

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER  
AND SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No. 3827/Del/2009  
AY: 2006-07**

Suraj Overseas (P) Ltd. Green Field Farm, Khasra No.8/1/1 10/2, 9/3, 4, Gadiarpur Jaunpur road Tehsil Mehrauli New Delhi	vs.	ACIT, Circle 9(1) New Delhi]
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PAN: AAACS 4002 K

**(Appellant)**

**(Respondent)**

**Appellant by** : Shri Ajay Vohra, Sr.Adv.  
And Sh. Rohit Garg, Adv.

**Respondent by** : Smt. Anima Barnwal, Sr.D.R.

**ORDER**

**PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER**

This is an appeal filed by the Assessee directed against the order of Ld.CIT(A)-XII, New Delhi dated 10.04.2009 pertaining to the Assessment Year (hereinafter referred to as the A.Y.) 2006-07, on the following grounds.

*“1. That the CIT(A) erred on facts and in law in upholding the action of the A.O. in treating the profits arising from sale of shares as business income as opposed to capital gains returned by the assessee.*

*1.1. That the CIT(A) erred on facts and in law in not appreciating that investment in shares under a portfolio management scheme is on capital account.*

- 1.2. *That the CIT(A) erred on facts and in law in not appreciating that profit on sale of shares had been returned and consistently accepted as capital gains by the A.O. in the earlier years.*
2. *That the CIT(A) erred on facts and in law in not admitting the additional evidences filed by the assessee in accordance with Rule 46A of the Rules.*
3. *That the CIT(A) erred on facts and in law in confirming the disallowance of Rs.2,13,123 made by the A.O. u/s 14A of the Act.*
4. *That the CIT(A) erred on facts and in law in not appreciating that for the purposes of disallowance u/s 14A of the Act, there must be direct nexus between expenditure incurred and the earning of exempt income.*
5. *That the CIT(A) erred on facts and in law in not holding that disallowance u/s 14A of the Act could not have been made by the A.O. by applying the provisions of Rule 8D of the I.T. Rules, 1962 (the Rules) as the same are only prospective in nature and therefore were not applicable during the relevant A.Y.*
6. *That the CIT(A) erred on facts and in law in upholding the proportionate disallowance of interest expense u/s 14A of the Act by applying Rule 8D of the Rules without appreciating that there was no nexus between the borrowed fund and investment in shares yielding dividend income.”*

**2.** One of the issues that arose in this appeal was referred by the Hon'ble President, ITAT to a Special Bench of the Tribunal u/s 255(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The question referred to was *“Whether on the facts and in the circumstances of the case, the CIT(Appeals) erred in law in holding that profit aggregating to Rs.2,51,50,313/- earned by the appellant from sale of shares and securities held under discretionary portfolio management scheme was assessable under the head 'business income' as opposed to capital gains returned by the appellant?”*

**3.** The Special Bench of the Tribunal in its order dt. 14<sup>th</sup> October, 2015 at paras 13 and 14 held as follows.

“13. Thus in view of the aforesaid decisions of the two High Courts in favour of the assessee where no contrary decision is cited before us, we answer the question in favour of the assessee holding that' the issue is no longer res integra. Only the facts of the present case need to be examined-by the Division Bench as the issue of admission of the 2- PMS Agreements including the other supporting evidences is pending adjudication before the Division Bench. Similarly the details of the transactions as culled out by the Honble High Court in the case of Radial International vis-a-vis the assessee's case have been tabulated by the assessee so as to canvass that the period of holding of shares under PMS is identical. The correctness of the claims made in the tabulation at pages 568-573 of the paper Book needs to be verified. We find that although no objection was taken by the Department that it was fresh evidence as the Departmental stand was that it may be verified at the A.O's level. However we allow the assessee to file an appropriate petition before the Division Bench.

14. Accordingly having answered the question posed within the procedural and factual constraints, we return the reference to the Division Bench to decide the appeal of the assessee.”

**3.1.** Thus the appeal is before us.

**4.** We have heard Smt. Anima Bernwal, Ld.Sr.D.R. on behalf of the Revenue and Shri Ajay Vohra, the Ld.Counsel for the assessee.

**4.1.** On a careful consideration of the facts and circumstances of the case, orders of lower authorities and case law cited, we hold as follows.

**5.** The assessee has filed an application for admission of additional evidences under Rule 29 of the I.T.A.T. Rules, 1963.

**5.1.** In ground no.2 the assessee challenges the action of the Ld.CIT(A) in not admitting additional evidences as per Rule 46A(1).

**5.2.** In view of the decision of the Special Bench of the Tribunal and also in view of the facts that these additional evidences go to the root of the matter and are necessary for the adjudication of the issue, we admit the same. Thus ground no.2 of the appeal is allowed. For the same reasons, the application for admission of additional evidence under Rule 29 dt. 13.1.2016 is also allowed.

**5.3.** In view of the admission of additional evidences, we restore the matter to the file of the A.O. for fresh adjudication in accordance with law. The A.O. is directed to apply the propositions of law laid down by the Special Bench of the Tribunal, as well as the Jurisdictional High Court on this issue. In the result ground nos. 1 to 1.2 are allowed for statistical purposes.

**6.** Ground nos. 3 to 3.3 are on the issue of disallowance u/s 14A of the Act. This issue is also restored to the file of the A.O. for fresh adjudication in accordance with law. The A.O. shall apply the propositions of law laid down by the Jurisdictional High Court in the case CIT vs. Maxopp Investments Ltd. reported in 247 CTR 162 (Del), and dispose of the matter de novo.

**7.** In the result the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 01<sup>st</sup> June, 2016.

Sd/-  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Sd/-  
**(J.SUDHAKAR REDDY)**  
**ACCOUNTANT MEMBER**

Dated: the 01<sup>st</sup> June, 2016

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar