

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Ravish Sood(JM)
I.T.A. No. 3125/Mum/2016 (Assessment Year 2008-09)

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| M/s. M.P. Recycling Co. Pvt. Ltd. 51-53, A Wing Mittal Court, J.B. Marg Nariman Point Mumbai-400 021. PAN : AADCM3153A (Appellant) | Vs. | DCIT CC-6 Mumbai (Respondent) |
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| Assessee by | Shri Rakesh Joshi |
| Department by | Ms. S. Padmaja |
| Date of Hearing | 26.10.2017 |
| Date of Pronouncement | 26.10.2017 |

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 18.01.2016 passed by the learned CIT(A)-47, Mumbai and it relates to A.Y. 2008-09. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of ₹ 15.55 lakhs made by the AO u/s. 14A of the Act.

2. Facts in brief are that the assessee belongs to Arya Group of companies and the said group was subjected to search on 29.4.2011. Consequent to search proceedings, the assessee was issued notice u/s. 153A of the Act and the present assessment was completed u/s. 143(3) read with section 153A of the Act. In response to the notice issued u/s. 153A of the Act, the assessee filed its return of income declaring total income of ₹ 13.35 crores. The Assessing Officer noticed that the original assessment u/s. 143(3) of the Act had been completed by the Assessing Officer at ₹ 13.51 crores by making addition u/s. 14A read with Rule 8D of the I.T. Rules to the tune of ₹ 15.55 lakhs. The Assessing Officer further noticed that the assessee had challenged the said addition by filing the appeal before the appellate authority and it was

pending. Accordingly the Assessing Officer completed the assessment u/s. 153A of the Act and also by determining total income of ₹ 13.51 crores, as determined in the original assessment proceedings, i.e. by making addition of Rs.1555 lakhs u/s 14A of the Act.

3. Before the learned CIT(A), the assessee challenged the addition of ₹ 15.55 lakhs made by the Assessing Officer u/s.14A of the Act on merit as well as on legal ground. The assessee contended on legal ground that the impugned addition would not have been made in the present assessment proceedings as no incriminating material relating to the same was found during the course of search. The learned CIT(A) did not accept the same on the ground that the Assessing Officer did not make any fresh addition in 153A proceedings, but only repeated the addition made in the original assessment proceedings. Aggrieved by the order passed by the learned CIT(A) the assessee has filed this appeal before us.

4. Learned AR submitted that the addition of ₹ 15.55 lakhs made by the Assessing Officer in original assessment proceedings has since been deleted by the learned CIT(A) and the Assessing Officer has also passed the order giving effect to the order of the learned CIT(A) on 18.7.2011 by allowing relief granted by the learned CIT(A). Accordingly, learned AR submitted that addition made by the Assessing Officer u/s. 14A in 153A proceedings would partake the character of new addition. He submitted that the assessment order originally passed for the year under consideration would not abate as per the provisions of sec. 153A and hence the addition, if any, can be made by the Assessing Officer only on the basis of incriminating material found during the course of search. Since the search team did not find any incriminating material relating to the addition made u/s. 14A of the Act, the learned CIT(A) was not justified in confirming this addition. In support of this legal proposition learned AR placed reliance on the decision rendered by Hon'ble Bombay High Court in the case of CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. [2015] 374 ITR 645.

5. On the contrary, learned Departmental Representative supported the order passed by the learned CIT(A).

6. Having heard the rival submissions, we are of the view that there is merit in the contention of the assessee. Once addition made by the Assessing Officer in the original assessment proceedings is deleted by the learned CIT(A), the Assessing Officer could have made addition in 153A proceedings only on the basis of incriminating material found during the course of search, since the assessment year under consideration would remain unabated. In the absence of incriminating material has held by Hon'ble Jurisdictional High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra), impugned addition could not have been made by the Assessing Officer. Accordingly, we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to delete the impugned addition u/s. 14A of the Act.

7. In the result, appeal filed by the Revenue is dismissed.
Order has been pronounced in the Court on 26.10.2017.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 26/10/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Sr. PS/Asstt. Registrar)
ITAT, Mumbai

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