of the exempt income.*

4. However, on the other hand learned Departmental Representative strongly relied upon the order passed by the learned CIT(A). The learned CIT(A) order in question speaks that no expenditure has been debited to the P&L Account relating to the earning of dividend income to the tune of Rs. Rs.4,50,744/- & Rs.11,32,682/- respectively in appeal the assessment years in question. Now it is to be seen whether no expenditure was occurred on account of earning exempt income then in the said circumstance section 14A r.w. Rule 8D was applicable or not. This question is now been clarified by the number of pronouncements made by the High Court of Punjab & Haryana, ITAT Delhi and in other cases cited above. It has categorically been held that when it is found that earning exempt income no expenditure has been incurred then disallowance u/s. 14A of the Act cannot be stand.

5. Therefore, in the said circumstance in the case of assessee specifically shows that no expenditure was incurred to earning exempt income therefore, undoubtedly the provision u/s. 14A r.w. Rule 8D is not applicable to his case. Hence, in view of the said circumstances and in view of the law mentioned above we are of the view that the order of learned CIT(A) under challenge is not liable to sustainable in the eyes of law therefore we set aside the same and the appeal is hereby restored to the

file of Assessing Officer to reassess the return of the income of the assessee without applicability of the provision u/s. 14A r.w. Rule 8D in accordance with law.

**ISSUE NO. 2:**

6. The learned representative of the assessee has argued that the learned CIT(A) has wrongly confirmed the addition of Rs.1,00,00,000/- u/s. 69B of the Act in view of the statement made by the assessee u/s. 132(4). As per records search and seizure operation u/s. 132(1) of the act was carried out at the business and residence of the assessee. During the search and seizure operation documents relating to the purchase of property were found and seized and confirmed by the statement recorded u/s. 132(4). Shri Govind Agarwal head of family has declared a sum of Rs.1,00,00,000/- as undisclosed income as the immovable property was purchased and the undisclosed income of Rs.1,00,00,000/- was declared in the income tax returns. During the assessment proceeding, the Assessing Officer work out about the source of earning this undisclosed income which was not specifically proved. Therefore, the Assessing Officer treated the said income as unexplained investment u/s. 69B of the Act. No evidence of any kind has been shown to Assessing Officer to which it can assume that the said amount of Rs.1,00,00,000/- is not required to deal with in view of the provision u/s. 69B of the Act. Source of Rs.1,00,00,000/- has not been proved nor the said amount has been disclosed in the books of account. However, it was explained that the said amount was paid to purchase the land which was not effect later on but in this regard there is no cogent and convincing material on record. Therefore, in view of the said circumstance we nowhere found any eligibility or uniformity in the order of learned CIT(A) under challenge. Therefore, the finding of the learned CIT(A) on this point is hereby upheld.

7. In the result, the both appeals of the assessee are hereby partly allowed.

Order pronounced in the open court on 16<sup>th</sup> December, 2015.

Sd/-

Sd/-

(N.K.BILLAIYA)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 16<sup>th</sup> December, 2015

*MP*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**