



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no. 700/Mum./2014
(Assessment Year : 2009-10)

Shri Darryl Romesh D'Monte
29B, Kinara, Carter Road
Bandra (W), Mumbai 400 050
PAN – AABPD1931A

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-19(3), 251, Piramal Chambers
Lalbaug, Parel, Mumbai 400 012

..... Respondent

Revenue by : Shri Satya Pal Kumar
Assessee by : None

Date of Hearing – 23.08.2016

Date of Order – 16.09.2016

ORDER

PER SAKTIJIT DEY, J.M.

Instant appeal by the assessee is directed against the order dated 12th November 2013, passed by the learned Commissioner (Appeals)-18, Mumbai, for the assessment year 2010-11.

2. The only issue arising for consideration in the present appeal is in relation to disallowance of an amount of ₹ 2,65,236, under section 14A r/w rule 8D.

3. Brief facts are, the assessee an individual is stated to be a freelance writer on environment and development issues and also works as consultant to various national and international agencies on media issues relating to environment and development. For the year under consideration, assessee filed his return of income on 22nd September 2009, declaring total income of ₹ 24,99,240. The income declared by the assessee comprised of house property income, professional income, capital gain and income from other sources. During the assessment proceedings, the Assessing Officer while verifying the Balance Sheet of the assessee noticed that the assessee had made investment in shares and mutual funds totaling to ₹ 5,83,68,964. However, the assessee had voluntarily not made any disallowance under section 14A on account of expenditure incurred on earning exempt income. He, therefore, called upon the assessee to furnish the details of investment giving rise to exempt income. After verifying the details submitted by the assessee, the Assessing Officer found that the average value of investment during the year was ₹ 55,57,87,949. He, therefore, proceeded to disallow an amount of ₹ 2,78,940 being 0.5% of average value of investment in exempt income yielding asset in terms of rule 8D(2)(iii). Being aggrieved of the disallowance made by the Assessing Officer, assessee preferred appeal before the first appellate authority.

4. Before the first appellate authority, it was contended that the expenditure incurred is directly related to his professional income, whereas, exempt income earned by way of dividend, interest on PPF, capital gain on sale of shares and mutual funds do not have a nexus with the expenditure incurred. Therefore, no disallowance of expenditure can be made under section 14A r/w rule 8D. The learned Commissioner (Appeals), after considering the submissions of the assessee having found that similar disallowance was made by his predecessor-in-office in assessee's own case in assessment year 2008-09 followed the same and held that the Assessing Officer was justified in disallowing expenditure under section 14A r/w rule 8D. However, he observed that as the total expenditure debited to Profit & Loss account is ₹ 2,65,236, the disallowance made cannot exceed the expenditure debited to the Profit & Loss account. Accordingly, he restricted the disallowance under section 14A to ₹ 2,65,236.

5. As noted from the order sheet entry dated 26th May 2016, when the appeal was last posted for hearing no one appeared for assessee, hence, hearing was adjourned to 23rd August 2016 and a notice through RPAD was issued to the assessee intimating fresh date of hearing. However, when the appeal was called for hearing on this date, no one appeared on behalf of the assessee to represent the case.

From the aforesaid facts, it appears that the assessee is not interested in prosecuting his appeal. Therefore, we proceed to dispose of the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

6. We have heard the learned Departmental Representative and perused the material on record. Undisputedly, as per assessee's own admission, during the relevant previous year assessee had earned exempt income by way of dividend, interest on PPF and capital gain on sale of shares and mutual fund. However, the quantum of such income is not available, either from the assessment order or any other material on record. Further, it is not disputed that the total expenditure claimed by the assessee for the year under consideration is ₹ 2,65,236. The details of expenditure as has been mentioned in the statement of facts forming part of form no.35 filed before the learned Commissioner (Appeals) indicates that assessee's claim that part of the expenditure is relatable to his professional activities cannot be rejected. Thus, the entire expenditure debited to the Profit & Loss account cannot be disallowed by attributing it entirely to earning of exempt income. That being the case, the entire expenditure debited to the Profit & Loss account cannot be disallowed. Keeping in view the peculiar facts and circumstances of this case, we are of the view that

5% of the total exempt income earned by the assessee during the relevant previous year can be considered for disallowance under section 14A r/w rule 8D. We may further add, this decision of ours is purely in the context of facts involved in the present case, hence, not to be considered as a precedent. The ground raised by the assessee is partly allowed.

7. In the result, appeal is partly allowed.

Order pronounced in the open Court on 16.09.2016

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 16.09.2016

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai