

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI JASON P. BOAZ, AM AND SHRI SANDEEP GOSAIN, JM**

आयकर अपील सं./ I.T.A. No. 3500/Mum/2013

(निर्धारण वर्ष / Assessment Year: 2009-10)

Vipul N Ambani 4-A, Rizvi Park, 5-A, Altamount Road, Mumbai-400 026.	बनाम/ Vs.	ACIT Circle 2(3), Aayakar Bhavan, 6 th Floor, M.K.Road, Mumbai-400 023.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.		AABPA 6889Q
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/Respondent by	:	Shri Vikram Batra

सुनवाई की तारीख / Date of Hearing	:	17/02/2016
घोषणा की तारीख / Date of Pronouncement	:	19/02/2016

आदेश / ORDER

Per Sandeep Gosain, J. M.:

The Present Appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals) - 6, dated 21.02.2013 whereby CIT(A) has dismissed the appeal filed by the assessee against the order of AO dated 21.12.2011 on the grounds of appeal mentioned herein below.

“1. CREDIT CARD EXPENSES AS AN UNEXPLAINED EXPENDITURE:

- 1.1 *The learned Assessing Officer has erred in disallowing credit card expenses.*
- 1.2 *The assessee has incurred various expenses through his credit card for personal purposes as well as for business purposes for companies in which assessee is director. Expenses incurred for personal purposes are accounted as drawings and incurred for companies are reimbursed to the assessee by the respective companies.*
- 1.3 *However, without giving any reasonable opportunities to explain the same, the AO suo motto disallows the whole amount as unexplained expenditure u/s 69C.*
- 1.4 *The Appellant submits that considering the facts and circumstances of the case and the law prevailing on the subject, the learned Assessing Officer was not justified to consider credit card expenses of Rs.1,712,880 as income.*
- 1.5. *The Appellant submits that AO be directed not to consider the credit card expense as unexplained expenditure.*

2. DISALLOWANCE OF TRAVELLING & BUSINESS PROMOTION EXPENSES:

- 2.1 *The learned Assessing Officer has erred in disallowing travelling & business promotion expenses.*
- 2.2 *The assessee incurred travelling and business promotion expenses amounting to Rs.563,210 & Rs.46,820 respectively to earn the business income.*
- 2.3 *The assessee promised to submit the evidence to explain that these payments are made for the business purposes.*
- 2.4 *The Appellant submits that considering the facts and circumstances of the case and the law prevailing on the subject, the learned Assessing Officer was not justified to disallow of travelling & business promotion expenses of Rs.563,210 & Rs.46,820 respectively.*
- 2.5 *The Appellant submits that AO be directed to consider the expense as business expenses.*

3. DISALLOWANCE OF SOCIETY MAINTENANCE EXPENSES:

- 3.1 The learned Assessing Officer has erred in disallowing society maintenance expenses.
- 3.2 The Appellant submits that considering the facts and circumstances of the case and the law prevailing on the subject, the learned Assessing Officer was not justified to disallow of society maintenance expenses of Rs.128,000.
- 3.3. The Appellant submits that AO be directed to consider the expense as business expenses.

4. DISALLOWANCE U/S 14A:

- a. The learned AO has erred in adding back Rs. 333,920 expenses to earn tax free income of Rs.225,016 as dividend.
- b. The learned AO has erred in disallowing Rs. 333,920/- u/s.14A of the Income Tax Act on the basis of rule 8D as follows:

	Rs.
1. The Amount of expenditure as per Rule 8D (2)(i)	Nil
2. Amount as per formula given in Rule 8D (2)(ii)	
A Amount of Interest	Rs. 8,767
B Average value of Assets	Rs. 66,034,978
C Average value of total assets	Rs. 154,581,309

Therefore, $A * B/C$

3,745

3 Amount equal to one half % of B

330,175

Total

333,920/-

However, the AO erred in following the Rule 8D, as the same should be calculated as follows:

Rs.

3. The Amount of expenditure as per Rule 8D (2)(i)	Nil
4. Amount as per formula given in Rule 8D (2)(ii)	
A Amount of Interest	
B Average value of Investments pertaining to exempt income	Rs. 53,275,878
C Average value of total assets	Rs.154,581,309
Therefore, A *B/C	Nil
4 Amount equal to one half% of B	<u>Nil</u>
Total	Nil

Therefore the AO should be directed to delete the disallowance amounting to Rs. 333,920.

c. *If borrowed amount not used to earn exempt Income, no disallowance can be made Vis. 14A- ACIT Vs. MI5 Reliance Land Pvt. Ltd. (ITAT Mumbai).*

5. *The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.”*

2. The brief facts of the case are that the assessee filed its return of income on 30.09.2009 declaring total income of Rs.46,73,581/-. The same was duly processed u/s 143(1) of the Income tax Act. The case was selected for scrutiny and statutory notices were issued and served upon the assessee. Assessing Officer after considering the case of the assessee has passed the order of assessment thereby

making disallowance in respect of credit card expenses, travelling expenses and business promotion expenses, Society maintenance expenses, derivative loss and disallowance u/s 14A.

3. Aggrieved by the order of the AO, assessee filed an appeal before the CIT(A) and the CIT(A) after considering the case of the assessee, dismissed the same vide order dated 21.02.2013.

3.1 Aggrieved by the order of the CIT(A), the assessee filed the present appeal before us on the grounds mentioned herein above.

4. At the very outset, it is submitted that the case of the assessee was fixed for arguments but none has appeared on behalf of the assessee and on perusal of the order sheet. We have further noticed that even on previous dates nobody had appeared, although notices of RPAD was also issued and served on assessee. It was also noticed that even on the impugned order passed by the CIT(A) it is mentioned that none appeared on behalf of the assessee and this fact has been categorically mentioned that various notices were also issued by the AO but none appeared and therefore the AO had made best judgement assessment in accordance with the

provisions of section 144 of the Income-tax Act. And even CIT(A) has also passed ex-parte orders. Same is the situation before us.

5. On the other hand, ld. DR representing the revenue is ready with the arguments and therefore we have decided to hear the appeal in the absence of the assessee.

6. All the grounds raised by the assessee are inter-connected and inter-related therefore we thought it fit to dispose off the same by the common order.

7. We have considered the detailed order passed by the AO and the operative portion of the same is reproduced as under:

“Notice u/s.143(2) was, therefore, issued on 23.08.2010 and duly served on the assessee. Subsequently, notice u/s.142(1) dated 17.06.2011 was issued to the assessee along with AIR information. Further, notices u/s.142(1) of the IT Act were issued from time to time. In response thereto and subsequent notices u/s.142(1), Shri Vikas Mehta, CA from M/s.Reajen Damani & Associates, CAs attended from time to time and filed details.

It is seen that the assessee though attended time to time, but did not furnish the details. He always furnished only part details and sought adjournment for balance details. It clearly shows that the assessee has been evading the submission of proper details for the reasons known to him. I, therefore, complete the assessment on the basis of information available on record. The assessment is completed ex-parte u/s.144 of the IT Act, 1961.

3. Credit card expenses:

3.1 As per the AIR information, the assessee had incurred certain expenses through his American Express Credit Card. The assessee was asked to furnish the details as to how the payments were made and the purpose of the expenses.

3.2 The assessee vide letter dated 20.12.2011 gave month wise details of credit card payments of Rs.17,12,880/-. The assessee also submitted month wise statement of card payments. However, the assessee did not explain the source of payment of these expenses. The onus was on the assessee to explain with evidences the source from where these payments were made.

3.3 The assessee orally contended that payments were made by the company in which the assessee is director. However, the assessee did not bring any evidence to explain the same. Moreover, the assessee was required to explain the payments made by the company were for the business of the company and not otherwise. If the payments were not for the business of the company, the same would be perquisite in the hands of the assessee. Considering the fact that the assessee is a Director in a private limited company, wherein the real person behind all the transactions remains the assessee only, the source of such credit card payments by such company was more essentially required to be investigated to ascertain the real beneficiaries.

3.4 Under the circumstances, credit card payment of Rs.17, 12,880/- is added to the total income as unexplained expenditure u/s.69C. Penalty proceedings u/s.271 (1)(c) has been initiated separately for concealment of income.

4. Travelling expenses & business promotion expenses:

4.1 The assessee debited travelling expenses of Rs.5,63,210/-. The assessee did not furnish any details of the expenses. Nor did the assessee explain the purpose of these expenses. The assessee was required to furnish the details of the places he visited and the persons who accompanied him. Further, he was required to explain the persons he met and the purpose of such meeting with corresponding evidences. However, the assessee did not furnish any details.

The onus was on the assessee to establish with evidences that the expenses were for the purpose of business only. In the absence of any details, the same is disallowed and added to the total income of the assessee. Penalty proceedings u/s.271 (1)(c) has been initiated separately for furnishing inaccurate particulars of income.

5. Society maintenance expenses:

5.1 The assessee debited society maintenance of Rs.1,38,880/-. The assessee explained that the expenses were in respect of the premises in which he is staying. Since, residence is more used for the purpose of personal use by the assessee, his spouse and children, the question of debiting society expenses of the residence in the profit and loss account does not arise.

4.2 Similar is the case with business promotion expenses of Rs.46,820/- and the same is disallowed. Penalty proceedings u/s.271 (1)(c) has been initiated separately for furnishing inaccurate particulars of income.

The assessee may argue that he had been carrying out the business activities from the residence, but it does not mean that the residence was wholly and exclusively used for the purpose of business. The use of residence for the purpose of business may be incidental and not exclusive. Under the circumstances, the society maintenance charges cannot be allowed as deduction in full. Since, the main use of the residence is personal use an amount of Rs.1,28,000/- is estimated towards personal use and balance of Rs.10,880/- is towards business of the assessee. Therefore, an amount of Rs.1,28,000/- is disallowed and added to the total income of the assessee. Penalty proceedings u/s.271 (1) (c) has been initiated separately for furnishing inaccurate particulars of income.

6. The assessee has debited derivative loss of Rs.1,84,020/- for which no details have been furnished. The assessee did not bring any evidence on record to establish the nature of such derivative loss and its allowability. The derivative loss would be allowable if the transactions are done through recognized stock exchange. Since, there is no evidence to this effect, the derivative loss of Rs.1,84,020/- is disallowed.

7. Disallowances u/s. 14A:

7.1 During the year the assessee has earned exempt income of Rs.2,25,016/-. However, the assessee did not disallow any amount u/s. 14A of the IT Act, 1961. Further, the assessee did not submit any explanation for the disallowance u/s. 14A of the IT Act, 1961.

7.2 Since, the assessee did not justify his claim that it did not incur any expenditure on exempt income, I invoke the provision of section 14A r.w Rule 80. In view of the above, disallowance u/s. 14A is worked as under:

		OPENING BALANCE	CLOSING BALANCE	
(i)	The Amount of expenditure directly relating to income which does not form part of total income			
(ii)	In case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula			
A	Amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year			8,767
B	The average value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of	66874994	65194961	66,034,978

	the previous year			
C	The average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year	155561220	153601398	154,581,309
		A X B / C		3,745
(iii)	0.5% of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year			330,175
	DISALLOWANCE U/S.14A	(i) + (ii) + (iii)		333,920

7.3. *The assessee may argue that the disallowance u/s 14A had been more than the exempt income and therefore it should be restricted to exempt income. The same argument can not be accepted. What is required to be disallowed is expenses attributable to exempt income. Such expenses may be more or may be less. Some investment may yield less return whereas other investment may yield higher return. Therefore disallowance of expenses against the exempt may be less or more than the exempt income. The quantum can not be criteria for restricting the disallowance. What is required to be computed is true and correct taxable income. In the process, the quantum of disallowance u/s 14A may be higher than the exempt income.*

7.4 *A reference may be made to the Hon'ble Supreme Court's decision in the case of CIT v Is Rajendra Prasad Moody 115 ITR 519 wherein it was held that interest paid on money borrowed for investment in shares which had not yielded any dividend, was admissible deduction. It was the case when the dividend was taxable. It is clear that the deduction of expenses was never related with the income.*

7.5 *Now the situation is other wise. The dividend is exempt from tax. The question arises whether there can be disallowance of expenses more*

than the exempt income. The question is obviously yes as laid down by the Hon'ble Supreme Court in the above referred case. Hence the disallowance of expenses u/s 14A is of expenses attributable of exempt income and such disallowance may be more or less than the exempt income.

7.6 Hence, an amount of Rs.3,33, 9201 - is disallowed u/s. 14A of the IT Act, 1961.

8. The assessee's total income is computed as under:

<i>PARTICULARS</i>	<i>AMOUNT</i> <i>(Rs.)</i>	
<i>Total income as per computation of income</i>		<i>46,73,582</i>
<i>Add: Disallowance as discussed above</i>		
<i>Credit card expenses - para 3</i>	<i>17,12,880</i>	
<i>Travelling Expnses-para 4.1</i>	<i>5,63,210</i>	
<i>Business Promotion expenses-para 4.2</i>	<i>46,820</i>	
<i>Society maintenance expenses - para 5</i>	<i>1,28,000</i>	
<i>Derivative loss - para 6</i>	<i>1,84,020</i>	
<i>Disallowance u/s.14A - para 7</i>	<i>3,33,920</i>	<i>29.68.850</i>
<i>Assessed total income</i>		<i>76.42.430</i>

4. Assessed accordingly. Give credit for taxes paid after due verification. Charge interest u/s.234B and 2340 of the IT Act, 1961. The Interest and Tax working is as per ITNS 150A, which is part of this order. Issue DN/RO Challan accordingly. Penalty proceedings u/s.271 (1)(c) has been initiated separately.”

In Appeal before CIT(A), nobody appeared on behalf of assessee therefore, CIT(A) after considering the order passed by the AO had found the same valid and hence confirmed.

8. From the aforesaid detailed order passed by the AO we found that assessee has neither furnished the required details and in addition the assessee had not given proper details for the reasons known to him. The AO made the best judgement in accordance with provisions of section 144 of the Act and even before the CIT(A) no body appeared to counter or rebut the finding recorded by the Id. AO. Therefore, the CIT(A) had no other option except to dismiss the appeal and before us also the position is same as nobody appeared to rebut or counter the finding recorded by the CIT(A) and the AO. We found that the AO has valid reasons for making disallowance of expenses and therefore the order of the AO as well as the CIT(A) do not need any interference as no material or circumstances have been brought before us to show that the order passed by the CIT(A) is perverse. Therefore, considering the totality of the facts and circumstances of the case and after going through the orders passed by the revenue authorities we hold that the orders passed by the AO as well as the CIT(A) are based on valid reasons and thus no interference is required by us. Therefore, we uphold the orders passed by CIT(A) and dismiss the appeal of the assessee.

9. In the result, the assessee's appeal is dismissed.

Order pronounced in the open court on 19th February, 2016

Sd/-

(Jason P. Boaz)

लेखा सदस्य / Accountant Member

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated :19.02.2016

Ps. Ashwini

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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai