

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 554/JP/2016  
निर्धारण वर्ष/Assessment Year : 2011-12.

Asstt. Commissioner of Income Tax, Circle-1, Jaipur.	बनाम Vs.	Dr. Bimal Roy Soni, 38, Kanota Bagh, Jawahar Lal Nehru Marg, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AFPPS 1588 H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA No. 416/JP/2016  
निर्धारण वर्ष/Assessment Year : 2011-12.

Dr. Bimal Roy Soni, 38, Kanota Bagh, Jawahar Lal Nehru Marg, Jaipur.	बनाम Vs.	Joint Commissioner of Income Tax, Range-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AFPPS 1588 H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

राजस्व की ओर से/ Revenue by: Shri P.P Meena (JCIT)  
निर्धारिती की ओर से/ Assessee by : Shri Manish Agarwal (CA)

सुनवाई की तारीख/ Date of Hearing : 07.03.2017.  
घोषणा की तारीख/ Date of Pronouncement : 08 /03/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, J.M.

These two cross appeals by the revenue and assessee are directed against the order of Id. CIT (A)-1, Jaipur dated 18.03.2016 pertaining to assessment year 2011-12. First, we take up assessee's appeal in ITA No. 416/JP/2016. The assessee has raised the following grounds of appeal :-

"1. On the facts and in the circumstances of the case, the Id. CIT erred in confirming the disallowance of interest amounting to Rs. 33,19,540/- (total disallowance Rs. 80,26,665/-) made by assessing officer by invoking the provisions of section 14A (r.w. rule 8D) of Income Tax Act, 1961.

1.1. That the Id. CIT (A) has further erred in ignoring the fact that there was no direct nexus between the borrowed funds and investment in securities having exempted income, thus the disallowance of Rs. 33,19,540/- confirmed by CIT (A) deserves to be deleted.

1.2. That the Id. CIT (A) has further erred in ignoring the fact that by making investment having tax free income, assessee assumed holding in those companies and thus the investment is under business expediency therefore no disallowance be made u/s 14A of the Income Tax Act, 1961.

2. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.

2. Briefly stated the facts are that case of the assessee was picked up for scrutiny assessment and the assessment under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) was framed vide order dated 25.03.2014. While framing the assessment, the AO observed that the assessee has claimed expenditure of Rs. 89,78,807/- under the head Interest to various parties and financial institutions. Under these facts, the AO invoked the provisions of section 14A read with rule 8D and made disallowance of Rs. 80,26,665/- and added the same to the income of the assessee. Aggrieved by this, the assessee preferred an appeal before Id. CIT (A), who after considering the submissions restricted the addition to the extent of Rs. 33,19,540/-. Aggrieved, the revenue is in appeal before this Tribunal.

3. The Id. Counsel for the assessee reiterated the submissions as made in the written brief and submitted that the issue is squarely covered by the decision of this Bench in the assessee's own case pertaining to assessment years 2008-09 & 09-10.

3.1. On the contrary, the Id. D/R opposed the submissions.

3.2. We have heard rival contentions, perused the material available on record and gone through the orders of the authorities below. It is contended that the investment made in the sister concerns was to have controlling interest and in respect of the investment made in partnership firms, it is contended that income from partnership firms in the form of remuneration is duly offered for tax. The income in the form of share in profits of the firm is also subject to tax which was borne by the partners. It is submitted that share in profits of firm apparently seems to be exempt income, but eventually the same comes in the hands of the partners after suffering tax in their profit sharing ratio. Thus the tax is also borne by the respective partner. We find that the Coordinate Bench in ITA Nos. 105 & 687/JP/2012 for the A.Y. 2008-09 & 09-10 has decided the issue in para 4.3. of its order by holding as under :-

"4.3. We have heard rival contentions, perused the material on record and gone through the orders of the authorities below. The Id. CIT (A) has deleted the disallowance on the ground that it has been held by the coordinate Bench in assessee's own case pertaining to A.Y. 2002-03 that provisions of section 14A are not applicable. Since the facts are identical in the year under appeal also, the contention of the assessee throughout has been that the investment wherefrom it has earned exempt income were made for the purpose of maintaining the controlling interest. Therefore, in view of the decision of the Tribunal, provisions of section 14A would not be applicable. The coordinate Bench in

assessee's own case in the assessment year 2002-03 had deleted the addition on the basis that provisions of section 14A would not be applicable in the case of the assessee as the investment has been made solely for the purpose of having the controlling interest. There is no change into the facts in this year as well. The revenue has not brought to our notice any contrary binding precedent. Moreover, the assessee has dividend income to the tune of Rs. 756/- and the disallowance towards expenditure is made at Rs. 44,89,436/-. In view of above, we do not see any reason to interfere in the order of the Id. CIT (A). The same is hereby upheld."

The facts are identical in this year as well. Therefore, taking a consistent view, we direct the AO to delete the addition. Ground raised in this appeal is allowed.

4. Now we take up revenue's appeal in **ITA No. 554/JP/2016**. The revenue has raised the following grounds of appeal :-

" Whether on the facts and in the circumstances of the case and in law, the Id. CIT (A) has erred in deleting the disallowance of Rs. 47,07,125/- out of total disallowance of Rs. 80,26,665/- made by the AO under the provisions of section 14A of the I.T. Act r.w. Rule 8D of the I.T. Rules."

5. The representatives of the respective party have adopted the same argument as made in ITA No. 416/JP/2016. The only effective ground in revenue's appeal is against restricting the disallowance made under rule 8D of the Income Tax Rules. Since this issue is decided in favour of the assessee in the assessee's appeal in ITA No. 416/JP/2016, we do not see any merit in the contention of the Id. D/R, the same is dismissed.

6. In the result, appeal of the assessee is allowed whereas appeal of the revenue is dismissed.

Order pronounced in the open court on 08 /03/2017.

Sd/-  
( भागचन्द, )  
(BHAG CHAND )  
लेखा सदस्य/Accountant Member  
Jaipur

Sd/-  
( कुल भारत )  
( KUL BHARAT )  
न्यायिक सदस्य/Judicial Member

Dated:- 08/03/2017.

d/

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

1. The Appellant- The ACIT, Circle-1, Jaipur.
2. The Respondent – Dr. Bimal Roy Soni, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 554 & 416/JP/2016)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar

